



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

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

As a result of the COVID-19 State of Emergency, this meeting was closed to the public to avoid group congregation.

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: Andy Clyburn, Acting Chairman, Laura Shufelt, Wendy Northcross, Mark Ells, Mark Milne (Absent).

Other Attendees: Ruth Weil, AHG&DTF Staff; Attorney Charlie McLaughlin, Senior Town Attorney; Elizabeth Jenkins, Director of Planning & Development; Arden Cadrin, Housing Coordinator, Planning & Development; David Anthony, Director of Asset Management; Councilor Paula Schnepf; Tim Telman & Robert Carlton, Applicants; Jake Dewey; 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, Andy Clyburn, Mark Ells. Mark Milne (Absent).

Topics for Discussion

1. Public Comment

None.

2. Approval of minutes for the 3/26/21 meeting.

Motion was made by Andy Clyburn and seconded by Laura Shufelt, to approve the March 26, 2021 meeting minutes as submitted subject to revisions requested by Wendy Northcross that acronyms used throughout the minutes initially be spelled out in full for clarity. Roll

Call Vote: Wendy Northcross (yes), Andy Clyburn (yes), Laura Shufelt (yes), Mark Ells (abstains). Motion carries.

3. Continued Application:

Continuation of the review of, and possible vote on the conditions of funding to be included in a Grant Agreement relating to the revised application submitted by Standard Holdings, LLC for a project identified as “Residence @ 850”, a proposed multifamily housing development applying for \$1.4Million Dollars of Trust funds 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. *The Trust voted on March 5, 2021 to approve the application for funding subject to a review of and an affirmative vote by the Trust on the conditions of funding to be included in a Grant Agreement to be executed by the parties.*

Ruth Weil explained that at the last meeting on March 26, 2021, the Application for funding was approved subject to the approval of certain conditions to be incorporated in a Grant Agreement. Since the last meeting, several changes have been proposed based on correspondence from Mass Development and further review from the Legal Department and additional input from the Applicant. With regards to Mass Development, Ruth said she has been advised that the Department of Housing and Community Development (DHCD) Regulatory Agreement or Restrictive Covenants will be the operative document in terms of the affordability issues. As a result, Mass Development will not be approving either the lottery agent, marketing agent nor will they approve the management agent. Ruth explained that the changes in paragraphs 1B and 1C reflect the change that Mass Development will not be involved in terms of those items.

Ruth Weil explained that paragraph 1D was revised with efforts from Charlie McLaughlin, the Applicants and their attorneys, and herself to address some concerns with the language as it had been proposed. Ruth indicated that the redlined copy has two clarifications: first, regarding the membership of the LLC, the review is triggered by the vote of the Trust on the transfer when the change of membership is greater than a total of 25% during the 10- year period; second, there was a sentence added regarding the qualifications of the transferee that the Trust would be considering in determining whether the transfer was appropriate. Ruth explained that paragraph D was added as an amendment at the March 5, 2021 Trust meeting. Paragraph D states that an annual certification shall be submitted to the Trust regarding compliance with the affordability requirement from either the monitoring agent or from Mass Development. Laura Shufelt noted that Mass Development should be changed to DHCD and Ruth agreed this change should be made.

Ruth explained that paragraph 2 deals with the mortgage. She said that previous Trust funding awards, s required non-forgivable monetary mortgages. As an example, the Trust gave a loan in the amount of \$50,000 for the Village Green development with a 30 year non-forgivable no interest loan . Also, for the Ridgewood Ave development, Housing Assistance Corporation (HAC) pledged a property at 422 West Main Street resulting in a mortgage on that property for a loan that is non-forgivable loan due and payable after 30 years. When the Legal Department reviewed paragraph 2, it wanted to make clear that what is proposed is a no-interest monetary loan that will be forgiven in 30 years unless there is a default. Additionally, the developer requested that language be added in the last sentence providing a 60-day cure period including the ability to dispute the default, all which is acceptable to Legal. Ruth reminded that in this

context, it is important to note that this is only an outline of conditions that the Trust is presently reviewing. The Grant Agreement itself will add meat to these bones and the mortgage and promissory note will contain the specific conditions of default that will be spelled out in a final document. The Trust will be voting on the parameters of the outline only. Ruth said that attorneys will work out the details of the Grant Agreement and should problems arise, it will be brought back to the Trust for any issues that we cannot be resolved amongst the attorneys.

Ruth noted that at the last meeting Trust members emphasized the requirement that the Affordable Housing Restriction (AHR) be senior to all encumbrances and survive foreclosure. She indicated that this condition is in the special permit and is also required under the Trust rules. Ruth said that she spoke recently with Mass Development and they have provided confirmation that they have no problem subordinating their mortgage to the AHR.

Referring to her Memorandum to the Trust Board Members dated April 8, 2021, Ruth noted that there are seven conditions listed that the developer is going to have to fulfill before any money is released. She explained that these are the conditions that will be spelled out in the Grant Agreement and stressed the importance that the developer be informed of his requirements for the money is to be disbursed. Ruth explained that the details regarding the timing of disbursement of the funds are still in review with Mass Development. She noted that for the last two Trust developments, the Trust has held onto the money until occupancy permits are issued.

Ruth explained that to assist the developer, she reached out to Mass Development to see if it was possible to work on a pro rata construction loan basis where there are inspections, and the money is disbursed periodically based the construction schedule and inspections. However, she said that she has not seen the agreement with Mass Development, although a draft of the type of agreement has been requested. Ruth explained that this arrangement is not unusual, and a problem is not anticipated, so the condition regarding disbursement only recognizes the fact that we are trying to work out an agreement with Mass Development and if for some reason that does not come to fruition, we will come back to the Trust to see if there is an alternative disbursement process that can be invoked.

Motion was made by Andy Clyburn and seconded by Wendy Northcross to approve a Grant Award to Standard Holdings, LLC in the amount of \$1.4 Million from Community Preservation funds for a project identified as “Residence @ 850”, a proposed multifamily housing development to create 10 units of affordable rental housing to survive foreclosure and to be affordable in perpetuity to individuals and families whose income is 50% of the Area Median Income (AMI), to be located at 850 Falmouth Road, Hyannis, MA subject to the conditions contained in the April 8, 2021 Memo from Ruth Weil to the Trust and any other additional conditions necessary to ensure the proper expenditure of those funds.

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

Motion was made by Andy Clyburn and seconded by Wendy Northcross that the Chair is authorized to sign a Grant Agreement on behalf of the Trust Fund Board without requiring further review by the Board.

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

Mr. Tim Telman, Applicant expressed his gratitude for the support of the group and wanted to ensure that it was acknowledged. Chairman Ells said they are looking forward to his project and wished him good luck.

4. Review and discussion of the funding parameters established in the Trust's Notice of Funding Availability (NOFA) for Development Activities.

Ruth Weil reminded that the Trust went through a lengthy and thorough process to develop the Notice of Funding Availability (NOFA) criteria, and there were limitations set with certain provisos. However, Laura Shufelt had raised a concern that the parameters that were established of a maximum of \$100,000 per unit with a total project maximum of \$500,000 for development activities. The NOFA contains a phrase that states that the specific amount to be awarded depends upon the Trust's evaluation of the particular aspects of each project as they relate to the established priorities and criteria referenced in the NOFA. Ruth noted that the Trust wants to be consistent, however, each project is *sui generis* to a degree, so there will be differences. Ruth explained that it would be helpful that if the Trust is going to deviate from these criteria, the reasons for deviating be specified so that future applicants know the expectations. Ruth stated that the proposed language change in the NOFA for discussion today is that if there is a deviation from the established funding parameters, the Trust shall specifically articulate the extraordinary circumstances which provide the basis for the deviation. Laura Shufelt added that without the specifics of deviation outlined, the Trust's past actions would become precedent and the established funding parameters would be disregarded. Laura reminded that the Trust spent a lot of time looking at the numbers and said that she did not think that in this case where the parameters were exceeded, a proposal from an unknown, out of town developer would have survived. The reason for exceptions needs to be outlined so future applicants, and others advising them, do not rely on the expectation this will be consistently repeated. As an example, Laura referred to her experience with the Zoning Board of Appeals and other boards, where if the established guidelines or ordinances are not strictly followed, the basis for deviations need to be made clear in the resulting document.

Chair Ells confirmed with Ruth that staff reviews the NOFA Application when it comes in and asked if staff would like to offer comment. Arden Cadrin suggested that maybe the parameters need to be adjusted to reflect what we are seeing for real expenses out there in the real world. She explained that those are the parameters that were established a while ago and maybe they are not up to date. Wendy Northcross concurred with Arden's suggestion that we need to stay within the realm of what realistically is going on in the marketplace. She said that she thinks that as Jake referred to at the last meeting in public comment, the Trust should be incumbent for hunting and gathering more funding resources for the Trust. Wendy said that she has no problem with stating clearly why the Trust made exceptions, however she said she wants to ensure that the Trust does not get boxed in. Laura noted that the \$100,000 per unit maximum is more than what other Towns offer for rental unit support on the Cape and explained that she did not think Barnstable costs more than anywhere else especially in this case. Laura explained that the most recent developments the Trust has approved have not proposed a 40B which adds costs, and instead have been accomplished by right, special permit or regulatory agreements: construction costs are the same regardless of permitting. Laura indicated that the Town of Falmouth cannot keep up with the requests for Trust rental money at \$65,000 per unit maximum, noting that the evidence does not support the need to provide more than \$100,000 per unit. However, she did say that perhaps the \$500,000 per project could be adjusted based upon certain conditions, but the \$100,000 per unit fills the gap. Laura offered to provide a list of surrounding Towns and

their per unit criteria. Wendy asked if Barnstable's criteria it is truly enough and Laura said that it is enough noting that mostly they are providing the money for wastewater treatment and they are affordable, it is not 18%. Laura reminded that the need is for affordable housing and we are not supposed to be building market housing, that is not what the Trust is funding: if we are funding affordable housing, \$100,000 is enough to fill the gap. Andy Clyburn acknowledged Laura's point of view and noted that there is not a line in the sand for the \$65,000 per unit amount and said he is more concerned with the per project maximum. He expressed concern that if a developer is ready to develop housing, we may not want to be limiting the number of units if it is a larger project as long as we are consistent with the maximum per unit. Laura agreed and noted that the \$100,000 per unit and \$500,000 per project was capped because of the amount of funds available. Depending upon how much we are giving per unit, we can do 7 or 8 or 4 additional with the \$2.5 Million that we had. Laura said she is not opposed to that as long as we are not looking at \$100,000 per unit with no cutoff per project. We certainly could not do \$100,000 per unit for 40 units. Laura said that Falmouth is very open and public about how much money they have, and there are lot of local developers, and available raw land that Barnstable does not have. Andy Clyburn asked how Barnstable can reach the same success as Falmouth and noted that lowering the amount from \$100,000 downward will not encourage development. Laura suggested a marketing campaign is needed as it is likely only the people that listen to the Trust that know this is out there, or if they go into the Planning Department. We need to go to the home builders and get the word out although we may not want to advertise the \$140,000 per unit approved for this project as an example. However, the fact that this project received funds will generate interest.

Ruth Weil said that she reached out to the homebuilders, realtors, a list of developers that Laura provided 6 months ago and will circle back, noting her marketing efforts included contacting local attorneys that do 40Bs and multifamily housing developments. She said that maybe now that the NOFA has been existence for a while, she will resend those letters. Arden Cadrin noted that affordable units are developed in a large variety of ways as Andy indicated. Some get free land, some are larger projects that require multiple funding sources but take a long time to develop. She said we may not want to limit that flexibility of how we create affordable housing in the Town of Barnstable. If there is a project ready to go that might need a little more funding so that they do not have to go for other funding sources, what would be the harm in trying to support that? She said that we need to look at the variety of ways that it gets developed and match your funding sources to those strategies. Andy Clyburn stated that when it comes time to discuss agenda items for the next meeting, we should support what Laura said and have an item on there about advertising and then an item for going back for another funding request from the Community Preservation Committee. Attorney McLaughlin stated to Laura's observation on the prior applicant and being local, that it certainly was helpful in our assessing capabilities. A local applicant who may also be problematic may also be known to us. He said that the record should be clear that this was fully vetted to the Trust's credit, by the independent review that we contracted. He said that he felt that at the end of the day, if a retired South Shore banker had come in to us and presented the same case, he thought they would stand on equal footing with a local developer in terms of analysis and did not want the record to suggest in any way that the local player had any undue influence on the outcome.

Ruth Weil suggested that the NOFA be included on the next agenda because we are out of money in the development activity category based on the NOFA: that was limited to \$1Million and we are now at \$1.4Million. Bring the item back, revisit and try to incorporate some of this discussion.

5. Staff updates on the evaluation for the development of affordable housing of the portion of the property now addressed as 1200 Phinney's Lane, Hyannis, MA (Map 274, Parcel 031) which was formerly owned by the Disabled American Veterans (DAV) and on the potential uses for the property that is the site of the former Marstons Mills Elementary School, 2095 Main Street, Marstons Mills, MA.

David Anthony, Director of Asset Management, explained he has been working with Planning and Development to identify a partner to perform an evaluation of the 1200 Phinney's Lane site. The Asset Management Revolving Fund will be used to contract this partner so that if for some reason it is discovered that there is no ability to move forward, there will not be an Affordable Housing Trust investment that would need to be corrected. He said that he will report back any information received. He noted that the Capital Improvement Plan (CIP) item for the Police Department security fencing for the parking lot to the rear, is in line for consideration in the FY22 budget process, which was important to Chief Sonnabend if the lots were to be developed. David indicated that he did not yet have a timeline to share, as the engagement letter for the consultant is being finalized. Elizabeth Jenkins said that she worked with Ruth and David to put a scope of work together essentially for a development feasibility analysis to examine the feasibility of developing the properties with several different type housing typologies in mind. This will provide an understanding of the potential densities as well as an analysis of things like access, utility availability, and anything else that would be necessary to get housing units out of the site. The pro forma analysis was not included due to the different types of densities and zoning opportunities which result in different feasibility to develop a project financially. Elizabeth explained that the pro forma can always be done as Phase 2, noting that zoning recommendations were included in the tasks to be completed with the survey available.

David Anthony explained that the Marstons Mills Elementary School project has a CIP for demolition in this year's FY22 CIP program. He noted that the portables were already taken down in 2020, so this CIP would be for the balance needed for the removal of the school, including the foundation and essentially render the site vacant land. He said that this site is considered for Phase I town sewer, but there is a lot of work needed to reach that far down Route 28, noting that the earliest would be at the end of Phase I for sewer to be available. He shared that the property itself is 13.11 acres, however there are two small parcels abutting parcels that could be used to increase the overall size of contiguous municipal property to 14.2 acres. David noted that there was discussion regarding involving Marstons Mills as a village to see what the village may envision for this asset, similar to Cotuit when we were considering the Cotuit Elementary School lot, indicating that a meeting had been done in the past, however it may be time to refresh now that the Marstons Mills village center project has been finalized. David said that the scheduled for the building demolition will depend on workflow in FY22 into FY23. Laura Shufelt stated that she is concerned that village participation does not always bring out those who are in favor and are usually opposed to things. She expressed concern regarding the possible veto power held by Village Civic Associations over proposals which has occurred in the past with town land and proposed affordable housing. Laura said that while she feels input and community engagement is important, a single village should not be given the opportunity to overrule what is a Town-wide need for housing. Andy Clyburn said that he did not think that has been the case and was unsure how those dots were connected. He explained that this is a necessary process for the Town Manager to declare the property as excess and it will be the full Town Council that would ultimately vote. Andy said that there is no veto power for civic associations or any other group. David said that he does not know of any existing veto power and noted that his experience at the Cotuit meeting was that it was abutters who came forward

and people who had larger concerns about the village for open space. He shared the varying village ideas for the Cotuit property including veteran's centers, demo and keep green, but ultimately, we heard from Cotuit Water District as to their needs. The direct abutters and others had personal stories and there were lots and lots of people who came forward with those. David said that there was no organized civic association response that he recalled and said that at the end of the day, it seemed like people were happy to be heard. The Marstons Mills Elementary site previously had ideas for open space, housing, playgrounds and said that a fresh response may be a good idea. Laura Shufelt said that she is not sure how many people came out at these meetings in favor of affordable housing at that Cotuit meeting, but obviously we need to listen to abutters in the village and at the same time consider that there is a broader need in the community and respond to the need without allowing villages to be exclusionary which some are. Andy Clyburn acknowledged that Asset Management is not exclusionary and noted that Laura's concerns are heard loud and clear. Andy Clyburn explained that David's points about this being in Phase I sewer area changes that calculus significantly compared to what was considered at the Cotuit Elementary. Mark Ells asked when the Marston Mills Elementary School was disposed of by the School Department. David said that in 2009, the school was closed, there were three subsequent RFPs over the years, and we got it back three or four years ago. Ultimately the building was determined to be costly to restore and it was winterized. Mark Ells noted that he is sharing his thoughts as Town Manager now and he had supported the CIP for demolition and that we are going to move forward on this parcel and given the need for housing in our community, some portion of that parcel will be used for an affordable housing effort. He said that Phase I sewer and the potential to tie in seems like a long way away, but we already had this as a municipality, although it has not under Town Manager control for over a decade. Mark said that he would not have committed to this unless he hoped we were going to expand sewer. He committed to take down the building, which needs to be done as it is not a usable building without significant investment, and then finally prioritize some portion of that land for affordable housing. Andy Clyburn said that we should realize what a significant step it is just to dedicate the number of resources we are in the current environment to that CIP effort. It will cost upwards of \$1Million to demolish the building and there are clearly other needs, and this demonstrates the Towns commitment for moving forward in the right direction with this particular parcel.

6. Correspondence

None

7. Discussion of topics for future meetings.

Andy Clyburn reviewed the topics that were brought forward for the next meeting. He agreed that the Trust needs to do a better job advertising and demonstrating transparency. He said he would like to add an agenda item to the next meeting to have further discussion about how we might go about doing that. The other item for the agenda is returning to the Community Preservation Committee for additional funding of the Trust for affordable housing. Laura Shufelt said that like Wendy Northcross said, the Trust should explore other avenues for funds that we could add to the Trust and consider some of the unique ways other Town are using to do it. Laura said she could provide a couple of examples other than taking revenue from short term rentals, which is being done. A lot of towns are having a transfer tax for sales over \$2Million and are asking for special legislation and thought it would be good to sign onto that.

Ruth Weil said that in terms of fundraising if this Board is going to be involved in actual fundraising, guidance from Legal may be needed because there are all sorts of parameters and

limitations on that. Mark Ells said that he was not present at the meeting where this was discussed in public comment but noted that before he contemplates fundraising as the Board Chair, he would want to better understand what the authority of the Trust is, and what are the potential restrictions the Trust has, before pursuing funding sources in a more aggressive way. Chair Ells said that he does not have a good feel for the discussion that Laura brought to our attention, noting that he is curious about the healthy housing markets in Falmouth and Yarmouth that do not seem to be in Barnstable, although we have seen some improvement. He referenced that Elizabeth Jenkins has confirmed there is discussion in the queue, but he said he would like to have a better understanding of what is happening in the housing market, specifically for Trusts like ours and what they are allocating. Mark said that he felt comfortable in the Trust's actions and decisions for the "Residence @ 850" Application, but a better understanding of the marketplace would be helpful in making future decisions, recognizing that the market is always changing. Chair Ells said he wants to know what is happening here in Barnstable especially compared to surrounding communities and would like to take this up at a future meeting. He commented that the Trust should discuss bringing in an outside group to assist with this. about If you think we should bring in an outside group to help with that, maybe we should talk about that. He said that he agrees with Andy as to the lack of movement in the last decade, but it seems as though we are starting to see it again and we want to keep that going.

After brief discussion, it was decided that the scheduled April 23, 2021 meeting would not likely have a quorum so it should not be held. The next scheduled meeting is May 14, 2021.

Motion was made by Andy Clyburn and seconded by Laura Shufelt to not hold the April 23, 2021 meeting with the next Trust meeting to be held on the following scheduled meeting date of Friday, May 14, 2021. Roll call vote: Laura Shufelt (yes), Wendy Northcross (yes), Andy Clyburn (yes), Mark Ells (yes). Motion carried.

Adjournment

Motion to adjourn was made by Wendy Northcross and seconded by Laura Shufelt. Roll call vote: Laura Shufelt (yes), Wendy Northcross (yes), Andy Clyburn (yes), 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 4/9/21.

Exhibit 2 – Draft minutes for 3/26/21 Affordable Housing Growth and Development Trust Fund Board meeting.

Exhibit 3 – Memorandum from Ruth Weil – Revised Grant Agreement Conditions for the Residence @ 850.

Exhibit 4 – Barnstable Affordable Housing Growth & Development Trust Fund- Notice of Funding Availability (NOFA) FY2021 (revised).

Respectfully submitted,

Ellen Swiniarski
CPC Coordinator
Planning & Development Dept.