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**MINUTES
SELECTMEN'S MEETING
TOWN HALL
MONDAY, DECEMBER 12, 2022
4:00 P.M. - REGULAR MEETING
REMOTE PARTICIPATION OPTIONAL**

SELECTMEN PARTICIPATING: Michael MacAskill, Larry Ballantine, Julie Kavanagh, Mary Anderson & Donald Howell

ALSO PARTICIPATING: Town Administrator Joseph Powers

CALL TO ORDER

Mr. MacAskill called the meeting to order at 4:03 p.m.

PUBLIC COMMENTS/ANNOUNCEMENTS

No public comments/announcements were given.

OLD BUSINESS

- A. Vote to approve the Massachusetts Department of Environmental Protection Watershed Permit and Title V Regulation Comments

Mr. MacAskill reported that this is no longer time sensitive but that we now have a completed draft for review. Mr. Powers followed up by stating that we received word from the Department of Environmental Protection that they have extended their comment period. Staff has put together a well-crafted response and comments need to be submitted no later than January 30, 2023.

Water/Wastewater Superintendent Dan Pelletier was present.

Mr. Ballantine stated that he is very much satisfied with the letter.

Mr. Howell hopes that DEP understands the implications of their numbers. To implement the numbers that they are talking about is clearly saying that the entire town needs to sewer.

Mr. Ballantine moved to send the comment letter as presented in the packet, 2nd by Mr. Howell and approved 5-0-0.

**JOINT MEETING WITH THE BOARD OF TRUSTEES OF THE HARWICH
AFFORDABLE HOUSING TRUST**

Trust members present were Chairman Joseph Powers, Donald Howell, Larry Brophy, Brendan Lowney and Judith Underwood. The meeting of the trust was called to order.

- A. Discussion on the purpose of the Harwich Affordable Housing Trust Fund

Mr. Powers reviewed the declaration of trust as presented in the packet and commented that it lays out all of the purposes of the Harwich Affordable Housing Trust Fund. Mr. Powers went on to read article 2 of the declaration, which covers the purpose of the trust. As this discussion happens regarding the purpose of the trust, the last item of business that will be discussed is the preservation of affordable housing in Harwich relative to 2 properties in town that are on the subsidized housing inventory list as kept by the Department of Housing and Community Development (DHCD). Harwich has 327 units credited to the town which puts us at a 5.4% number of affordable units. The targeted affordable housing figure is 10%. If we are mindful of the list and the number of units, the only way to get units on the list is if they have affordable restrictions that meet the criteria of DHCD. There are 13.7 acres adjacent to Pleasant Lake Avenue that the trust is trying to figure out what can be done with to create affordable housing. There was a community engagement forum held on October 4 which included ample discussion on workforce housing. Workforce housing is not an element of affordable housing and does not impact upon the subsidized housing inventory list and is not something that the trust can engage in. The purpose of the trust is limited to preservation and creation of affordable housing in Harwich for the benefit of low and moderate income households as defined by DHCD.

Mr. Powers reviewed the webinar that both he and Ms. Anderson had attended which was put on by the Massachusetts Municipal Association and the Massachusetts Select Board Association. When we talk about a family of 4 earning less than 60% of our area's median income, we know that the family's total income is less than \$65,200/year and that rent levels with that are \$1,200/month included utilities. Mr. Powers take on this is that it was a purposeful act and understanding of DHCD.

Mr. Howell stated that after that meeting, he did research on DHCD's website and also talked with proximity trusts in Chatham, Orleans and Yarmouth. Mr. Howell said that he would be interested to see all information being discussed in writing. He added that there was an act that the Governor signed into legislation a few weeks ago that did allude to the states affordable housing trust fund money that is being poured into developments, however it was specifically earmarked for high impact areas like New Bedford, Lowell and Fall River. It appears that they were trying to target the 30-40% development as opposed to flat out homelessness. Mr. Howell stated that he has seen nothing in writing that eludes to a 40% or 60% cap and that in order to have this discussion, he would like to have information in writing.

Ms. Anderson stated that she doesn't disagree with Mr. Howell. Staff has asked our new housing advocate to confirm what the number is. Ms. Anderson added that the information provided at meetings has been provided by the state is not sure why incorrect numbers would be provided. Mr. Howell responded by saying that he doesn't think that anyone is misrepresenting, but that he thinks there a change in the DHCD guidance.

Mr. Powers said that this discussion was brought to the board of trustees after reporting from the community engagement forum. It is fair to say that a part of the discussion is what the trustees should be working on and what can be done to move the needle forward with affordable housing. Mr. Powers noted that his concern is that a lot was focused around the trustees developing a work force housing plan. Work force housing does not go back to the purpose of the trust however there

are a number of public bodies that can impact greatly on the work force housing discussion. Mr. Powers introduced Housing Advocate Brianna Nickerson and Director of Planning and Community Development Paul Haliokitis. Mr. Powers commented that the discussion tonight is trying to reset the expectations of the community and what parties oversee what housing mechanisms.

Ms. Kavanagh stated that going back and understanding that we are only talking about affordable housing when it comes to the trust, she asked if we have seen any scenarios in any surrounding towns that are bringing in a partnership that isn't looking for state or federal money. Ms. Kavanagh noted that she is baffled as how we move forward and agreed that the numbers being discussed are ridiculous.

Mr. Howell said that the only information he doesn't agree with at this point is what the income percentage cap for affordable housing is.

Mr. MacAskill reminded everyone that the discussion now is to talk about the purpose of the trust.

Mr. Ballantine stated that when he looks at documents from other towns, that their declaration of trust is wider than Harwich. He feels that there does need to be an overall discussion on work force housing so we can move forward. Mr. Ballantine noted that there has been some competition between the trust and the housing committee, which there is no need for. They should be linked together to come up with a plan to best move forward.

Ms. Underwood re-read article 2 of the declaration and noted that she does not see the trust as bankers of realtors of property at all. She sees the article as being clearly written regarding preservation and creation of affordable housing.

For Mr. Lowney, the goal is to increase the housing inventory, which is why DHCD is involved. He added that there may be other committees and presentations that come before the trust with ideas for development.

Mr. Brophy commented that the best way to find out what the options are would be to test the market with an RFP, adding that there is a wide range between low and moderate income. We should be looking at variations where we can get the most for our dollar.

Mr. Howell stated that he is getting copies of the RFP's that were put out for the Route 28 developments in Yarmouth. Mr. Howell went on to read article 4 of the declaration and noted that it is the town's job to be on the lookout for land and developers within the confines of the percentages that DHCD will allow.

Richard Waystack was present and reviewed a document under the state called the Massachusetts Affordable Housing Trust Fund Guidelines. He feels that the town should not be doing the building, but should be putting out RFP's for someone to do the work. He added that 110% median income cap will solve the problem that the community is looking for. There needs to be a determination in writing from the state as to what the cap will be. Mr. Powers responded that he

is aware of this document and that it is the state's version. While we can compare ourselves to any other municipality or state organization, the devil is in the details of their governance.

Ms. Underwood agreed that having something in writing from the state would solve a lot of questions. Mr. Powers responded that the town continues to seek information and clarification of housing material.

Mr. Lowney noted that when you go through the DHCD website, there are many different programs and the term low to moderate income housing and use percentages are found everywhere. He suggested that if an RFP is put out, that a blanket statement of low to moderate income be used.

Mr. MacAskill asked if the trust members have brought any requested action items to the chair of the trust to be placed on an agenda. Ms. Underwood responded that they have had some conversations about bringing ideas forward.

Mr. MacAskill went on to ask how we move the housing needle forward.

Ms. Underwood asked Mr. MacAskill, as the Board of Selectmen Chair, to provide the trustees with an update on the 265 Sisson Road property. Mr. Powers responded that this topic will be discussed under item D of the agenda.

Mr. Howell stated that the Marceline property was acquired by the Town for roughly \$800,000 and that was by good fortune and he added that this is a critical piece of property that something can be done with. Mr. MacAskill noted that the Marceline property is zoned commercial. Mr. Howell responded that it would not matter because its development would go through the 40b process.

Mr. MacAskill asked to make sure that everyone is clear on what the trust's responsibility is. Ms. Underwood responded that she is not clear that she and Mr. MacAskill are of the same understanding, but what she hears is that the trust is going in a particular direction and that she wants Mr. MacAskill to know what that direction is. Mr. MacAskill feels that everyone is getting there in figuring out the path forward.

Ms. Underwood noted that one of the challenges for any next steps are the old tax properties with owners unknown and that the trust as a body cannot advance until they have been settled. Mr. MacAskill responded that his understanding is that the town fairly quickly found out who the owners were. It wouldn't slow us down, it would just mean that someone may have the ability to build a house in the middle of our affordable housing project.

Ms. Kavanagh said that it is clear that the purpose of the trust is for affordable housing. She suggested looking at other towns to see how their trusts made progress and how their RFP's were structured.

Ms. Anderson stated that everyone in the room supports affordable housing. We all need to put the emotion away and work together to figure out how to move forward.

Mr. Waystack commented that the discussion still involves work force housing but again stated that work force housing is not allowed under the trust documents as they stand. He asked if the trust documents could be amended to include work force housing. Mr. MacAskill responded that there is a process to amend the declaration of trust, which would start with the trust and then come to the Selectmen. Mr. Ballantine agreed that the trust document needs to be amended, but that he is clear on what is says now.

Mr. Brophy, Mr. Lowney and Ms. Underwood agreed that they are okay with the existing trust documents.

Mr. Powers read that the declaration of trust may be amended from time to time except for those provisions as specifically required under the act by an instrument in writing signed by all of the trustees and approved at a meeting called for that purpose and approved in writing by the Board of Selectmen provided that in each case a certificate of amendment has been recorded at the Barnstable County Registry of Deeds and Barnstable County Land Court.

B. Discussion on the composition of membership and length of terms of members

Mr. MacAskill asked for comment on there should be a term limit for members and what the composition of the membership should be. He wondered if this should be changed annually and added that this is a question that he has received more than once.

Mr. Powers read article 3 and article 5 of the declaration.

Ms. Kavanagh stated that she understands when the trust documents were drawn up, that it was important to have a member of the Selectmen as a member. She added that she has conflicts with this and wondered if the Selectman position should act more as a liaison and empower the trust. Ms. Kavanagh suggested even have 2 liaisons to the trust, thinking that the Selectmen acting in an advisory role might be better.

Ms. Anderson thinks of the trust as a committee and pointed out that looking at other committees, members have held seats for a long time. Ms. Anderson feels that it is important to have term limits and some process to gradually change out the committee, including the trust.

Mr. Howell commented that a liaison doesn't actually vote on anything at the meeting. He went on to read M.G.L. Chapter 44, Section 55c, and paragraph B. It is written in M.G.L. that a Selectman has to sit on the trust. Ms. Kavanagh responded that she is fine with keeping a Selectman on the trust if it is required. She added that it would also be important to make sure that the membership is rotated.

Mr. Ballantine stated he doesn't think that it is appropriate for the Town Administrator to be the Chair of the trust and that the trust members should be voting on the chair position.

Mr. Brophy added that change is good, but that he isn't sure where it should be done, noting that he suspects someone shouldn't stay on a board for 20 years.

Mr. Lowney would like to see how far the trust can move forward before any change is discussed. At this point, he has no interest in changing things.

Ms. Underwood thinks that only the trust can change the trust and asked if the Selectmen have any purview. Mr. MacAskill responded that the trustees would initiate the changes and then bring them to the Selectmen. Mr. Howell added that it does not have to be a unanimous vote, but the changes have to be signed by all parties.

Ms. Kavanagh questioned if we have been following the letter of the trust when it comes to term limits. Mr. Howell responded that he could not speak for the first year, but beyond that, knows that there have been staggered terms.

Mr. MacAskill asked if the trust membership should be allowed to auto renew every year or if term limits should be considered. Ms. Anderson responded that she would like to consider term limits, not only for the trust, but other committees as well. In general it is good practice to have rotation. Ms. Anderson asked if this would require a change in the trust document. Mr. Howell responded that it would.

Ms. Underwood stated that having worked on large projects that can take many years, there is a lot to be said for continuity. Ms. Kavanagh agreed with Ms. Underwood.

Mr. MacAskill said that the charter was not made when the trust was changed. Mr. Howell responded that the trust is required to operate within the confines of the same state procurement regulations and state personnel regulations that a municipality would.

Greg Winston was present and commented that this process is just getting started. In his opinion, Harwich is lucky to have this group of people to represent them and that changes should not be considered until the trust has better direction, particularly when they are talking about percentages.

C. Discussion on any prospective language changes to the Trust document

Ms. Underwood feels that rotating the chair membership makes sense.

Mr. Ballantine stated that the trust may vote to have the same chair each year, but that it should be the trust members making the decision.

Mr. Howell noted that the relationship between parties has changed from the prior Town Administrator until now. Given the constraints, the Town Administrator is not a manager and is subject to the management of the Board of Selectmen. Mr. Howell said that he is a stickler for bylaws and if changes to the declaration are being considered, he would ask that clarification of language to be clear of what board is being talked about, is included.

Ms. Anderson agreed with a previous comment about not spending any money to change the document at this point. She added that she could go either way on if the Town Administrator is the chairman or not, noting that the trust documents say that the chair would be the Town Administrator or their designee.

Before talking about any amendments, Ms. Kavanagh would like to see other towns trust documents. Ms. Anderson agreed.

Mr. Powers asked everyone to think about why the Town Administrator appears at all in the list of trustees. He knows that the declaration was taken from another municipality and that the town's name was changed. The only turnover that has happened on the Board of Trustees has been the Town Administrator. As Town Administrator, he only serves because he is required to do so. As members contemplate perspective language changes, Mr. Powers asked the members to consider how we got here. This was a purposeful act by the town through executives and followed by a Town Meeting, which he was not involved in. Mr. Powers pointed out that the Town Administrator serves on no other committee. He feels that is a worthy question that should be looked at deeper, why the Town Administrator is a member of the trust and why are they required to be the chair. Mr. Howell responded by saying that the Town Administrator is mentioned in MGL as "may serve" and the representative of the executive "shall" serve on the trust.

Mr. Howell commented that if you are the chair of the trust, you have to respond to the trustees. His question remains that what happens if the Town Administrator as the chair doesn't agree with the trustees, whose team they play on.

Ms. Anderson stated that it used to be you had input as the chair at the trust meetings. She has attended many trust meetings since being a Selectmen and generally at the end of the meetings, Mr. Powers would ask for input from the trust members on potential agenda items. If members forget to mention something, it is very easy to contact the Town Administrator for follow up. Mr. Howell added that he has not been overly successful in having items that he wants placed on agendas. Ms. Kavanagh noted that this is the first time she is hearing any trust members say that they have had trouble with getting items on an agenda.

Mr. MacAskill recalled an issue with the chairman's seat after the previous Town Administrator had left. He agreed that a Selectmen should not hold a seat on the trust, that it has affected the relationship between the Board of Selectmen and the Town Administrator. Mr. MacAskill believes that Harwich's trust document is the same as Yarmouths and that any switcharoo would need to be proven to him.

Mr. Waystack wondered if the DHCD language could be removed from the trust document which would allow the trust to look at work force housing in the community.

Mr. Howell feels that this conversation needs to be deeper that what can happen tonight and that he is happy to work with Mr. Powers to make forward progress.

Mr. Powers emphasized that out of all of the people here, he is the only one that is an employee of the town. He asked for all parties to have discretion and please tread lightly and carefully in the comments that are being made.

Ms. Underwood said that one could look at having the Town Administrator as chair of the trust as being a conflict. At the end of the day, the Selectmen are the Town Administrator's boss. She added that she has sent Mr. Powers items to be placed on an agenda and that they have not been added.

Mr. MacAskill stated that it is a very simple process to have items placed on an agenda. They can be emailed to the Town Administrator and he will put them on the agenda. The chair decides if items are ready to be discussed at a meeting. Mr. MacAskill asked the trust to create a mechanism to have items placed on their agendas.

Elizabeth Harder was present and feels that Mr. Powers is being put in a difficult situation and that he is being treated unfairly. She pointed out that the trust document reads the Town Administrator or their designee shall be the chair. She suggested that a designee be made the chair which would save Mr. Powers from having to work this out.

Mr. MacAskill stated that he debriefs with Mr. Powers once a week and that he has done a terrific job of organizing the trust and getting caught up on the backlog of projects. The town has had a very busy year but it is time for Harwich to move forward.

Mr. Lowney said that he would be terrified if Mr. Powers was not leading them. He has bought consistency to the trust. Some of the agenda items that he has suggested have made it and others have not. Mr. Lowney begged that Mr. Powers stay on the trust in some capacity over the next year to get over hurdles, then potentially assign a designee.

Ms. Kavanagh agreed that Mr. Powers has done a good job and has not heard of any other issues as they relate to agenda items. She is not looking to spend money on amending the trust declaration if we don't need do and thinks that everyone can agreed that we have to move forward as a group.

Mr. Brophy noted that the addition of the newly appointed Housing Advocate and Town Planner should make life easier for the Town Administrator.

Ms. Underwood asked that the next time a joint meeting is called, that the Board of Selectmen Chair ask everyone if they are available before scheduling the meeting.

Ms. Anderson also agreed that Mr. Powers has done a great job as the chair of the trust.

Mr. Powers noted that he would not be part of conversations that include him as the chair of the trust and that he would leave it to the members. Until/unless there is a change, the charter dictates the responsibilities of the Town Administrator as it relates to the trust. He added that he would

like everyone to be mindful of the calendar and added that he has been the chair for just over a year.

D. Update on 2019 Annual Town Meeting Article 61 parcels

Mr. Powers reviewed 2019 Annual Town Meeting Article 61 as well as other documents as provided in the packet. Soon after he became chair of the trust, the trust members asked about working on the parcels that the trust had ownership of. Mr. Powers had responded that he was surprised because the only parcels that the trust owned were the former Marceline parcels. Following their discussions, Mr. Powers did his due diligence and found additional information regarding article 61. He found that while Town Meeting voted to transfer parcels referenced as A through E in the article, no one actually took any steps to get those parcels from the Board of Selectmen to the trust. The parcels that everyone thought were under the care and control of the trust were not. When the property of 265 Sisson road is talked about, there remains the issue that there is a tenant in the building on that property. The town had received an opinion from Town Counsel in 2019 that says upon transfer, the tenant lease shall be the property of the trust. The trust has discussed this and have not come to an agreement.

Mr. Powers stated that he is glad that this meeting is happening tonight because he feels the frustration of the trustees and the community and is equally as frustrated. He went on to read the explanation that was provided with article 61. Mr. Powers went on to say that he has an obligation first to the town through the Board of Selectmen to discover any errors and omissions that have occurred and then take every step to correct them, and then move forward to bring the trust up to speed. There are a number of issues that remain to be answered that aren't just under the purview of the trust, regarding 265 Sisson Road.

Ms. Underwood said that prior to COVID, the trust was working with a great consultant on the 265 Sisson Road parcel. The tenants of the building were going to stay in the building. Ms. Underwood thinks that the Selectmen need to sign off on the transfer of the property so we can move forward. She added that the tenants in the building are long term and have been amicable with what the trust has been planning.

Mr. Powers noted that 265 Sisson Road was transferred in December 2021 from the Board of Selectmen to the trust. The outstanding issues are of the lease and tenancy itself. This is a bigger issue than just the trust and it is something that the Selectmen should discuss and explore, with the suggestion of including Town Counsel. Mr. MacAskill responded that he will put this on for a Selectmen's agenda in early January.

Mr. Lowney stated that Massachusetts Housing Partnership and Bowler Engineering got together and put together an RPF back in January, which was presented back to the trust. The issue with the 265 Sisson Road property is that every time we talk about low to moderate income and talk to developers, the numbers don't work with the proposed 4 quad buildings.

Mr. Howell asked that the Board of Selectmen schedule an executive session to discuss the Earle Road property.

Mr. Lowney gave a breakdown of the properties as listed in article 61. Mr. Howell followed by stating that it does appear that we got a gift box that did not have a lot in it when we got these properties. He wants the public to understand that there isn't a ton of property that is vacant that something can be done with. The upland of the developable parts of these properties are all broken in some way or another. Mr. Howell wants to see movement with the Marceline property.

Ms. Anderson asked about the Queen Anne Road property formerly known as the pet burial ground and the fair amount of land that exists there.

Mr. Powers stated that he picked up where his predecessor left off and does not know what the expectations were from 2019 Town Meeting. Mr. Powers added that he will do as necessary to accomplish what needs to be done.

Ms. Underwood asked if there is an end date for the owner's unknown properties and if that is something that the housing committee and others could work on. Mr. MacAskill responded that there is no end date and that the Selectmen would be discussing this further at their meeting on December 19.

TOWN ADMINISTRATOR'S REPORT

No report was given.

SELECTMEN'S REPORT

No report was given.

CORRESPONDENCE

No correspondence was discussed.

ADJOURNMENT

Mr. Powers moved to adjourn the meeting of the Board of Trustees of the Affordable Housing Trust, 2nd by Mr. Lowney and approved 5-0-0.

Mr. Howell moved to adjourn the meeting of the Board of Selectmen, 2nd by Ms. Anderson and approved 5-0-0.

Respectfully submitted,
Jennifer Clarke
Recording Secretary