



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

Tuesday, December 19, 2023
Affordable Housing Growth & Development Trust Fund
Fund Board APPROVED Meeting Minutes
11:00 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.

Other Attendees: Elizabeth Jenkins, Director, Planning & Development; Jillian Douglass, Trust Administrator, Planning & Development; Charlie McLaughlin, Senior Counsel, Town Attorney's Office, and Ellen Swiniarski, Community Preservation Coordinator, Planning & Development. Tim Tellman and Attorney David Lawler for Standard Holdings; Jake Dewey for Linnell Landing; Nathan Herschler, 298 Main Street, Hyannis Pre-development.

Call to Order

With a quorum present, Chairman Ells called the meeting to order at 11:00 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): Wendy Northcross, Laura Shufelt (at 11:08 a.m.) Mark Milne, Andy Clyburn and Mark Ells.

Public Comment

None.

Topics for Discussion

1. Approval of minutes for the November 3, 2023 meeting.

The motion of Wendy Northcross was seconded by Andy Clyburn to approve the November 3, 2023 meeting minutes as submitted.

Roll Call Vote: Wendy Northcross (yes), Mark Milne (yes), and Andy Clyburn (yes), Mark Ells (yes). Motion carried.

**2. Linnell Landing – Jake Dewey
Request from Applicant to Amend Pending Development Grant Agreement –
Proposing two (2) phases for release of development funds for Linnell Landing (50
Yarmouth Road)**

Ms. Jillian Douglass, Trust Administrator, noted that a draft motion was provided in the meeting packet as guidance to amending the grant agreement. Laura Shufelt joined the meeting at 11:08 a.m. and questioned if there was a written request for the amendment to the pending grant agreement and Ms. Douglass noted that the request was provided through email. Mr. Dewey explained that the requested amendment is to comply with HDIP and TIE agreement stating that 33% of the project would be restricted but only 17% of the new units are restricted which cannot exceed 20% per EOHLC requirement for the TIE agreement. He said that the TIE agreement was approved back in November 2023 by the Town Council and he is now attempting to comply with the State by restricting units now that do not fall into the TIE agreement and then restrict the other two units when completed. The banks require a higher interest rate during construction so having the funds up front is very advantageous to making numbers work. There was discussion regarding procedure and it was decided that the resulting grant agreement is the operative document. To clarify, Mr. Dewey provided an overview of the project and the request saying the existing building has 3 units that are occupied, and his preference is to not have to relocate the existing tenants. These three existing units would be deed restricted now. The proposed new construction is for 12 new units of which no more than 20% of these can be restricted, which is a maximum of 2 units. One unit is inclusionary at 65% AMI and the other unit would be restricted at 100% AMI. It was noted that staff would follow the recommendation of the board to amend the grant agreement to reflect mutual agreement. Mr. Dewey clarified that he is not seeking HDIP credit funds at this time.

Atty. McLaughlin said that Laura is correct that funding is usually disbursed as a proportion of the commercial loan advancement on funds, with all due process and architectural certifications completed. Mr. Dewey clarified that the three units exist and have already been renovated so there is no construction proposed in the 1st phase. The restrictions and mortgage could be liened against the three existing units, regardless of the construction of the 12 new units. Laura informed Jake that until the existing units are fairly-marketed through a lottery, they will not be counted on the SHI, she noted that Jake could hold the lottery (or lotteries) at future dates, as tenants move out of each of the three existing units.

There was board member discussion whether there could be approval of the request today. Wendy indicated that she was comfortable with \$350,000 of the total \$500,000 being released for the first phase, with AHRs placed on the three units that already exist. However, she questioned how long the present leases may hold up the units from being eligible to count on the SHI. Jake repeated that he dislikes disrupting tenants and offered to have funds held-back until there was a turnover. Atty. McLaughlin noted that the Trust is authorized to loan money and the funds could be loaned with a mortgage in the first position, with a date that the units would have to be fairly-marketed by. Once units are on the SHI, the mortgage could be discharged, leaving the affordable housing restriction in first place. Laura noted that initial LAU preapproval can be obtained in order to distribute the funds for the existing units, but they would not count on the SHI until new eligible tenants are occupying the units. Laura said that if there is a mortgage that is collateralizing the amount that is being asked for, then it should be okay. However, she

questioned if there is \$350,000 in equity for the property, to be able to disburse \$350,000 as one amount. Jake noted that there is no other lien on the property, but the assessed existing building value was \$217,000 and it was noted that it may be beneficial to have an updated appraisal, because that assessment of the existing building was clearly outdated.

Chair Ells requested that guidance be restated so that Mr. Dewey is informed what will come back in the form of an amendment to the grant agreement. Mr. Dewey said that he could live with a \$20,000 holdback amount representing funds he would not be spending on a lottery, until a future date. Attorney McLaughlin offered the motion to approve a forgivable loan in the amount of \$350,000; \$330,000 of which would be advanced at the closing, secured by a first-place mortgage on the existing structure, and provided that upon certification of compliance with an appropriate lottery and occupation of the units by eligible tenants, 1/3 of the \$20,000 reserve could be released for each of the three units, and the mortgage would then become an affordable housing restriction without further action from the board.

Laura Shufelt offered that the original vote for up to \$500,000 be secured by a mortgage, with \$350,000 as a first phase. Once the affordable housing restriction on the three existing apartments and conditional approval from EOHLC for the LAU units is recorded, then the second phase amount of \$150,000 could be distributed coincident with the construction loan percentages. Atty McLaughlin added that this would need to be subject to a satisfactory appraisal. Jake clarified regarding the 2nd portion of funding, saying that he is not planning to use a construction loan and would prefer one lump disbursement at the end, instead. Chair Ells confirmed that a motion would not be required if there is a consensus of the board members that these amendments to the grant agreement could be referred to staff for drafting, incorporating Attorney McLaughlin's statement, as modified by Laura Shufelt, with additional statements from the applicant, Jake Dewey, for a final version to be brought back to the board.

Poll of the Board Members for consensus: Wendy Northcross (yes), Laura Shufelt (yes), Mark Milne (yes), Andy Clyburn (yes), and Mark Ells (yes). The timeframe for drafting was estimated to be one week with a final version expected to be brought back for a vote at the January 5, 2024 meeting.

3. Request from Applicant Regarding Pending Pre-Development Grant Agreement - Request for Clarification – Nathan Herschler

Elizabeth Jenkins left the meeting. Mr. Nathan Herschler provided an overview of his project at 298 Main Street, Hyannis and said he wanted to ensure he is on the same page as the Board, moving forward. He said there are four one-bedroom apartments and one studio apartment, all currently occupied at 298 Main Street. Additionally, there are two vacant spaces in the building. One is unconstructed storage space, and this is the space requiring the support of pre-development funds. The second vacant space is unoccupied office space that can be converted to an apartment, without support from the Trust. Mr. Herschler said that his intention is to restrict both now-vacant units, ideally at 80% AMI. He said that 60% AMI for one unit was discussed at an earlier meeting and he wanted to ask the Board if language could be added to the grant agreement, reflecting that the applicant seeks predevelopment funding to convert the vacant storage space at 298 Main Street to one two-bedroom affordable housing unit at 80% AMI, with the intention to also restrict the second vacant unit at 80% AMI. He is requesting 80% AMI be the expected affordability level for both of the units. This would leave flexibility for negotiation at the development phase, depending upon what costs are estimated. He noted that conversion of

the office space to an affordable unit will require installation of a fire safety sprinkler system, however, if it were to be rented at market rate (100% AMI) requirements are slightly less stringent, and sprinklers may not be required.

Ms. Douglass explained that they are looking for guidance from the Trust to amend the draft grant agreement. Mr. Hershler said that 80% AMI restrictions work most effectively if two units are restricted, saying his goal is to provide the Town with two affordable units, not just one. Atty. McLaughlin asked Mr. Hershler what security he is offering for the predevelopment funds. Mr. Hershler noted that the building has ample equity with an appraised value of \$1.3M and a primary mortgage of \$870,000. Attorney McLaughlin stated, if verified, there is likely enough equity to protect the Trust's funds. He asked Mr. Hershler if subordination would be possible from the holder of the first mortgage, Rockland Trust, to place the Trust in first position. Laura Shufelt offered that she is comfortable with \$50,000 predevelopment reimbursement funds for one unit at 80% AMI and is agreeable to taking second position with the loan-to-value, saying that it is a small amount to spend to obtain an affordable unit.

The motion of Laura Shufelt was seconded by Andy Clyburn that the Trust vote to amend their original vote taken on September 8, 2023 with conditions of the award up to \$50,000 in reimbursable funds towards predevelopment costs to develop housing units at 298 Main Street Hyannis, such that **upon execution of an affordable housing restriction for one unit at 80% AMI**, the Trust will reimburse the Applicant up to \$50,000 in predevelopment costs.

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

Attorney McLaughlin clarified that a subordination agreement from the lender of the permanent financing will be required at the closing, so that the affordable housing restriction will be recorded as the senior document.

Elizabeth Jenkins returned to the meeting.

4. Standard Holdings – Completion Report for “Residences @ 850 Falmouth Road” Lottery and Request to Discharge Trust Mortgage – Tim Telman & Attorney David Lawler.

Ms. Douglas noted that the lottery report for Residences at 850 Falmouth Road included in the meeting packet appears to be in compliance. Attorney McLaughlin said that a confirmatory subordination agreement for the affordable housing restriction to be in first position, will need to be recorded due to a Scribner's error. With that document recorded, it would be appropriate to discharge the mortgage, subject to that condition, and the Town Attorney's approval. Attorney David Lawler said that he has agreed, noting that all the units are occupied, including all of the affordable units. Laura Shufelt expressed concern that the agreement throughout the granting of this funding was that there would be a 30-year mortgage to back up the affordable housing restriction. She referenced HAC's project on Ridgewood Avenue as a similar example. She noted that having a mortgage is how affordable housing restrictions are enforced. She questioned why they are seeking to discharge the mortgage, as the property could be refinanced with the Trust's subordination. Attorney Lawler stated that this is a grant, not a loan, and the funds are granted in order to secure the affordable units and ensure that the process is going through with a lottery. The units are currently secured in perpetuity saying this has been done 100%. He noted that everything on record, including the regulatory agreement, reflects that the 10 units are to be affordable in perpetuity, and a mortgage would not provide additional guarantees. He stated the deed restrictions, the regulatory agreement and Zoning Board of Appeals decision are all acting as permanent restrictions, securing the affordable units.

Attorney McLaughlin noted that he would like to consult with Ruth Weil and also have an offline conversation with Laura. He noted that, with an affordable housing restriction recorded in the first position to all other encumbrances, the affordable housing restriction is enforceable, both in equity and in a court of law. Anyone taking over the property, as a result of foreclosure, would be bound by the affordable housing restriction. There was discussion regarding the model the Ridgewood Ave property followed, regarding the mortgages recorded as security. Laura noted that the 30-year mortgages on the properties on West Main Street that secured the project on Ridgewood Avenue, have not been discharged, although the project has been completed and is fully occupied. Attorney McLaughlin suggested that this item be taken under advisement to allow further discussion and consultation with Ruth and Laura. He asked that this item be brought back to the next Trust meeting on January 5, 2024.

5. Topics for Future Meetings/Agendas

- Laura Shufelt asked that procedures for amendments to agreements be placed on a future agenda.
- Laura Shufelt suggested a discussion about the Bond Bill, and whether Barnstable would want to be part of the “Seasonal Communities” discussions. It was decided that Mark Milne and Laura would meet, and bring this item forward to the Trust through Jillian when ready.

6. Matters Not Reasonably Anticipated by the Chair

None.

- 7. Next Meeting Dates – January 5, 2024, 9 a.m.** Laura Shufelt noted she may be 15 minutes late.

Adjournment

The motion of Wendy Northcross was seconded by Laura Shufelt to adjourn the meeting.

Roll Call Vote: Laura Shufelt (yes), Wendy Northcross (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 12/19/23.

Exhibit 2 – Draft Minutes from the November 3, 2023, Trust meeting.

Exhibit 3 – Email and draft documents regarding Standard Holdings Release of Mortgage

Exhibit 4 – Residences @ 850 Affordable Housing Unit Marketing Final Report

Respectfully submitted,
Ellen Swiniarski
CPC Coordinator
Planning & Development Dept.