The Town of Barnstable

Affordable Housing Growth & Development
Trust Fund Board
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Mark S. Ells, Chairman

Friday, January 5, 2024
Affordable Housing Growth & Development Trust Fund
Fund Board Meeting 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, Laura Shufelt (at 9:35 a.m.) and Wendy Northcross. Mark Milne (absent)

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. Donna Kalinick, Assistant Town Manager, Town of Brewster; Attorney David Lawler for Standard Holdings; Jake Dewey and Attorney Kilroy for Linnell Landing. Town Counselors Gordon Starr and Paula Schnepp.

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): Wendy Northcross, Laura Shufelt (at 9.35 a.m.) Andy Clyburn and Mark Ells. Mark Milne (absent)

Public Comment
None.

Topics for Discussion

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1. **GUEST SPEAKER for Discussions on Policies & Program Investigation: Trust Sponsored Programs with Donna Kalinick, Assistant Town Manager, Procurement Official and Affordable Housing Trust Member for the Town of Brewster.**

Ms. Jillian Douglass, Affordable Housing Trust Board Administrator, noted that information regarding how the Trust in the Town of Brewster had implemented their rental assistance program was included in the meeting packet. Brewster Assistant Town Manager Donna Kalinick shared that she is the Town Manager's designee to the Town of Brewster's Affordable Housing Trust and said she would provide a brief overview of how the rental assistance program was created in Brewster: Ms. Kalinick explained that after the Brewster Affordable Housing Trust was created in 2018, as a goal of the 2017 Housing Production Plan, a priority goal was to create a local rental assistance program. While investigating and reaching out to other entities about the creation of this program, the pandemic began. She explained that Brewster ended up participating in a lower cape working group that was looking at creating an emergency rental assistance program and guidelines. The Community Development Partnership (previously known as the Lower Cape Community Development Corporation) was the lead entity. She said that the original 2020 program in Brewster included an emergency rent component. However, the state and federal government infused a lot of money into various state programs in response to the pandemic, so for the first 18 months, most people were accessing emergency rental assistance through the state, or getting increased or extended RAFT assistance. Ms. Kalinick explained that once the state programs started to phase-out, there was an increase in the number of applicants for the local funds.

Ms. Kalinick said that the original rental assistance program was set up to assist 10 recipients, however that number increased to 15 in August 2023, with 15 now enrolled in the program. Because the Town of Brewster did not have the resources to administer the program in-house, the town had gone through the RFQ process receiving three responses and ultimately hiring HAC to administer the program. She noted the benefit of having HAC is that at intake, HAC reviews the full range of financial programs that are available to the people who are applying for possible eligibility, and not immediately putting them into the local program. Additionally, HAC provides data tracking inquiries for assistance and participation in state and local programs as well as case management. HAC also assists qualified applicants for the state voucher program as the local funding is only allocated on an annual basis, not to exceed three years. Currently, the wait-list for state voucher approval is about three years. The intention is to bridge the need with local assistance, while waiting for long-term housing assistance through a state voucher. Ms. Kalinick shared that at the Trust meeting held last evening, there was discussion about increasing the program to 20 recipients responsive to continued increases in rents.

Ms. Kalinick explained that the funding for the rental assistance program has been Community Preservation Act (CPA) funds, through applications to the Community Preservation Committee (CPC) in the amounts of $75,000 and $150,000. She anticipated that with the program fully enrolled, additional CPA funds will be needed, noting an upcoming town meeting in November 2024. She shared that the Brewster Affordable Housing Trust is unique, as their bylaw requires a CPC representative to be included on the Trust, noting a strong working relationship with CPC. She noted also a CPA funded buy-down program, saying also that Brewster became a CBDG community, and through a regional grant, can now assist with housing rehabilitation and childcare vouchers. The Town is investigating a town-run childcare stipend program, as well. Ms. Kalinick said that in addition to the initiative the Trust has taken to develop affordable housing, the Brewster Trust has devoted a fair amount of focus and funding on support programs, both to help people stay in their homes with rental assistance and through buy-down funding for income-eligible buyers to purchase deed-restricted homes. She shared that recently, resources were allocated to renovating a foreclosed home, listed on the Town's SHI, that had suffered a flood. The Trust took over rehabilitating the property and is now in the lottery process for continued deed-restricted resale.

In response to questions from the Barnstable Affordable Housing Trust members, Ms. Kalinick stated that there is a 5-year financial plan for the Brewster Trust and a request for an additional $150,000 in CPA funds for fiscal year 2025 is planned to replenish the $225,000 in CPA funds already received. She explained that CPA funds are not the only source of funding for the Trust. In Brewster, 50% of the Town's short-term rental tax receipts had been enacted by the Selectboard to be allocated to the Trust three years ago, providing $500,000 (as of July 2023) to the Trust. Ms. Kalinick confirmed that the rental assistance program is intended to provide support while waiting for a more permanent state voucher, which takes about three years. She noted an increase in demand for the program, saying a total of 162 newly constructed Affordable units have become available in the last two years in Brewster, and the program adjusted to allow up to 100% of market rent, when rents started to get out of hand. Ms. Kalinick said that the majority of the 15 recipients for rental assistance are older residents living alone.

Ms. Kalinick shared that HAC is very familiar with the housing market and holds most of the mobile vouchers on the Cape with the rest being held by housing authorities. HAC is expert in their ability to look at all the available programs and provide the most resources to people. She noted that frequently there is a lack of coordination between social service agencies and non-profits that do not communicate with each other. When someone is experiencing housing instability, they are likely also to be experiencing food instability and transportation challenges and need more than just one service. Ms. Kalinick shared that as a housing program in town, the Trust tried to reach out to other agencies to encourage them to work together, although it is not an actual function of the Trust. She explained that it is most important to keep the existing units on the SHI, maintain them, and provide the necessary support services.

Mr. Kalinick confirmed that eligible recipients are selected on a first-come-first-serve basis, noting that there are 3 people beyond the 15 now participating that have submitted applications. She noted that after a program is implemented, there needs to be flexibility to make changes in response to what is occurring. She said that the initial CPA funding request for 10 recipients was financially based. She said that the Barnstable Trust may want to investigate how many vouchers there are in town and how many units may be available if interested in setting up a rental assistance program, noting that Barnstable would need to have a far bigger program than Brewster.

2. **Standard Holdings – Request for Discharge of Trust Mortgage Continued –** David Lawler

Ms. Jillian Douglass, Trust Administrator, noted that Attorney McLaughlin was available to answer questions after having discussions with Ruth Weil. It was confirmed that Attorney McLaughlin will be assisting in wrapping up outstanding items for the Trust after his retirement. Attorney McLaughlin said the question is whether the mortgage that had been recorded to secure the advancement of Trust funds could be discharged. He noted that at the last Trust meeting he expressed that he was comfortable that the Trust had achieved the purpose and received the benefit of the bargain, however, he agreed to check with Ruth Weil regarding the question about the Standard Operating Procedure (SOP) for Trusts in the Commonwealth. He noted that Ruth said that the SOP is to leave the mortgage in place and he had not found reference leading up to the granting of mortgage for any expectation that the mortgage would be discharged prior to it's term. He said that Ruth was clear that the Board has the authority to consider waiving the mortgage. The Board's concern is enforceability of the restriction if there is a violation of the

affordable housing restriction (AHR) after occupancy whereby the town would be burdened with court costs to enforce an agreement, even if it were in first place at the registry and senior to all other encumbrances. He suggested a creative middle-ground is an option for the Trust to consider is to amend the AHR to include recouping full cost of collections, if any action is necessary in the courts to enforce the AHR. He noted that there is no guarantee of an award of attorney's fees with just a mortgage in place.

Attorney McLaughlin noted that the advantage of amending the AHR over the mortgage is that although a foreclosure of the property may be achieved, there is an unusual situation where there is not a monetary enforceable number with the mortgage, because it was essentially a grant. Discussions with counsel were that an amendment to the AHR could include an option to recover the full amount of the grant if desired. He explained that Ruth checked and found precedent for that type of recovery, if there was a violation. He noted that the Board could vote on the discharge of the mortgage, if Attorney Lawler would be agreeable to amendment of the AHR providing for collection costs to be paid and recapture of the grant amount.

Laura Shufelt disagreed that the funds provided can be considered a grant, noting the anti-aide amendment requires something in return for providing public funds. She said that the argument that the Town is receiving restrictions in return for the funding does not hold, because the restrictions were required by zoning. She said that instead, what was given by the developer in return for funds, was reducing the AMI to 50%, noting that this was done because the Trust had set the precedent that it would not fund units that are inclusionary. In keeping with policy, the Trust would not have funded this project at 65% AMI because that is what was required under zoning. Laura explained that the Trust funding was a financial Affordability gap-filler, not a purchase of restrictions. She noted that to secure those funds, there needs to be collateral or a mortgage in place as security. She said it has been the precedent practice that any time the Trust has given CPA funds or Trust funds over $100,000, there has been a mortgage in place. Laura said that although the AHR allows EOHLC and the Town to enforce the AHR, the Town has no enforcement powers, and would have to go to the Attorney General's Office, which rarely happens. She noted that the mortgage not only secures the funds; it prevents a subsequent owner from overfinancing the property, noting that real estate is cyclical and there will (at some point) be a downturn in property values. The mortgage protects both $1.4M and the 50% AMI.

There was discussion regarding two options to provide adequate protection and the benefits of each. Attorney Lawler said that the removal of the mortgage would allow financial flexibility for his clients, which is helpful from a business standpoint. He explained that an amendment to the AHR would better position the town for enforceability, because a claw-back of the funds would clearly be included, where it is unclear in the mortgage, because the benefit of the bargain has already been achieved. He referenced that the argument that this is how it always has been done does not allow for consideration for improvements. Attorney Lawler said that the project would not have happened without the Trust funds noting that the Town received 53 units total, with 10 units at 50% AMI, all fully-occupied with qualified tenants. He said the developer would like to continue working with the Town of Barnstable and the discharge of this mortgage would help them provide more housing to the citizens of Barnstable.

Chair Ells said that to be successful we need to be able to adapt and when options present. We need to review policy changes for their merits. He said he is willing to consider new options if they are equal or superior, but does not want to deviate from precedence in response to one project. There was further discussion and agreement that a legal opinion is required to advise the Trust on this question regarding the discharge of the mortgage with an amended AHR. Chair

Ells also requested an answer to whether the funds are considered a grant or not, and what is the significance between the two. He said this is a priority and asked that the item be brought back to the Trust once there is a legal opinion from Attorney Karen Nober and there can be meaningful discussion.

3. **Request for Phasing and Changes to Grant Agreement – Continued– Linnel Landing, 50 Yarmouth Road – CCR Holdings –** Jake Dewey

Ms. Douglass said that an updated, red-lined affordable housing restriction was expected as an example for Jake to consider, and noted that the 100 % AMI units will not be monitored by EOHLC, because they will not be listed on the SHI. She said there is not a full draft grant agreement yet, because discussions about phasing of the project are outstanding. Ms. Douglass noted that Jake is requesting release of $350,000 for Phase I on the existing updated building for the recording of 3deed restrictions. Phase II for the remaining $150,000 includes 2 units; one which would be the 65% AMI inclusionary unit, and the other affordable at 100% AMI to provide financial flexibility for Jake.

Jake noted that he had a draft declaration of restrictive covenants and draft grant agreement from Attorney Kilroy, however it does not appear they were received. It was also confirmed that the request for phasing had not been submitted as a written request. Attorney McLaughlin said that his understanding is that the documents accurately reflect his discussions with Attorney Kilroy. He said that the front building has already been restored, and have certificates of occupancy, and are fully rented. He asked if the Board would be comfortable advancing $350,000 for Phase I and having a grant agreement in place that commits the Trust to release the additional balance of $150,000 against the 2 units- once occupancy certificates have issued for them, the lottery has taken place, and the units have been fairly-marketed and occupied by income-eligible tenants. He said he is comfortable making that recommendation and would ensure that the AHR and/or mortgage is secured in 1st position.

Chair Ells said that the answer would be provided at the next meeting. Jake noted that the Barnstable Housing Authority said they would administer and pay for monitoring both the 100% AMI units and the 80% AMI unit. Laura requested clarity on what is being asked and whether the property will be subdivided in the future. Jake said that there are no plans to subdivide however, language can be added that no subdivision can be made without approval of the Board. It was requested that Ms. Douglass coordinate for the next Trust meeting.

4. **Planning & Development Updates – Elizabeth Jenkins – Planning & Development**

Ms. Elizabeth Jenkins reported that the Housing Production Plan has been completed. The Plan was introduced to the Local Comprehensive Planning Committee at the last meeting and a discussion of housing strategies, specifically as they relate to planning, zoning, and land use, will be brought back to the Committee for their January 25, 2024 meeting. This will allow integration of both the Housing Production Plan and the Local Comprehensive Plan draft strategies, and to proceed with review of the Housing Production Plan, presenting it to the Trust, Planning Board and the Housing Committee for additional feedback and finalization. An updated timeline will be provided.

Chair Ells took the next item out of order:

8. **Matters not Reasonably Anticipated by the Chair**

Chair Ells lead a discussion regarding planned Legal coverage for the Trust with the retirement of Attorney McLaughlin. It was acknowledged that support will need to be provided and that

several options are being reviewed. Attorney Nober said that she would advise in advance of the next meeting if Legal is not prepared to answer the two outstanding questions requiring their opinion.

5. Trust Administrator's Updates/Follow-Ups – Jillian Douglas

a. Draft of Semi-Annual Report to CPC
Ms. Douglass noted that the draft of the Semi-Annual Report to CPC was included in the packet for this Trust meeting. She explained that there is an option for her to include information on the town's progress on other housing projects in the pipeline. It was agreed that this additional information did not need to be included. Chair Ells said that reporting to the CPC has been successful thus far and should be continued as it has been done in the past, with a signature by the Trust Board Chair.

b. Letter of Appreciation for Charles McLaughlin for 18 years of service. Chair Ells asked that the draft letter be circulated to the Board members in case anyone would like to add to it, and he would sign the final letter as Chair.

6. Approval of minutes 12/19/23

The motion of Wendy Northcross was seconded by Andy Clyburn to approve the December 19, 2023, Trust meeting minutes as submitted. Roll Call vote: Wendy Northcross (yes); Laura Shufelt (yes); Andy Clyburn (yes); and Mark Ells (yes). Motion carried.

7. Topics for Future Meetings/Agendas

- Standard Holdings – Request for Discharge of the Trust Mortgage
- Andy Clyburn requested follow up on discussion about information received from Brewster. It was noted that Barnstable is structured differently and would like this to be first digested and then brought back for the Board's consideration. Elizabeth Jenkins said a report would be prepared.
- Laura Shufelt requested ideas of how units that are being produced are going to be monitored and whether we are going to monitor them at all.
- Laura also requested discussion whether the Trust will increase the membership.

Wendy Northcross left the meeting at 10:40 a.m.
Laura Shufelt shared that in the new bond bill, there is a commission being formed looking at seasonal communities and what incentives and products could be put into place like what has been done for gateway cities. She said that in her professional role, she is participating in policy decisions surrounding seasonal communities and asked if Chair Ells and Elizabeth would like to discuss. Chair Ells noted that Julian Cyr had also mentioned this along with other items for Friday afternoon's meeting. Chair Ells that Mr. Cyr said he would like to hear from the Town Manager. Chair Ells said would appreciate input from Laura and Elizabeth.

9. Next Meeting Dates – Tentative 9:00 a.m. February 2, 2024.

Adjournment
The motion of Andy Clyburn was seconded by Laura Shufelt to adjourn the meeting.
Roll Call Vote: Laura Shufelt (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 1/5/23.
Exhibit 2 – Information regarding the Town of Brewster Rental Assistance Program
Exhibit 3 - Draft Minutes from December 19, 2023, Trust meeting.
Exhibit 4 – Draft Semi-Annual Report to CPC.
Exhibit 5 – Draft Letter of Appreciation for Charles McLaughlin