

LEGAL AND OPERATIONAL ISSUES

Kathleen M. O'Donnell, Esq.
Milton, MA

Operating Documents

- By-law or Ordinance
 - Adopted pursuant to Town Meeting vote or City Council vote
- Declaration of Trust
 - Drafted by attorney for Trust
 - Terms based on by-law, ordinance or vote of Town Meeting
 - Recorded with Registry of Deeds
 - Trustee's Certificate – recorded with deeds, mortgages, discharges – shows current Trustees authorized to sign

Uniform Procurement Act – c. 30B

Contracts – not real estate – Make friends with Procurement Officer of your town or city

- Amount less than \$10,000 – use sound business practices
- Amount higher than \$10,000 but less than \$50,000
 - Solicit three written bids based on a purchase description (check to see if municipality has higher requirement)
 - Maintain file for each contract
 - keep record of all names and addresses of contacts, the date and amount of the bid
 - Must award to lowest bidder
 - keep copies of all bids for at least six years from the date of the final payment
- Above \$50,000 – Section 5 – competitive sealed bidding process – see note above re: Procurement Officer

Uniform Procurement Act - C. 30B

Section 16

- Applies to the sale/purchase of an interest in real property – includes restrictions!
- If the transaction is fully funded by CPA money, the exemption in c. 44B follows the money and c. 30B does not apply; any other trust project is not exempt.
- Purchase: for property costing more than \$35,000
 1. Advertise for proposals
 2. Proposals must be opened in public
 3. Exemption – file uniqueness determination in Central Register at least 30 days prior to closing

Uniform Procurement Act – c. 30B

Section 16

- Disposition:

1. Determine value by usual appraisal methods
2. Establish re-use restrictions
3. If value exceeds \$35,000, advertise in Central Register and local sites, open proposals in public, and disclose reasons if disposition is for less than fair market value
4. There is no uniqueness determination for sale of property

Open Meeting Law

- Open Meeting Law:

Posting requirements: meetings must be posted with the Town Clerk at least 48 hours prior to meeting date. 48 hours does not include Saturdays, Sundays and holidays.

Notice must include date, time and place and agenda. The agenda must include all topics that the chair reasonably believes will be discussed at the meeting.

Minutes: Retain copies of everything – maps, photos, Power Point presentations, abutters' letters, etc.

Public Records Law amended

Chapter 121 of the Acts of 2016

- Designate Records Access Officer for Trust
 - Assist in identifying the records requested
 - Assist custodian of records in saving and storing public records
 - Prepare guidelines for people requesting access
 - Shall coordinate Trust's response to requests for access to public records
- Must respond to request within 10 business days
- May charge .05 cents for copies, if task takes more than 4 hours, may charge \$25 per hour

Ongoing Problems

- Real Estate Taxes – valuation of affordable units - abatements

Review tax bills to make sure that the assessors have factored in the reduction in value due to the restriction – property should not be assessed at fair market value

- Monitoring and enforcement of affordable housing restrictions – who's in charge? Does the affordable housing restriction run to the benefit of the city or town or to the Trust? Is the Trust an authorized agent of the municipality?

Funding Sources

- Community Preservation Act funds (172 cities and towns now have CPA)
- Inclusionary Zoning Payments in lieu – to receive these funds, the Trust must be mentioned in the Zoning By-Law – otherwise payments go to the general fund and must be appropriated to the Trust by Town Meeting
- Sales of tax title parcels – must have Town Meeting vote in place that establishes this program
- Donations and gifts

Grant Agreements - Types

- Grant Agreements between Trust and Community Preservation Committee and/or Selectmen
- Grant Agreements between Trust and Developer

Grant Agreement with CPC

- Basic purpose – reassuring your local CPC that you are using the funds for the activities authorized by Town Meeting/ City Council vote
- Agreement may be signed by CPC or Selectmen or Mayor, depends on practice
- Describes the proposal you submitted to the CPC and the amount of money voted
- Establishes a time limit for performance with right to extend for good cause

Grant Agreement with CPC

- Restricts use of funds for purposes authorized under the Community Preservation Act (G.L. c. 44B)
- May restrict the percentage of funds that can be used for administration and operation of the Trust
- Establish a process for funding and a contact person
- Requires delivery of a deed restriction approved by DHCD running to the benefit of either the Trust or the municipality
- Termination on disbursement of all funds and delivery of restriction or may be terminated by municipality if obligations are not met – undisbursed funds returned by Trust to CPC

Grant Agreement with Developer

- Same concept – establish amount of grant, described purpose of grant, requirement for creation, maintenance, and support of affordable housing
- Be sure to include the requirements that are in any grant agreement with the CPC
- Require developer to include Trust as a party to the Affordable Housing Restriction imposed on the property
- Termination Date – very important – if the project is not built and sold to an affordable buyer, the money comes back!

Loan Agreements and Mortgages

- Trusts do have the authority to act as a lender and accept notes and mortgages (REMEMBER - Some trusts are prohibited from borrowing – check your vote/by-law)
- Loan Agreement is similar to grant agreement but provides for a mortgage that can be foreclosed if property no longer contains affordable housing.
- May be long term, no interest, forgiveness over time
- Agreement to subordinate loan to construction and permanent financing
- Secured by Mortgage recorded with Registry of Deeds

Mortgage/Title Issues

- Declaration of Trust for AHT should be recorded at the Registry of Deeds
- Trustees Certificate naming current Trustees and stating that the Trust has not been altered, amended or revoked, and that Trustees have been authorized to do any of the following; buy the property, make the loan, subordinate or discharge the mortgage, etc. will need to be recorded

Affordable Housing Restrictions

- Required if you used CPA funds for acquisition of property
- CPCs usually want housing included on DHCD's Subsidized Housing Inventory (SHI) – must use DHCD's approved LIP Deed Rider
- If property is owned by the Trust and is being sold to an affordable buyer – process approved by DHCD and compliance with c. 30B
- Work with affordable buyer's lender to make sure that Deed Rider is acceptable

Downpayment Assistance

- Used with Affordable Housing Restriction
- Must be approved by Buyer's Mortgage lender
- Promissory Note in the amount of grant – Example
 - Due and payable if property is no longer borrower's principle residence
 - Due and payable if property is sold within five years; after five, no amount owed
- Mortgage –
 - Secures Promissory Note
 - Recorded at Registry AFTER the approved first mortgage