

Brookline Advisory Committee
Sustainability Sub-Committee

Report on Article 18: “Authorization to Accept Massachusetts General Laws, Chapter 44, Section 55C – Affordable Housing Trust Fund” and Article 19: “Amend Article 3.13 of the Town’s By-laws”

The Sustainability Subcommittee of the Advisory Committee held a public hearing on April 16, 2020 using the Zoom virtual meeting technology to discuss and possibly vote on Warrant Articles 18 & 19, submitted by the Planning Department. Attending were committee members Carlos Ridreujo, TMM P 14, chair, Pam Lodish, TMM P 14, Amy Hummel, TMM P 12, and David Lescohier, TMM P 11. Members of Town Staff were Virginia Bullock, Planning Department, Alison Steinfeld, Planning Department, and Joslin Murphy, Town Counsel. Others were Roger Blood, Chair of the Housing Advisory Board, Werner Lohe, TMM P 13 and Deborah Brown, TMM P 1.

Summary

Article 18 seeks Town Meeting authorization to accept Massachusetts’ Affordable Housing Trust Fund law (M.G.L., c. 44, s. 55C). This action would establish the Town’s Affordable Housing Trust Fund under the provisions of this statute.

Article 19 seeks to amend Article 3.13, the Housing Advisory Board by-law, to resolve differences between Brookline’s current by-law and M.G.L. c. 44, s. 55C.

Recommendation

By a vote 4-0-0 the Sustainability Subcommittee voted to recommend favorable action on article 18, with no changes as follows:

VOTED: To accept the provisions of Massachusetts General Laws Chapter 44, Section 55C, and establish a trust known as the Brookline Affordable Housing Trust Fund, the purpose of which shall be to provide for the creation and preservation of affordable housing in the Town of Brookline for the benefit of low and moderate income households and for the funding of community housing.

By a vote 4-0-0 the Sustainability Subcommittee voted to recommend favorable action on article 19, with changes as follows: (deletions, strikethrough; additions, bold)

VOTED:

SECTION 3.13.1 PURPOSE

There is hereby created in the Town of Brookline a Housing Advisory Board, hereinafter called the Board, to report to and advise the Select Board, for the following purposes:

- a. to study and recommend housing policy for the town,
- b. to advise on the coordination of housing policy and programs within the town,
- c. to act as Trustees for funds received as gifts, grants, aid, reimbursements and payments for housing, including renewal, replacement and new construction,
- d. to propose plans and programs for relieving congestion; substandard, decadent or blighted areas; unsanitary or unsafe buildings; and for providing safe and sanitary dwellings for families and elderly persons of low or moderate income at rentals which they can afford;
- e. to promote the preservation and creation of housing which is affordable to low, moderate and upper-moderate income persons, households and families, and
- f. to administer the **Brookline Affordable Housing Trust Fund**, ~~hereinafter established~~.

SECTION 3.13.2 MEMBERSHIP

The Housing Advisory Board shall consist of ~~seven~~ **eight trustees who shall be** residents of the town, five appointed by the Select Board for ~~three~~ **two-**year staggered terms, and a member each of the **Select Board**, Planning Board and Brookline Housing Authority. Vacancies shall be filled for unexpired terms. Of the Select Board's appointees, one should be a low- or moderate-income tenant who demonstrates a knowledge of tenant issues. The other Select Board's appointees should have knowledge or experience in one or more of the following areas: government housing programs, housing or real estate finances, affordable housing development, design or urban planning, real estate law. The Select Board should ensure that all of these areas of expertise are represented on the Housing Advisory Board.

SECTION 3.13.3 HOUSING TRUST

~~There is hereby created in the Town of Brookline a Housing Trust, whose~~ **The funds of the Town of Brookline Affordable Housing Trust Fund, established pursuant to M.G.L. c. 44, s. 55C,** are to be managed and expended under the supervision of the Housing Advisory Board. **The purpose of the Trust is to provide for the creation and preservation of affordable housing in the Town of Brookline for the benefit of low-and moderate-income households and for the funding of community housing, as defined in and in accordance with the provisions of M.G.L. c. 44B.** The Housing Trust may accept gifts, grants, aid, reimbursements, payments and appropriations for the purposes set forth in **this Section 3.13.3**, and the Housing Advisory Board may expend the funds in the Housing Trust, with the approval of the Select Board, for such purposes. Without limiting the foregoing, and with the approval of the Select Board, the Board may employ consultants, full or part-time staff and contract for administrative and support services. All funds received for the Housing Trust shall be deposited with the Treasurer and held in a separate account known as the Housing Trust account. The Brookline Housing Trust fund shall be the sole designee and recipient of any and all developer cash contributions made to the Town for affordable housing purposes under Section ~~4.40-08~~,

Affordable Housing Requirements, of the Zoning By-law. No expenditures shall be made from the Housing Trust Fund without the prior approval of the Select Board.

SECTION 3.13.4 DUTIES

In addition to the duties given to the Board in Section 3.13.1., it shall also review and make recommendations to the Planning Board for projects under any so-called ~~inclusionary~~^{incentive} zoning provisions. The Board shall, in appropriate cases, act as the negotiating agency with developers and owners regarding the financial aspects of the development or conversion of property. The Board may hold both real and personal property and, without limiting the foregoing, may hold interests in real and personal property, including mortgages, land leases, easements, restrictions and options. The Board shall have authority to apply for, receive and expend grants, aid, reimbursements, gifts and other funding for housing and conversion projects, including, without limiting the foregoing, preservation of existing housing, expansion of low, moderate and upper-moderate income housing, and conversion of existing housing or non-housing structures to low, moderate and upper-moderate income housing. The Board shall report each year to the Select Board and the Annual Town Meeting on progress achieved in meeting any Town-wide goals and priorities for housing in Brookline adopted by the Select Board and the Housing Advisory Board.

SECTION 3.13.5 POWERS

The Board may use the Housing Trust, or any additional funds that may be available to provide rent subsidies, mortgage interest payments, mortgage principal payments, condominium principal or interest payments, development subsidies and conversion subsidies. The Board may also use such funding for housing studies and reports, for the employment of experts and for such purposes it deems necessary or desirable to accomplish the purposes set forth in Section 3.13.1.

Background

In the 1980s, Brookline, along with a few other communities filed home rule petitions seeking to establish trust funds devoted to the promotion and support of affordable housing. Brookline's home rule petition was filed in 1986. In 1987, Town Meeting enacted a housing trust fund by-law which is now known as "Article 3.13, Housing Advisory Board", of the Brookline General By-laws. The Attorney General approved this by-law. Although it appears that the Town's petition was never passed, in 2005 the "Municipal Affordable Housing Trust Fund" law, M.G.L., chapter 44, section 55C was enacted. This statute has greatly simplified the process of establishing housing trust funds.

Brookline's Housing Advisory Board by-law is similar to the terms of the state statute and has functioned well. Thus, there has been no compelling need to accept the Commonwealth's Municipal Housing Trust Fund law.

However, because there are two important initiatives that could entail significant new contributions to the Affordable Housing Trust Fund on the warrant for the 2020 Annual Town Meeting, Town Counsel has recommended, largely as a matter of housekeeping, that the Brookline's Affordable Housing Trust Fund be established under the provisions of M.G.L. c. 44, s. 55C.

The first initiative is the Newbury land acquisition and zoning transaction, Articles 9 – 15.

The second is the Community Preservation Act authorization, Article 24.

In order to bring Article 3.13 into compliance with M.G.L. c. 44, s. 55C, the Planning Department's Article 19 changes the membership of the Housing Advisory Board from 7 to 8 members, requires a Select Board member, reduces the term of office from three years to two, and inserts the specific operative language from M.G.L., Chapter 44, Section 55C in section 13.13.3 of the by-law.

The Massachusetts Housing Trust statute enumerates 16 possible duties, but says that municipalities through by-law or ordinance may add to or delete these duties. Brookline's by-law lists "preservation of existing housing, expansion of low (80% AMI), moderate (100% AMI) and upper-moderate income housing (120% AMI), and conversion of existing housing or non-housing structures to low, moderate and upper-moderate income housing". This income range exceeds that which is enumerated in the state statute because it includes "upper-moderate income housing", otherwise known as "workforce" housing. While Brookline's inclusion of an upper-moderate income category will continue to be allowable for purposes other than Trust Fund expenditures, the statute does not allow any Trust Fund spending for upper-moderate housing. The Section 13.13.3 amended language eliminates use of Trust Fund funds for upper-moderate income housing, but under 3.13.4 would still allow the Board to promote upper-moderate affordable housing in other ways. There have been very few, projects in the past containing upper-moderate income affordable units funded with Affordable Housing Trust Funds. The HAB Chair does not view this restriction as imposing a significant impediment to carrying out the HAB's mission.

Over the years, the Brookline Affordable Housing Trust Fund has managed approximately \$14 million, expended \$11 million, and supported the development of over 350 units of affordable housing, which represents a substantial contribution to Brookline's affordable housing inventory. As of 2018, Brookline Housing Authority operated 920 units, and there were 891 privately owned units. According to the 2016 Brookline Housing Production Plan, 104 of Brookline's affordable units were produced under the inclusionary zoning by-law.

However, despite Brookline's efforts to promote affordable housing, the Town remains unaffordable for many lower- and moderate-income residents.

Seven-thousand of Brookline's 24,500 households (29%) have low or moderate income.

Over 5,000 Brookline households (27%) spend more than 30% of their income on housing.

Only three percent of vacant rental units in Brookline are affordable.

A median income household of four (\$113,000) can afford a rent of \$2,700, but the average three-bedroom rent is \$3,500.

Forty-seven percent of renters are living in housing they cannot afford.

Of the 5,900 households age 65 and above, 1,900 households are renting. Fifty-two percent of these households are spending more than 30% of their income on housing.

There are 1,500 seniors and 1,300 families on the Brookline Housing Authority waiting list

Discussion

Does HAB support these Articles?

The Chair of the HAB has been consulted and has expressed support for these articles. HAB is planning to schedule a public hearing so that the Board may vote on formal WA 18 & 19 recommendations.

What would be the consequence of no action on these articles?

The existing Trust Fund has been maintained as a separate fund since its inception. While the Town could continue to receive funds dedicated to affordable housing under the so-called “gifts and grants” law, Town Counsel recommends that Town Meeting act favorably so the fund is permanently established under the provisions of M.G.L. c. 44, s. 55C.

In addition, M.G.L., c. 44B, s. 5(f) states that “a city or town may appropriate money in any year from the Community Preservation Fund to an affordable trust fund”. (This section of M.G.L. c. 44B does not specifically reference M.G.L. c. 44, s. 55C.)

Is there concern if the Trust Fund will henceforth be restricted to funding moderate and low-income projects?

There will be very little change, in reality. Twenty-two percent of projects are 50% AMI and below, 14% are 60%, 59% are 80%. Only 4% are 110% and 120% AMI.

For more information:

<https://www.brooklinema.gov/DocumentCenter/View/19238/Affordable-Rentals-in-Brookline---Updated-May-2019?bidId=>

Will the Select Board Member be a voting member?

The Select Board member will be a voting trustee. The Brookline by-law requirement that projects are submitted for Select Board for approval will remain, even though M.G.L., c. 44, s. 55C does not require this.

If the Affordable Housing Trust Fund will no longer provide funds for upper-moderate income projects, what will be the AHTF role for such projects?

The Housing Advisory Board will be able to participate with other funders such as Mass Housing, for example, which does have a program to produce 120% AMI projects. These

projects could play an important and growing role in Brookline’s affordable housing advocacy, as there is concern that Brookline should be seeking to encourage workforce housing. Also, developer payments for inclusionary zoning may include funds for upper moderate and workforce housing support.

What is the overall vision and priority of HAB, and what should the priority be for affordable housing in Brookline?

The role of HAB is to analyze affordable housing projects when they are put forward by developers. The developers work under the constraints of various funding sources in order to arrive at a workable pro-forma. The Affordable Housing Trust Fund is only one piece of this puzzle. It is a complicated process. The aim is to foster diverse opportunities for affordable housing to meet the needs of a variety of income levels, including both family and senior housing.

Sign in Sheet

Find a participant

-  David Lescohier (Me)
-  Carlos Ridruejo (Host)
-  Joslin Murphy
-  pamelalodish
-  Alison Steinfeld ✓
-  Amy ✓
-  Deborah Brown ✓
-  Roger Blood ✓
-  Virginia Bullock ✓
-  Werner Lohe ✓