

TOWN OF BARNSTABLE HOUSING COMMITTEE

Guidelines for Comprehensive Permit Developments Financed by The New England Fund of the Federal Home Loan Bank

Summary.

This memorandum summarizes (1) the information required to enable the Town of Barnstable Housing Committee to consider an application for a Comprehensive Permit for a development to be funded by the New England Fund of the Federal Home Loan Bank of Boston and (2) the standards that will be used by the Committee in making a recommendation to the Zoning Board of Appeals.

The Committee intends to make the review of Comprehensive Permit applications as expeditious and inexpensive as possible. At the same time, it is not possible for the Committee to write detailed guidelines that will cover the full range of developments that might be eligible for financing under the New England Fund. The Committee will look to guidelines under other affordable housing programs, including the Local Initiative Program (LIP) and the Home Ownership Opportunity Program (HOP), for guidance in cases where these Guidelines are not definitive. Those considering a development in Barnstable are urged to meet with the Committee informally before submitting a formal application to review the proposed development.

Contents of application.

Applicants should use the suggested application form with attached development budget, statement of sources and uses of funds and pro forma operating statements.

The applicant will have obtained a "site approval letter" from a member Bank of the FHLB of Boston documenting the following:

The Bank has expressed a firm interest in financing the development.

The developer is a public agency or non-profit or limited dividend organization.

The developer has control of the site, as evidenced by a Purchase & Sales agreement or Deed.

The Bank has visited the project site, reviewed the project plans and pro forma financial projections and has determined that the project meets the guidelines set forth in this memorandum and is financially feasible.

If the comprehensive permit is approved, the Developer and the Bank will enter into a Regulatory Agreement with the Town and the Monitoring Agent substantially in the form attached as Appendix A.

Developer qualifications.

Credentials

Experience

Consistency with local needs.

The proposed development must be consistent with the Town's priorities for meeting the need for affordable housing in the Town, as identified in the Barnstable Comprehensive Plan and the action plan as approved by the Town Council.

The local deficit in affordable housing is mainly a product of its seasonal real estate market. Much of the rental housing stock is available for rental at reasonable rents only during the off-season period, from Labor Day to Memorial Day. Summer rental costs are out of the reach of those year-round residents who are most in need of affordable housing. Developments that provide year-round rental housing or home ownership opportunities for those who are priced out of the market by seasonal housing costs will best serve local needs. Developments that contribute to the creation of seasonal, rather than year-round, housing will not be consistent with local needs.

The Committee will pay special attention to the problems that may be created by the inclusion of affordable units in resort developments or developments that lend themselves to vacation use or second-home use or that will have a high seasonal rental value. The Committee will generally not endorse developments (1) in which the housing objectives of the owners of the market units and the affordable units may be very different, as, for example, a project in which many of the market units are likely to be used as vacation homes; or, (2) developments in which the affordable units will have a high seasonal rental value.

Limitation of profit/allowable development costs.

Condominium and home-ownership developments:

Developer's profit for condominium and single-family home ownership developments will be limited to Twenty percent of total documented development cost, net of related-party transactions, developer's fee and overhead, and development consultant fees. Developer shall pay any profit in excess of the allowed amount to the Town for deposit in the Town's affordable housing fund. When sales proceeds reach maximum profit limit, Developer shall deposit all sales proceeds into a restricted account for transfer to Town fund on final audit.

Rental developments:

Developer's profit in rental developments will be limited to Twenty percent (20%) of total documented development costs, net of related party transactions, developer's fee and overhead, and consultant fees. Developer shall pay any profit in excess of the allowed amount to the Town for deposit in the Town's affordable housing fund. Costs Certified by a Certified Public Accountant approved by the Town must be submitted to the Town prior to the issuance of an Occupancy Permit.

Profit limitation during operation of rental development will be limited to 20% of net operating income. Developer shall pay any profit in excess of the allowed amount to the Town for deposit in the Town's affordable housing fund Audited financial statements must be submitted annually to the Monitoring Agent and Town.

Construction budget and all scope change orders to be subject to Town's approval. The Town may disallow any ineligible or unreasonable costs.

Allowable Land Cost.

Ownership Developments:

Land cost for an ownership development is an allowable development cost at the greater of (a) the value of the Project Site before any zoning change or other relief granted by the comprehensive permit plus documented and reasonable carrying costs or (b) actual arms-length unconditional acquisition of the Project Site cost plus documented and reasonable carrying costs. Developer shall pay for appraisals by an appraiser or appraisers acceptable to the Town. If the Project Site is used for more than one use, or if the proposed development contemplates more than one use, the land value shall be separately allocated between the Project Site and the portion of the land used for the other uses.

Rental Developments:

Under consideration

Prior to the first construction loan drawdown, developer shall provide a full compilation and certification of total development costs (net of related-party expenses) and total revenues, on a GAAP basis prepared and certified by a certified public accountant acceptable to the Town. Developer shall provide an AIA form certified by architect or engineer with each application for a progress payment, at completion of construction and when each unit is sold. Developer shall disclose any sales to or other transactions with related parties, and related-party transactions shall be included in compilation and certification to extent necessary to assure full disclosure and accounting for profit. Town may audit developer's financial records and records of related parties on a GAAS basis.

Related Parties to include controlling entities, subsidiaries and commonly owned and commonly controlled entities. Control group to include family members.

Loan advances will not exceed audited costs plus 20%, less retention.

No collusion/no, kickback/no relationship statements are required from all vendors.

Financing terms.

Condominium and home-ownership developments: Purchase-money financing must be fixed rate with minimum term of thirty years. Interest rate, points and closing costs subject to Town's approval.

Owner occupancy.

To assure a stable community, suitable for affordable homeowners, investor ownership will not be permitted. Market units must be owner-occupied. No timeshare or short-term rental arrangements will be permitted. Developer will be given sufficient time to sell units, and will enter into long-term fall-time residential leases it unable to sell within prescribed window. An owner-occupant may rent for no longer than two years, if required for personal reasons, and approved by the Town.

To facilitate subsequent sales of affordable units, condominiums must be FNMA approved.

Eligible purchasers.

Eligible purchaser must be:

1) a first-time homebuyer. A first-time homebuyer is defined as an individual who has not owned real property for a minimum of three years, as evidenced by Federal Income Tax Returns. First-time homebuyer is further defined as a spouse displaced due to divorce or documented domestic abuse.

2) the Barnstable Housing Authority or,

3) a non-profit corporation duly organized, with providing Affordable Housing a stated purpose in its Articles of Organization and Mission Statement.

An eligible purchaser must qualify for purchase-money mortgage of at least 50% of purchase price.

Maximum Income from all sources of the Purchaser or Purchasers and adult members of the Purchaser's family residing in the home or condominium (excluding income from part-time and vacation-period employment of full-time students) shall not exceed Eighty Percent of the median income for Barnstable County, adjusted for family size, as established by HUD. Income will be imputed to non-income producing or low yield securities as if invested in 30-year Treasury obligations.

Net assets of the Purchaser or Purchasers and adult members of the Purchaser's family residing in the condominium to be based on LIP guidelines.

Selection method to be based on LIP standards, using a lottery, with the following exceptions:

Five percent minority preference.

For 2-bedroom units or smaller, no preference for families over single purchasers, or vice-versa.

Seventy percent of the affordable units may be set aside for purchasers residing in or employed in the Town and others with continuing connections with the Town, using LIP standards.

Percentage of Affordable Units.

In condominium or single-family homeownership developments in which the average value of the market units is no more than twice the selling price or rental of the affordable units, a minimum of Twenty-five percent of the units must be sold to Purchasers who meet the Eligibility standard.

In condominium or single-family homeownership developments in which the average value of the market units is three times the selling or rental price of the affordable units or more, a minimum of Fifty percent of the units must be sold to Purchasers whose incomes are proportionately distributed between 70% of median income and 150% of median income.

For condominium or single-family homeownership developments in which the selling prices of the units are between two and three times the selling price, the percentage and range of affordable units will be adjusted proportionately.

In lieu of the above standards, the Town may require a higher percentage of affordable units or a different mix of units, including a distribution of units from highest to lowest end of affordable range if more consistent with local needs.

Continuing affordability.

The history of comprehensive permit developments that rely on conventional mortgage financing teaches that market risk falls as much on the Town as on the developer. Mortgage foreclosures -on individual units as well as on entire rental developments -- create a serious risk that affordable housing units will be lost. To forestall similar problems in the future, the Committee will look closely at the marketability of a proposed development and the proposed financial structure, including the debt/equity ratio, to assure that the market risk is minimal.

Affordable units will be dedicated, by deed restriction, in perpetuity to affordable housing.

All transfers, including by testate or intestate succession, must be at discounted price to eligible purchaser, except that on death of owner property may be transferred to heir who would qualify as eligible purchaser.

Deed restrictions must survive foreclosure and bankruptcy.

Form of deed restriction to be based on LIP documents, with tightened notice and enforcement provisions.

Form of deed rider to follow.

Project Design.

The project design shall meet all requirements of applicable life-safety codes and of all applicable Regional, State and Federal codes, including the Americans with Disabilities Act.

Design of affordable units.

The design, mechanical and electrical systems and layout of affordable condominium units shall meet the following minimum requirements:

Consistent with market units, but Town can approve or require variations if more consistent with local needs.

Minimum size of units and appliances, finishes, closets, storage and other features to be based on LIP standards.

No external differences between affordable and market units.

Location of affordable units.

The affordable units shall be distributed throughout the development, but the Town can approve or require variations if more consistent with local needs.

Condominium governance.

Initial common charges for the affordable units shall be based on Basic Common Costs, which will include only those items of cost typical to 100% affordable developments. Town to review budget for initial Basic Common Costs and may disapprove ineligible items or unreasonable amounts. The common charges shall be allocated to the affordable units on the basis of sales prices, and among the affordable units on the basis of unit square footage.

Increases in common charges to affordable units will be limited to documented increases in Basic Common Costs, approved by the Town.

Owners of affordable units will have full access to all services and amenities provided to owners of market units, without discrimination. Any fees charged for the use of community amenities, such as meeting rooms and recreation facilities, other than nominal fees, shall be reduced for owners of affordable units by the same proportion that their common charges are less than common charges for market units.

Financial statements of condominium association and managing agent to be kept on GAAP basis and subject to annual audit by Monitoring agent on GAAS basis. Condominium association and managing agent to disclose transactions with related parties. Town may disallow charges to affordable units of costs that are unreasonable.

Regulatory agreement.

Parties to the Regulatory Agreement will be the Town, the Developer, the lending bank or banks and the Barnstable Housing Authority as Monitoring Agent.

Will require developer to comply with requirements of comprehensive permit, build in accordance with drawings and specifications, sell or rent in accordance with marketing plan and comply with record-keeping and audit requirements. Comprehensive permit will not be effective until development agreement is signed and recorded.

Lending Bank will monitor construction, using architect, engineer or qualified construction professional acceptable to Town, for compliance with drawings and specifications. Clerk of the Works to certify prior to construction advances that the scope

has not changed, or has been approved by Town and Bank. Non-scope changes in excess of budgeted contingencies to be subject to Town's approval. Construction monitor to issue certificate of completion under professional seal, with copies to all parties to Regulatory Agreement.

Lending bank will limit advances to lesser of percentage of completion or costs certified by CPA plus 20%. Retention to be at least 10%. Final drawdown to be made no sooner than Thirty days after delivery of certificate of completion to all parties.

Monitoring agent will monitor sales and rental programs.

Enforcement.

Breach of Regulatory Agreement, if not cured, will invalidate comprehensive permit.

Town to have express rights to enforce Regulatory Agreement by breach of contract action or injunctive relief. j

Regulatory agreement and loan documents to provide that breach of regulatory agreement will be an event of default under loan documents, and bank will take remedial action if requested to do so by Town.

Affordability covenants to survive foreclosure and to be conditions of comprehensive permit and to run with land so as to survive bankruptcy.

Monitoring.

Monitoring agent is the Barnstable Housing Authority.

BHA will monitor rentals directly.

BHA may subcontract to for ownership units.

Form of monitoring agreement to follow.

Fees.

Rental: Annual fee \$25 per unit plus actual cost of annual audit.

Ownership: 3% of selling price of affordable unit, paid at closing, plus cost of audit.

END.