



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

Friday, September 10, 2021
Affordable Housing Growth & Development Trust Fund
Fund Board Meeting APPROVED Minutes
9:00 A.M.

Pursuant to the passage of legislation extending certain COVID-19 measures adopted during the state of emergency, this meeting was closed to the public.

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: Chairman Mark Ells, Andy Clyburn, Mark Milne, Laura Shufelt and Wendy Northcross.

Other Attendees: Attorney Ruth Weil, AHGDT Staff; Attorney Charlie McLaughlin, Senior Town Attorney; Elizabeth Jenkins, Director, Planning & Development; Attorney David Lawler for Applicants Tim Telman and Rob Carlton; Jake Dewey, Applicant; and Ellen Swiniarski, CPC Coordinator, Planning & Development.

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 is recorded and in accordance with M.G.L. Chapter 30A, s 20 he must inquire whether anyone is recording this meeting and to notify the Chairman that a recording is being made. No one came forward.

Member Introduction

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

Topics for Discussion

1. Public Comment

None. Public comment was then closed.

2. Approval of minutes for the 7/23/21 meeting.

Motion was made by Laura Shufelt and seconded by Andy Clyburn to approve the July 23, 2021 meeting minutes as submitted. Roll call vote: Laura Shufelt (yes), Wendy Northcross (yes), Mark Milne (yes), Andy Clyburn (yes), Mark Ells (yes). Motion carries.

Approval of minutes for the 8/27/21 meeting.

Motion was made by Wendy Northcross and seconded by Laura Shufelt to approve the August 27, 2021 meeting minutes as submitted. Roll Call vote: Laura Shufelt (yes), Wendy Northcross (yes), Mark Milne (yes), Andy Clyburn (yes), Mark Ells (yes). Motion carries. .

3. Application for Funding: Review of the application submitted by Jake Dewey for pre-development funds to support the redevelopment and development of the following parcels located in Hyannis, MA: 560 West Main Street, 4 Elis Drive, 14 Ellis Drive, 15 Elis Drive, 20 Elis Drive, 30 Elis Drive, 31 Elis Drive, 35 Elis Drive, 39 Elis Drive, 40 Elis Drive and 44 Elis Drive.

Mr. Jake Dewey was present and advised that he is continuing to gather further information and will come back to the Board with final plans and provide an outline of where the requested predevelopment funds will be required with proposals for each component. This item was continued to the next meeting scheduled to be held September 24, 2021.

4. Discussion of amendments to the proposed Grant Agreement, Mortgage and Promissory Note relating to the approved application submitted by Standard Holdings, LLC for a project identified as “Residence @ 850”, to create 10 units of affordable rental housing, to be affordable to individuals and families whose income is 50% of the Area Median Income (AMI), to be located at 850 Falmouth Road, Hyannis, MA.

Ruth Weil reminded that when the Trust approved the Grant Agreement there were business issues outstanding because all of the financing was not yet in place. She said she has been working collaboratively with Attorney David Lawler and only a handful of unresolved business issues remain requiring the Trust’s guidance.

Handout - Issues to be Discussed with Trust at the 9/10/21 Meeting:

- Change of primary lender from Mass Development to Bank Five

Attorney David Lawler, attorney for Tim Telman and Rob Carleton, Standard Holdings, LLC, noted that many of the finer points of the Grant Agreement have been agreed upon with Ruth and Attorney Charlie McLaughlin. He explained that initially the application to the Trust was presented with Mass Development as the primary lender, however as a business decision, Standard Holdings is requesting that a change of the primary lender be made in the Trust documents to Bank Five with Mass Development as the secondary lender, reversing the order of lenders in the existing documents.

David Lawler explained the benefit of Bank Five as the primary lender noting that the bank is in the lending business and reviews projects and authorizations for release of the payments as the project progresses. Mass Development would have relied on Bank Five for this function regardless of the lender positions. Ruth said that a vote of the Trust is required to acknowledge the reversal of the lenders in the Grant Agreement documents with Bank Five as primary and Mass Development as secondary.

Motion was made by Andy Clyburn and seconded by Wendy Northcross to approve the change of the primary lender in the Grant Agreement from Mass Development to Bank Five.

Roll call vote: Laura Shufelt (yes), Wendy Northcross (yes), Mark Milne (yes), Andy Clyburn (yes), Mark Ells (yes). Motion carries.

- Increase of loan amount for the Residence @ 850 from \$10,510,000 to \$11,873,784

Attorney Lawler continued with discussion regarding an increase in the loan amount explaining that initially the total loan amount was \$10,510,000 at the time of the Trust's approval. The applicants had been advised at the time there were not additional funds available for loan. Subsequently, Mass Development offered another \$1.4 million dollars which increases the total loan amount to \$11,873,784. Because the initial Grant Agreement documents indicate the lower total loan amount, a vote by the Trust is required to authorize the change. Laura Shufelt inquired what other changes were made in the pro forma from what the Trust has previously reviewed. Mr. Tim Telman explained that the increased ability to borrow is related to the timing of the initial financing applications, the effect COVID had on the supply chain and supplies and the increase in property values on Cape Cod. He said when applications were made to committees, the numbers were tight explaining that banks lend based on two components which both have to work: 1) loan to value based upon the appraisal, and 2) cash flow coverage if either one is lacking, the number is lower. The initial application on all fronts showed the construction costs at \$11.4 million during late 2020. An increase in value of real estate on Cape Cod, supply shortages and all the hard components increased dramatically. In early May 2021 it was bid out again with hard costs coming in at \$12,976,000 which was \$1.4 million higher due to increases in construction prices. Mass Development provides a loan guarantee when above the 70% loan to value with the bank as well as below the \$1.2 cash flow coverage is needed; this is how the shortfall was managed. He said anything beyond this will be funded by Standard Holdings. Mr. Telman noted that there is demand for housing, and the goal would be to have rents somewhat higher than the initial projection in order to eliminate the Mass Development guarantee which costs an additional \$45,000. Attorney Lawler added that rents may go up slightly but will remain in the lower range for rents with the same business model.

Attorney McLaughlin noted that the Trust should also consider how long is reasonable for the Trust to keep the default guarantee in place beyond which time the guarantee would disappear, explaining that the point is, the Trust guarantees are behind the other creditors in the event of a foreclosure under any circumstances.

Motion was made by Andy Clyburn and seconded by Wendy Northcross that the Trust increase the loan amount for the Residence @ 850 from \$10,510,000 to \$11,873,78 in the Trust documents. Laura Shufelt amended the motion language to say the Trust is increasing the loan amount as described in the Grant Agreement. Laura's amendment was accepted by Andy Clyburn and seconded by Wendy Northcross.

Roll call vote: Wendy Northcross (yes), Laura Shufelt (yes), Mark Milne (yes), Andy Clyburn (yes), Mark Ells (yes). Motion carries.

- Whether the following proposed promissory note term should be included or eliminated.

Attorney Lawler explained that he has had discussion with Attorney McLaughlin regarding this item that addresses the date of when interest would begin to accrue in the event of a default on the primary mortgage. He noted that opinions differed in that Charlie is requesting that default interest go back to the day when the money was first granted, and Standard Holdings proposes that interest only go back to the date of the default which is more consistent with banking practices. He said that this is a business issue that was left for the Trust to decide. Attorney McLaughlin explained that the question is that in the event of a default, how long is the personal guarantee to remain in place and how to ensure that the Trust gets the benefit of the bargain. He offered that the guarantee should remain in place at least until the Certificates of Occupancy (CO) issue. Additionally, there is the question about project stabilization which is addressed in the Bank Five commitment letter and the question of default where the project could be at risk including the affordable units, noting that the affordable housing restriction should survive foreclosure on paper, explaining that in the event of bankruptcy, the Trust would be competing with other creditors without interest to recover the funds. Charlie said that the broader context is important to understand and noted that the present value of money is what is at risk as well as where we stand with other creditors so this does implicate when the interest begins to accrue because it and would add to the Trust's claim in that context. Ruth said that the action of the Trust would be to determine whether the interest would accrue from the date of the issuance of the grant, or from the date of the default. Ruth said that this language is in the mortgage document that had not been produced at the time the Grant Agreement. Mark Milne suggested finding a middle ground where if the default occurs prior to the issuance of the CO, interest would accrue from the date of the grant; and if default occurs after the issuance of a CO, interest would accrue from the date of default. Attorney Lawler agreed.

Motion was made by Mark Milne and seconded by Andy Clyburn that the Trust agrees that if a default occurs before the issuance of the Certificates of Occupancy, the interest will accrue from the date of the loan; and, if a default occurs after the issuance of the Certificates of Occupancy, the interest will accrue from the date of the default.

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

- Whether or not the mortgage shall include language regarding a loan to value percentage that would govern future borrowing.

David Lawler explained his position regarding the scenario where later on the developer would like to convert construction financing into regular financing while working on the project. He noted that this is a greatly appreciated grant and the Trust receives 10 affordable units at 50% AMI in perpetuity. He pointed out that the Trust gets the benefit of its bargain early on when the affordable housing restrictions are recorded at the registry, the project is constructed and COs are issued, at that point the Trust has received everything they have asked for. Although unlikely scenarios could be envisioned, the building will remain an apartment complex with 10 affordable units, even in the event of bankruptcy. He said this bullet item is an attempt to cap the ability to refinance and Bank Five will not allow their loan to be subordinate to the Trust under their banking package and does not go along with banking business practices. He explained that the language proposed makes the ability to borrow money impossible even now because the bank documents do not allow it. Attorney Lawler offered that once the restrictions are on record and a CO is received, the Trust is protected, but has no problem restricting up until that time. He noted

that the grant should not be treated like a conventional bank loan where it is expected to be repaid and reiterated that once the restrictions are recorded and COs issued, the Trust is protected and has received the benefit of the greatly appreciated bargain.

There was further discussion regarding how an affordable housing restriction could be eliminated in the case of bankruptcy. It was noted that the restrictions go on record first, before bankruptcy documents and should survive bankruptcy. One way the affordable housing restriction could be released was if the Department of Housing and Community Development or Town Manager were to sign off which is not likely. Attorney Lawler said he is not a bankruptcy expert, however bankruptcy releases unsecured creditors, the Trust is not a creditor. The restriction only creates a property interest right and bankruptcy does not eliminate a third parties property interest right.

Andy Clyburn asked Ruth and Charlie what scenario beyond the bullet above would what is proposed protect, noting that it was agreed that once the COs are issued, interest would accrue from the default date in the event of default. Charlie said he disagrees with the context that once the COs issue, it eliminates the Trust's risk noting that although it would be a bad public policy decision, a bankruptcy court judge could decide to remove the restrictions which is not impossible in theory and depends upon the court. Charlie also explained a scenario where the Trust has no say in the refinance of the project at a much higher rate and is unable to protect its stability by not becoming overleveraged. Charlie said he has made a suggestion that was not agreed by David explaining that the Bank Five commitment letter references a stabilization formula where the project reaches a determination of stabilization when it is capable of sustaining a refinance while still meeting obligations due to an increase in project value. He proposed that the Trust follow the bank's lead as a reasonable compromise that at the point of stabilization, what the Trust has in place would disappear. Charlie said that the bullet above and this one would go hand in hand and noted that it would be appropriate for the project at some point to stand on its own, the Trust to concede that the project is stable, and rely solely on the restrictions for security. David agreed that there are always possibilities that a court could do something against public policy, however, the added level of protection being proposed is not reasonable when balanced with dealing with a lending institution that has their own business practices and will not agree to it.

Laura Shufelt said that she had a hard stop at 10 a.m. and requested that if meetings will extend beyond the hour, the invite include the extra time so her schedule is not filled. Laura confirmed that the restrictions are recorded at the time of the Grant Agreement and asked if the appraisal considered the 10 restricted apartments which it was answered that it was. She suggested that the point of stabilization is a good compromise and said that if the Trust does not have anything in place, it could get over financed at some point and referenced Charlie's concern that the borrowers or new owners could borrow up to 100%. Chair Ells expressed concern that what is being suggested would render the developers unable to borrow money. Attorney Lawler said that it would. Charlie said that it would reflect the fact that Bank Five wants a level of financial stabilization demonstrated before they will allow any additional monies to be borrowed which is reasonable.

Laura Shufelt left the meeting at 10 a.m.

Attorney Lawler said that Bank Five has a different relationship where they are loaning up to \$12 million and will be paid that money back and have the stabilization formula in place for down the road. The Trust is providing funds as a grant not a loan with certain protections. The benefit

to the Trust are the permanent restrictions and COs. Once there is a building with occupants, it will be a building regardless of who owns it explaining that even in bankruptcy a trustee takes over collection of rents. David said that the proposed stabilization requirement puts a burden on the developer's ability to borrow money, impeding their ability to convert construction financing after a CO has been issued without a clear benefit to the Trust. He referenced Wendy Northcross's recommendation that protections remain in place only until the recording of the restrictions and issuance of the COs.

Mark Milne said that it seems like even in the worst case scenario, it is unlikely that the affordable units would be lost and unlikely that a bankruptcy court would allow the affordable units to be eliminated. Andy Clyburn said efforts to protect the grant by putting the grant on equal footing with the \$12 million loan would be great if it is achievable, but he expressed concern regarding any negative impact on the project's ability to move forward. Chair Ells asked what position the Trust is in for recovering funds. Charlie answered that the sequence would be that the Trust is behind the combined Bank Five and Mass Development loan amount that was just approved at \$11.8 before the Trust would have any chance of recovering the grant.

Mr. Tim Telman offered that the Affordable Housing Restriction will be in first position Next would be Bank Five and then if we want to treat the grant which is in 1st position and also call it a loan, then the Trust is in second position with a note and a mortgage behind the banks. So in a distressed situation, there may be no recovery whatsoever on that mortgage, however you would retain the 1st position with the restriction because the bank did not get their \$12M and if it is less than \$12 million there is nothing left for the Trust's note which is really a grant and nothing left for the equity holders which is us, we get paid last. The Trust is still in 1st position with the 10 restricted affordable units.

Wendy Northcross said that it seems Bank Five is protecting the Trust with their lending criteria by creating a stable project and said she did not see the benefit of additional protective layers.

Ruth Weil asked if there is already a commitment to Bank Five to comply with the loan to value ratio during the stabilization period, how does also imposing the same requirement in the Trust mortgage adversely affect the developer? David said that if refinancing with another bank, Bank Five's stabilization would not come into play because they would be paid off, but the Trust could still come forward and say they do not like the formula noting that this would take place after the Trust has paid out the \$1.4 million and should not have involvement at this point because it ties the developer from doing business in the conventional business market. David noted that the developers can only refinance if an FDIC lending institution does an appraisal and determines it qualifies.

Mark Milne said he appreciates legal team protecting the Trust as much as possible. He said he feels this is only necessary in the event that it is likely the affordable restrictions would be lost and has not heard anything that would put the affordable unit restrictions in jeopardy so did not think the stabilization protections were necessary. In answer to Chair Ells inquiry, Charlie said he would be surprised if a judge allowed the restrictions to be removed however the fact that the restrictions are in first place does not stop another creditor from trying to remove the restrictions so they can receive more money when the property is sold.

Andy Clyburn noted that the question being considered is whether or not the mortgage shall include language regarding a loan to value percentage that would govern future borrowing, and based upon prior member discussion, he made the motion that the mortgage not include this language, seconded by Wendy Northcross.

Roll call vote: Wendy Northcross (yes), Mark Milne (yes), Andy Clyburn (yes), Mark Ells (yes). Motion passes.

Standard Holdings Outstanding Deliverables

Ruth stated that she is continuing to work with the developer to obtain all documents required to be provided to the Trust prior to the release of the funds. Attorney Lawler expressed his thanks to Ruth, Charlie and the Trust.

Ruth noted the time and it was decided that agenda items 5, 6 and 7 along with item 3 would be moved to the next meeting agenda, September 24, 2021. Ruth shared that she has tried to develop metrics for the scoring of projects, however noted it is difficult and she found no other communities that have a set formula. She said that the HOME program has criteria similar to the Trust by awarding points. Andy agreed it is worthy of discussion but said that the method the Trust used in the past was very effective. Chair Ells said that whatever the Trust decides, there should be adaptability built in to take advantage of all opportunities.

8. Correspondence

Chair Ells noted that no correspondence was received.

9. Discussion of topics for future meetings.

Andy Clyburn said that he would like to have a discussion about how the NOFA is advertised.

Wendy Northcross reminded of Laura's comment about the length of the meeting invite being extended to 1 ½ hours and it was decided that for future meetings 1 ½ hours will be blocked out and held to.

Adjournment

Motion to adjourn was made by Mark Milne and seconded by Wendy Northcross. Roll call vote: Wendy Northcross (yes), Mark Milne (yes), Andy Clyburn (yes), and Mark Ells (yes). Motion carried. Meeting adjourned.

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

Exhibit 1 – Affordable Housing Growth and Development Trust Fund Board Agenda 9/10/21.

Exhibit 2 – Draft minutes for the 7/23/21 and 8/27/21 Affordable Housing Growth and Development Trust Fund Board meeting.

Exhibit 3 – Handout - Issues to be Discussed with Trust at the 9/10/21 meeting prepared by Ruth Weil.

Respectfully submitted,

Ellen M. Swiniarski
CPC Coordinator
Planning & Development Dept.