



TOWN OF GROTON
Affordable Housing Trust



Sheila Julien, *Chair*
David A. Wilder, *Vice Chair*
Colleen A. Neff, *Treasurer*
Becky Pine, *Member*
Stuart M. Schulman, *Member*

Meeting Minutes

Regular Session

Date: Monday, October 28, 2019
Time: 7 p.m.
Location: Town Hall, First Floor Meeting Room, 173 Main Street, Groton
Attending members: Sheila Julien, David Wilder, Stuart Schulman
Others in attendance: Daniel Emerson (CPC chair and Groton Housing Authority), Robert DeGroot (CPC and Historical Commission), Anna Eliot (CPC and Park Commission), Bruce Easom (CPC and Conservation Commission), Sammie Kul (CPC Assistant), Russell Harris (Groton Herald), Carolyn Perkins (Housing Partnership), Fran Stanley (Housing Coordinator)
Meeting handout: Agenda, October 28, 2019 letter to CPC, April 6, 2017 letter to MLD

Meeting called to order by Sheila Julien at 7:05 pm. Dan Emerson called the Community Preservation Committee meeting to order. He said that Russell Harris has informed him that he will be recording the meeting. The housing trust is meeting with the CPC in response to the CPC's July 22, 2019 invitation for the housing trust to participate in a post mortem review of the FY2012 Boynton Meadows Community Preservation Act Project.

Fran Stanley presented on behalf of the housing trust. She presented a 6-slide PowerPoint presentation to update the CPC on the current status of the housing trust's investment of \$400,000 into Mount Laurel Development, LLC (MLD). Note that MLD is the development company established for the purposes of acquiring and developing the property at 134 Main Street. Afterwards, Fran Stanley distributed a letter from the housing trust that mirrors the points made in the slide presentation to CPC and other attendees.

The text from the October 28, 2019 letter is as follows:

The Affordable Housing Trust has received the Community Preservation Committee letter inviting the Trust to participate in a post mortem review of the Boynton Meadows CPC project.

Some public information has been shared about the housing trust investment: Town Meeting information, approved regular session minutes, and other correspondence. Some information, however, remains confidential within the permissible exceptions to the Open Meeting Law; specifically, the exceptions that exist for litigation and value of real estate. The Select Board has been briefed. Once the Trust has resolved matters that have kept certain information private, then additional information will be made public.

Current Status at Boynton Meadows

Mount Laurel Development's project is not yet complete. The lower level commercial unit has not sold. Additionally, Robert France (manager for Mount Laurel Development) met with Town boards over the summer regarding outstanding work under current permits. In the course of those meetings, he made a personal verbal commitment to complete some outstanding items. It remains to be seen what additional work might be done.

Once the entire project is complete, the terms of the investment agreement require Mount Laurel Development to conduct a full accounting which will be shared with all investors.

Expectations at the Outset

Our hope at the outset of this project was that participating as an investor rather than the more common approach of subsidizing the housing units would create two benefits. The first benefit would be the creation of multiple affordable housing units. The second benefit would be a return of capital and potential profits that could fund future affordable housing.

In order to achieve these goals, the housing trust invested \$400k to create three (3) affordable units. If this amount had been applied to the development as a grant rather than an investment, the \$133k per unit subsidy would not be an unusual subsidy for value received. However, in addition, the housing trust expected a return on the investment.

Disappointing Results

At this point, Mount Laurel Development anticipates a loss. If this projection is accurate, the investors in this project will receive neither a return of capital or nor a profit.

The Good News

The housing trust achieved one of its two goals. Three (3) lovely affordable units were created in a desirable location. All sold and occupied including:

- a one-bedroom condominium,
- a two-bedroom condominium, and
- a three-bedroom condominium.

And, in addition, the project has been successful in several other respects. The project has allowed for the renovation of the historic Kilbridge antiques building. The project added new businesses to Town Center at a time when the economy had not yet recovered from the prior recession. And, the project has resulted in assessed values that currently generate annual tax revenues of approximately \$185k.

The Future

Some risk and uncertainty are inherent in any proposed project. That said, there is a serious need for affordable housing in Groton. CPC funds reserved for this purpose must be used as effectively as possible. The housing trust hopes to identify additional opportunities and work with the CPC to increase our affordable housing stock.

Thank you for your attention to this matter.

Bruce Easom requested to see the full agreement between the Trust and MLD. He said that he believes in open government. Fran Stanley said that she would see what could be released understanding that some aspects of the agreement were designed to be confidential but the Trust also negotiated for the ability to describe its own position in the deal. Fran Stanley referenced a letter of commitment in addition to several investment documents that were provided to the 2011 Spring Town Meeting. Bruce Easom replied that he would be interested in receiving as much as can be legally shared with the understanding that some parts may be redacted.

Bruce Easom also asked to see Town Counsel's advice to the Trust before documents were signed. Fran Stanley said that such advice is typically not shared and some of the advice given may have been oral rather than written.

Bruce Easom asked how many units of affordable housing would have been required of the project by Town Center Overlay zoning. Fran Stanley said that 3 affordable units would have been required. The Trust invested to create 3 affordable units. Fran Stanley agreed with Bruce Easom's hypothetical that if another developer had found alternative financing and had wanted to build a similar project under Town Center Overlay zoning, then 3 affordable units would have been required and therefore produced without the use of public funds. The project may not have gone forward without the Trust's investment, but there is no way to

know that. The Trust negotiated for one of the affordable units to be a 3-bedroom unit and so that type of affordable unit is unlikely to have been produced but for the Trust's involvement.

Anna Eliot asked if there is pending litigation, noting that litigation would create a public record. Fran Stanley said that there is no current litigation with the Trust as a party. Anna Eliot asked for the duration of the restrictions on the 3 Boynton Meadows affordables. Fran Stanley did not know, but promised to follow up with an answer after the meeting. Anna Eliot said that the Town needed to have new affordable units with a duration of perpetuity so that the Town is not in the position of losing some of its affordable housing inventory in the future.

Bruce Easom said that in his review of the minutes as well as the recordings of the 2011 Spring Town Meeting, he noted that resident Terri Ragot asked about audits. The answer she received was that there would be periodic audits with a frequency of about every 6 months. And that David Valletta stated that an outside auditor would be chosen. Fran Stanley and a couple of Trust members recalled that audits were not provided but that there were frequent verbal updates regarding construction progress and finances for the first few years.

Bruce Easom asked for all financial reports, if there are any, that the Trust has received.

Bruce Easom asked about David Valletta, wondering who paid him and his role in the development. Fran Stanley referenced his KMPD Capital affiliation and said that while he did not represent the Trust, she assumed that he worked for either Robert France or MLD.

Bruce Easom asked for Fran Stanley or the Trust to comment on the project as a whole. Fran Stanley referenced executive session material that is private and so she could not offer a comment. Dave Wilder noted that the April 6, 2017 letter from the Trust to MLD is a public document and could stand in as the Trust's comment. Daniel Emerson read the following text of the letter into the record:

April 6, 2017

Mr. Robert D. France
Manager
Mount Laurel Development, LLC
1000 Mount Laurel Circle Suite 4
Shirley, MA 01464

Re: Boynton Meadows Project

Dear Mr. France:

As the Groton Affordable Housing Trust has continued to review and analyze the history, progress and financial and contract documentation for the Boynton Meadows development, it has become clear that the Trust has been ill-served by the actions of Mount Laurel Development in carrying out the project. The financial and contract documents you have provided in response to our requests have suggested that the best interest of the Trust, as a substantial investor in the project, has not been respected. We have had the documentation reviewed by a CPA and have also obtained additional information regarding the project and financial arrangements made by Mount Laurel Development with other investors. All of this information points us to the conclusion that the expenditure of project funds and monies contributed as the Trust's investment in the development has not been undertaken in good faith.

Our observations to date raise the following serious concerns:

- Monies paid for various construction elements, including monies paid to entities related to or controlled by you or Mount Laurel, exceed the reasonably expected cost for such work and materials for a project such as this;

- Construction costs per square feet have substantially exceeded pro forma cost estimates, but without complete explanation for the differential;

- Allegations in a lawsuit filed by a prospective buyer seeking return of a purchase deposit for failure to complete the unit on time that Mount Laurel responded to a notice of termination of the purchase and sale agreement by stating it lacked funds to return the deposit even if it desired to do so (Smith v.

Mount Laurel Development, LLC, Middlesex Superior Court civil action no. 1781CV00149) and issuance of a writ of attachment by the court;

-Inconsistent and incomplete disclosures of other project investors and terms of investment in the various Preferred Membership Unit Investor Agreements;

-Inconsistent treatment of investor, individual and LLC funds respecting project receipts and payments, including, and particularly distressing, an undisclosed reduction in your equity position in Mount Laurel (to negative equity) as a result of a Mount Laurel distribution to you in the same amount as the investment of MB Realty in Mount Laurel, which was \$250,000 according to MB Realty's Preferred Membership Unit Investor Agreement - an amount greater than your equity contribution to Mount Laurel at the time.

With particular regard to the investor agreements, the Trust understands there are three investors in addition to the Trust: William P. Buck, Dawn Nelson Buck, and M. B. Realty Corporation. However, the various agreements with the investors do not accurately and consistently disclose to the individual investors the existence and nature of other investment agreements. Moreover, the M.B. Realty agreement includes an additional compensation provision neither given to nor revealed to the other investors: a payment of \$5,000 for each of the first 15 residential units sold.

Quite simply, the Trust has been misled, by what the information we have so far indicates is deceptive and fraudulent behavior. This situation cannot go on, and the Trust must be made whole now.

Therefore, please consider this letter as a demand for the following:

- **A return of the Trust's \$400,000 investment in the project;**
- **Reimbursement of the Trust's attorneys' fees for services related to the examination of Mount Laurel's actions as described in this letter and previous correspondence to you;**
- **Reimbursement of the Trust's expenses for the services of an auditor to review financial documents related to the Trust's inquiry into this matter.**

The Trust will expect an answer and a commitment to take the necessary action to honor the Trust's demand no later than April 15, 2017.

PLEASE NOTE: If Mount Laurel Development does not accept responsibility in this matter and take action to restore the Trust to its pre-investment position, the Trust will be forced to consider formal legal action to recover for its losses, including a request for assistance from any proper law enforcement authorities.

Sincerely,

Joshua A. Degen
Chair

cc: Town Manager, Town Counsel

Anna Eliot commented that she views this letter in an unfortunate light since it reads like an investor demand letter and, as a lawyer, she knows that there are different positions for parties depending on one's status as a lender, contract holder, or investor. And, as an investor, we have fewer rights.

Richard Hewitt stated that from what he has heard multiple committees and municipal staff reviewed the project and that there appears to have been a systems failure. The boundaries are not clear to Richard Hewitt, but he noted that the housing trust and the Town did not appear to have the expertise to review the business model. An evaluation by an independent expert of the business plan may have helped. Richard Hewitt noted that he is still in favor of the concept of an investor project. Daniel Emerson echoed Richard Hewitt's comments and stated that he viewed the project as a wash as the affordable units were created, but the investment dollars were not returned.

Robert DeGroot commented that this meeting was not intended to be a tribunal and that he was interested in fulfilling the community preservation act's purposes to create more community housing. Robert DeGroot said that he was interested to learn what new projects might be proposed. Fran Stanley listed several options including buying out an affordable homeownership unit to create a GHA owned rental unit. Russell Harris

said that the Town should try speaking with David Moulton as he was part of the greatest affordable housing project in Town (i.e., the Sandy Pond apartments owned by the GHA).

Russell Harris (Groton Herald) commented that he saw two problems. The first, is the position of the new owners and that they appear to be left with the costs of finishing the Blacksmith Row paving as there was no performance bond associated with the private way. Some discussion followed noting that present law and regulations did not allow the Planning Board to require a performance bond for Blacksmith Row. The second problem is that he saw that the Trust's investment meant that there was pressure on Town boards to approve the proposed subdivision even if that meant bending the rules. He offered the encroachment on the wetlands buffer as an example. Carolyn Perkins stated that she did not agree that there was bending of the rules.

Bruce Easom said that his review of the project has left him with several takeaways:

1. Partnering in a development requires extra vigilance and when the regulator is on the side of the business, bad things can happen.
2. He is not opposed to becoming an investor. Unless he fully understands the details of the past investment in Boynton Meadows, then he cannot recommend a future investment. He would vote yes with the right team and project. Bruce Easom continued stating that understanding what can go wrong or has gone wrong is important. In his view, the nature of the agreement is what would have offered protection in the event of a problem.
3. He criticized the representations of the project at the 2011 Spring Town Meeting that minimized the risk, mentioned auditing that did not happen and characterized the Trust's action as 'buying some land' and that was not what happened.

Bruce Easom referenced the CPA project that funded renovations to The Grange building on Champney Street and whether that investment of public funds in a private property resulted in a deed restriction and the duration of the deed restriction (20 years versus perpetuity).

Stuart Schulman commented that in his experience affordable housing is always a difficult subject. He said that we all live in a nice town with two-acre zoning. We all know that we need affordable housing in Groton and not just in Groton. Stuart Schulman said that he participated in the review of three 40B comprehensive permit projects when he was a member of the Zoning Board of Appeals. And, due to the nature of 40B projects overriding local zoning, the Town made involuntary allowances to accommodate the developers' proposed plans. Stuart Schulman said that he disagrees with Bruce Easom on one point and that is that he would never enter into an investor project again. He continued stating that expectations are an issue as the Trust could have spent this money as a grant which would have adjusted the expectations. He stated that the project is not a success, but that he hardly thinks of it as a failure.

Carolyn Perkins stated that Groton should look to other communities like Gloucester to see how CPA funds can leverage new affordable housing.

Daniel Emerson referenced his position as member of the Groton Housing Authority (GHA) board and that the GHA has a 14-acre site on Nashua Road that could be developed into several units of affordable housing. Daniel Emerson and Richard Hewitt wondered if gathering all the housing boards together would be productive (GHA, housing trust, housing partnership and CPC).

Anna Eliot referenced 63 Gratuity Road and the possible 40B development there as well as parcel at 797 Boston Road. The 797 Boston Road parcel at Four Corners is close to a sewer district, grocery shopping, and a restaurant. The site could probably accommodate a residential project with some density.

Also, Anna Eliot, Russell Harris and Fran Stanley discussed the accessory dwelling unit (ADU) bylaw and the two family by right provisions of Groton zoning. Anna Eliot suggests petitioning the Planning Board to loosen special permit restrictions which often limit lots to single family homes. Those lots created by special permit are not allowed to avail themselves of Groton's ADU and two-family zoning options. Russell Harris has frequently spoken in favor of in law apartments as such apartments can be beneficial to older homeowners trying to afford to stay in Groton as well as households in need of Groton rentals. The Housing Production Plan's housing survey results show that many residents are interested in such flexibility as well.

Fran Stanley promised to follow up on all of requests that had been made in the meeting and were not addressed in the meeting.

Sheila Julien adjourned the meeting at 8:45 pm. Minutes by Fran Stanley.