

July 7, 2021

Lee S. Smith
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Hon. Jennifer S. Roberts and
Members of the Select Board
Flynn Building
278 Old Sudbury Road
Sudbury, MA 01776

Re: Sudbury Housing Trust; Powers of Trustees

Dear Members of the Select Board:

As you requested, I have reviewed the Declaration of Trust of the Sudbury Housing Trust and the amendments thereto, as well as G.L. c. 44, s. 55C, the Municipal Affordable Housing Trust Fund statute (the "Statute").

At the 2006 Annual Town Meeting, the Town voted affirmatively on Article 33 to accept G.L. c. 44, s. 55C establishing a municipal affordable housing trust fund. The Sudbury Housing Trust was created by Declaration of Trust dated as of February 15, 2007, recorded in the Middlesex South Registry of Deeds in Book 49096, Page 353. Amendments thereto regarding the timing and staggering of terms of the Trustees were recorded in Book 69837, Page 157 and Book 76587, Page 425.

Section (c) of the Statute enumerates the powers of the board of trustees and further provides that a town may, by by-law, "omit or modify any of these powers and may grant to the board additional powers consistent with this section". The Town has not adopted a by-law for the Housing Trust.

In my opinion, the Declaration of Trust includes limitations on stated powers of the board of trustees that are not included in the Statute. Because the Town has not adopted a by-law omitting or modifying the statutory powers of the trustees, the powers or limitations thereof in the Declaration of Trust that are not enumerated in the Statute are unenforceable.

More specifically, the Statute does not include the authority to require prior Select Board approval before the Trustees may act. The following sections of Article III of the Declaration of Trust (Powers of Trustees) include such limitations on the Trustees' powers:

(Preamble) The Trustees "...shall have no ability to borrow money, or mortgage or pledge Trust assets, purchase, sell, lease, exchange, transfer or convey any interest in real property without prior approval of the Sudbury Board of Selectmen".

(Section 2) "with Board of Selectmen approval from Trustee recommendation" selling, leasing, exchanging, transferring or conveying personal, mixed or real property and entering into contracts for Trust property.

(Section 4) "with Board of Selectmen approval from Trustee recommendation", borrowing money and mortgaging and pledging Trust assets as collateral; and the requirement of 2/3 vote of Town Meeting to borrow in excess of the Trust's assets.

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(Section 6) “with Board of Selectmen approval from Trustee recommendation”, purchasing and retaining real or personal property, including investments.

(Unnumbered Section) “Notwithstanding anything to the contrary herein, Board of Selectmen approval shall be required for any of the following actions:

- (a) to purchase real or personal property;
- (b) to sell, lease, exchange, transfer or convey any personal, mixed, or real property; and
- (c) to borrow money, or to mortgage or pledge Trust assets as collateral to the extent of the Trust’s assets.

Notwithstanding anything to the contrary herein, the Trustees may not borrow, mortgage or pledge greater than the current Trust assets unless approved by the Board of Selectmen and by a 2/3 vote at any Annual or Special Town Meeting.”

The Town Meeting approval requirement for borrowing, mortgaging or pledging more than current Trust assets is also not included in the Statute.

Note further that pursuant to the Statute, Community Preservation Act (G.L. c. 44B) funds are required to be used exclusively for community housing and must be accounted for separately. Further, each year, all such funds must be reported to the Community Preservation Committee for inclusion in the community preservation initiatives report on Form CP-3 to the Massachusetts Department of Revenue. (See G.L. c. 44, s. 55C (c)(1)). These requirements must be followed even if not set forth in the Declaration of Trust.

In my opinion, the requirement of Select Board approval before the Trustees may exercise the above-referenced powers is unenforceable, as is the requirement of Town Meeting approval for borrowing, mortgaging or pledging more than current Trust assets. Such requirements would be permissible, however, if set forth in a by-law approved by Town Meeting. In my further opinion, the Trustees of the Housing Trust have the authority pursuant to the Statute to exercise these enumerated powers and those set forth in the Statute without the prior approval of the Select Board or Town Meeting.

Please let me know if I can be of further assistance.

Very truly yours,



Lee S. Smith

LSS/caa