
TO: Paul Bockelman, Town Manager (*By Electronic Mail Only*)

FROM: Shirin Everett, Esq.

RE: East Street School – Review of Town Meeting Vote

DATE: March 14, 2019

You requested that I review the vote taken under Article 27 of 2018 Annual Town Meeting (the “Vote”), pertaining to the use and disposition of the property located at 31 South East Street and known as the East Street School (the “Property”), and discuss the steps the Town should take to develop the property for affordable housing purposes.

As you are aware, the Vote authorized the Select Board (now the Town Manager under the new Charter) to convey the Property “to the Amherst Affordable Housing Trust Fund for affordable housing... provided, however, that the Town shall not provide a conditional commitment to convey said property to the Amherst Affordable Housing Trust until the Town Council determines that a feasible project, meeting the above objectives has been identified and shall not convey such property until financing commitments have been obtained, and key permits have been secured.”

I understand that the Trust would prefer that the Town Manager take the initial steps to develop the Property. Since the value of the Property exceeds \$35,000, the Town is required under G.L. c. 30B, §16, the Uniform Procurement Act, to issue a Request for Proposals (“RFP”), soliciting proposals for the purchase and development of the Property for affordable housing purposes. In my opinion, since the Vote authorized the conveyance of the fee interest in the Property, the Town Manager has the authority to dispose of any lesser interest in the land, such as a long-term lease. Accordingly, the RFP may solicit proposals from prospective buyers and/or lessees.

Once a buyer or lessee is selected (referred to here as the “developer”), the parties would enter into a Land Disposition Agreement (“LDA”), setting forth the terms under which the Property would be sold or leased to the successful developer. Included in the LDA will be a provision making the Town’s obligation to convey or lease the Property contingent on the developer obtaining all permits and approvals necessary to undertake the project and financing in an amount sufficient to purchase or lease the Property and construct the homes.

As mentioned above, the 2018 Vote states that “the Town shall not provide a conditional commitment to convey said property to the Amherst Affordable Housing Trust until the Town Council determines that a feasible project... has been identified” (emphasis added). In my experience, it is unlikely that a developer will enter into a LDA, which will require the developer to inspect the Property and obtain the necessary permits, all at considerable expense, unless the developer (and, more importantly, the developer’s lenders) have the assurance that there is in fact a commitment to convey or lease the Property to the developer once the LDA conditions are satisfied.

For that reason, I recommend that, once a successful proposer has been identified, the Town Council convene to determine if the project is feasible and vote to commit to selling or leasing the Property to the developer once permits and financing have been secured. Such a vote should provide the developer and its lenders with sufficient assurance to enter into the LDA. I expect that the Town Council will review the developer's reputation and experience with affordable housing projects, among other factors, to determine if the project will be feasible.

Alternatively, the Town Council could vote to amend the terms of the 2018 Vote before the Town Manager issues a RFP. The Town Council could also amend the Vote to make the process more efficient by permitting the Town Manager to convey or lease the Property directly to the developer instead of conveying the Property to the Trust first (which, in the event of a long-term lease, would require the Affordable Housing Trust to act as the landlord).

Please let me know if you have any questions regarding this matter or if I can be of further assistance.