

TOWN BULLETIN

Town of Whately Bylaw Approvals

On March 6, 2017 the Attorney General of Massachusetts approved the following attached changes to the General bylaws voted at the December 1, 2016 Special Town Meeting as summary of which follows:

- Under Article 11 was a vote to: (1) accept the provisions of G.L. c. 44, § 55C; (2) establish a trust to be known as the Whately Affordable Housing Trust Fund; and (3) add to the Town's general by-laws a new Chapter 2A, pertaining to the Town's Affordable Housing Trust and its Board of Trustees.

Pursuant to G.L. c. 40 § 32, neither general nor zoning by-laws take effect unless the town has first satisfied the posting/publishing requirements of the statute. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and zoning by-laws and amendments are deemed to have taken effect from the date they were approved by Town Meeting, unless a later effective date is prescribed in the by-law.

Lynn M. Sibley, CMMC, MMC
Town Clerk of Whately

Posted March 7, 2017 at the Whately Town Offices, Post Office, Library and Transfer Station as well as on the town website www.whately.org.

THE FULL VOTED ARTICLE IS ATTACHED.

ARTICLE 11: Upon motion made and seconded, it was

Voted that the Town accept the provisions of Massachusetts General Laws Chapter 44, Section 55C, and establish a trust known as the Whately Affordable Housing Trust Fund, whose purpose shall be to provide for the preservation and creation of affordable housing in the Town of Whately for the benefit of low and moderate income households, and, further, to amend the General Bylaws of the Town by inserting a new Chapter 2A, to be entitled “Whately Affordable Housing Trust Fund,” as follows:

WHATELY AFFORDABLE HOUSING TRUST FUND

Section 1: Name of Trust

The Trust shall be called the “Whately Affordable Housing Trust Fund.”

Section 2: Purpose of Trust

The purpose of the Trust shall be to provide for the acquisition, creation, preservation, rehabilitation and support of affordable housing in the Town of Whately for the benefit of low and moderate income households as defined by the Massachusetts Department of Housing and Community Development or successor agency (DHCD). In furtherance of this purpose, the Trust shall be authorized to acquire, by gift, purchase, or otherwise, real estate and personal property, both tangible and intangible, of every sort and description, and to provide funds for the benefit of low and moderate income households to assist in the acquisition, creation and preservation of housing affordable for such families. The Trust shall use such property, both real and personal, and shall dispense such funds in such manner as the Board of Trustees shall deem most appropriate to carry out such purpose consistent with the policies adopted from time to time by the Selectboard regarding affordable housing.

Section 3: Board of Trustees

There shall be a Board of Trustees of the Whately Affordable Housing Trust Fund, composed of five (5) Trustees, as determined by the Selectboard, at least one (1) of whom shall be a Selectman to be designated by said Selectboard and another one of whom shall be a member of the Whately Community Preservation Committee (“CPC”) to be recommended by said Committee. The Selectboard shall appoint the members of the Board of Trustees for renewable terms not to exceed two (2) years. To the extent possible, the Selectboard shall appoint as Trustees individuals with a background or interest in affordable housing, and specifically those with financial, legal or development expertise, or experience and perspective on historic preservation. The Selectboard may remove any member of the Board of Trustees for cause after that member has been provided an opportunity to be heard by the Selectboard. The term “cause” shall include, but not be limited to, four (4) consecutive unexcused absences from Board of Trustees meetings. To be eligible for appointment, a Trustee must be a resident of the Town of Whately. Any Trustee who ceases to be a resident of the Town of Whately shall promptly provide a written

notification of the change in residence to the Trust, whereupon the Trustee shall cease to be a member of the Board of Trustees and action shall be taken promptly to fill such vacancy. Notice of such resignation and appointment shall be filed with the Town Clerk, and, if the Trustees have any right, title or interest in registered land, filed with the Registry District of the Land Court. Any Trustee may resign by written instrument signed and acknowledged by such Trustee and duly filed with the Town Clerk, and filed with the Registry District of the Land Court, if applicable.

If a Trustee shall die, resign, or for any other reason cease to be a Trustee hereunder before his/her term of office expires, a successor shall be appointed by the Selectboard to fill such vacancy for the remainder of the unexpired term, provided that in each case the said appointment and acceptance in writing by the Trustee so appointed shall be filed with the Town Clerk, and filed with the Registry District of the Land Court, if applicable. Upon the appointment of any succeeding Trustee and the filing of such appointment or a certificate of such election, the title to the Trust estate shall thereupon and without the necessity of any conveyance be vested in such succeeding Trustee jointly with the remaining Trustees. Reference to the Trustee shall mean the Trustee or Trustees for the time being hereunder.

The Trustees shall annually elect a Trustee to serve as Chair. The Chair may establish sub-committees and/or ad hoc task-related committees to carry out the purposes of the Trust. Chairs of the sub-committees may be selected by the members of the sub-committees.

Of the original Trustees, three members (_____, _____ and _____) shall serve for a term of two (2) years. Two members (_____ and _____) shall serve for a term of one (1) year.

Section 4: Powers of Trustees

The powers of the Trustees, all of which shall be carried on in furtherance of the purposes set forth in G.L. c. 44, §55C, and pursuant to the provisions of this Declaration of Trust, shall include the following:

- (a) to accept and receive real property, personal property or money, by gift, grant, contribution, devise, or transfer from any person, firm, corporation or other public or private entity, including but not limited to, money, grants of funds or other property tendered to the Trust in connection with provisions of any by-law or any General Law or Special Act of the Commonwealth or any other source, including money from G.L. c. 44B, provided that to accept and receive real property, personal property or money reasonably determined by the Trustees, by appraisal or otherwise, to have a value equal to or greater than \$5,000 shall require the approval of the Selectboard, unless previously approved or appropriated by Town Meeting;
- (b) to purchase and retain real or personal property, including without restriction investments that yield a high rate of income or no income, provided that the purchase of real or personal property for consideration equal to or greater than \$5,000 shall require the approval of the Selectboard, unless funded by an appropriation made by Town Meeting;
- (c) to sell, lease, exchange, transfer or convey any personal, mixed, or real property and to grant, lend, or otherwise dispose of funds, either "one time only" or as part of an ongoing program to or for the benefit of low and moderate income persons and families for the acquisition, creation, preservation, rehabilitation and support of affordable housing

(provided, however, that CPA funds may be used only for purposes permitted under the requirements of the CPA) at public auction or by private contract for such consideration and on such terms as to credit or otherwise, and to make such contracts and enter into such undertaking relative to Trust property as the Trustees deem advisable notwithstanding the length of any such lease or contract, provided that any sale, exchange, transfer or conveyance of any item of personal, mixed or real property for consideration equal to or greater than \$5,000 shall require the approval of the Selectboard, unless approved by Town Meeting;

- (d) to execute, acknowledge and deliver deeds, assignments, transfers, pledges, leases, covenants, contracts, promissory notes, releases and other instruments sealed or unsealed, necessary, proper or incident to any transaction in which the Trustees engage for the accomplishment of the purposes of the Trust;
- (e) to employ advisors and agents, including but not limited to, accountants, appraisers and lawyers, as the Board of Trustees deems necessary for services in amounts not to exceed \$5,000 per transaction and cumulatively, not to exceed \$10,000 in any fiscal year unless previously approved by the Selectboard;
- (f) to pay reasonable compensation and expenses to all advisors and agents and to apportion such compensation between income and principal as the Board of Trustees deems advisable;
- (g) to apportion receipts and charges between income and principal as the Board of Trustees deems advisable, to amortize premiums and establish sinking funds for such purpose, and to create reserves for depreciation depletion or otherwise;
- (h) to participate in any reorganization, recapitalization, merger or similar transactions; and to give proxies or powers of attorney with or without power of substitution to vote any securities or certificates of interest; and to consent to any contract, lease, mortgage, purchase or sale of property, by or between any corporation and any other corporation, person or entity;
- (i) to deposit any security with any protective reorganization committee, and to delegate to such committee such powers and authority with relation thereto as the Board of Trustees may deem proper and to pay, out of Trust property, such portion of expenses and compensation of such committee as the Board of Trustees may deem necessary and appropriate;
- (j) to carry property for accounting purposes other than acquisition date values;
- (k) to borrow money on such terms and conditions and from such sources as the Board of Trustees deems advisable, to mortgage and pledge Trust assets as collateral, provided that any borrowing equal to or greater than \$10,000 and any mortgage or pledge to secure an obligation equal to or greater than \$10,000 shall require the approval of the Selectboard unless authorized or approved by Town Meeting;
- (l) to make distributions or divisions of principal in kind;
- (m) to compromise, attribute, defend, enforce, release, settle or otherwise adjust claims in favor or against the Trust, including claims for taxes, and to accept any property, either in

total or partial satisfaction of any indebtedness or other obligation, and subject to the provisions of G.L. c. 44, §55C, to continue to hold the same for such period of time as the Board of Trustees may deem appropriate, provided that to adjust any claim or accept any property in satisfaction of any indebtedness where the Trustees reasonably determine that the value of the claim or amount of the indebtedness is equal to or greater than \$10,000 shall require the approval of the Selectboard, unless authorized or approved by Town Meeting;

- (n) to manage or improve real property owned by the Trust or by others and in which the Board of Trustees has an interest; and to abandon any interest in property which the Board of Trustees determines not to be worth retaining;
- (o) to hold all or part of the Trust property uninvested for such purposes and for such time as the Trustees may deem appropriate;
- (p) to extend the time for payment of any obligation to the Trust;
- (q) to issue policy goals and statements to serve as guidelines for the Trust;
- (r) to exercise such additional powers, if any, as may be set forth in G.L. c. 44, §55C, as same may, from time to time, be amended; and
- (s) to acquire, create, preserve, rehabilitate and support community housing, as permitted under the CPA, and to enter into grant agreements with the Town of Whately for the foregoing purposes.

Section 5: Audit Requirement

The Board of Trustees shall provide for an annual audit of the books and records of the Trust within the scope of the Town of Whately's audit. Such audit shall be performed by an independent auditor in accordance with accepted accounting practices. Upon receipt of the audit by the Board of Trustees, a copy shall be provided forthwith to the Selectboard.

Section 6: Meetings of the Trustees

The Trustees shall meet at least quarterly at such time and such place as the Trustees shall determine. Special meetings may be called by the Chair or by any two (2) Trustees. Notice of any meeting of the Trust shall be filed with the Town Clerk and posted in accordance with the Open Meeting Law, G.L. c. 30A, §§18-25, as it may be amended from time to time. The Board of Trustees shall be subject to all other provisions of the Open Meeting Law. While a majority of the full Board of Trustees shall constitute a quorum for the transaction of any business of the Board of Trustees, less than a quorum may, subject to the requirements of the Open Meeting Law, continue a meeting to a time, date and place certain.

Section 7: Acts of Trustees

Any action of the Board of Trustees shall be approved by a majority of those present and voting at a duly called meeting, provided that a quorum is present, and any and all instruments executed by such majority shall be binding upon the Trust, and shall be conclusive evidence that such action has been duly authorized. The Trustees may, by instrument executed by all the Trustees, delegate to any attorney, agent or employee such other powers and duties as they deem advisable, including power to execute and deliver instruments as fully as the Trustees might themselves and to sign and endorse checks for the account of the Trustees of the Trust. The Trustees shall not

delegate the authority to amend or terminate the Trust and no such delegation shall be effective. No Trustee shall be required to give bond. No license of court shall be required to confirm the validity of any transaction entered into by the Trustees with respect to the Trust estate. No one dealing with the Trustees need inquire concerning the validity of any act of the Trustees or see to the application of anything paid to or upon the order of the Trustees. No Trustee shall be liable for the act, negligence or default of any other Trustee or any employee, agent, or representative of the Trustees selected with reasonable care, nor for errors in judgment, nor mistakes of law or fact made in good faith nor in reliance in good faith on advice of counsel nor for other acts or omissions in good faith.

In exercising these powers, the Trustees shall recognize the role of the Selectboard as the principal procurement officer under G.L. c.30B, including the bidding and awarding of all contracts. Where an act of the Trustees requires prior written notice to the Selectboard, notice shall be deemed given when addressed to the Selectboard, and an affidavit by the Chairman of the Board of Trustees that notice was given as required by this Section 7 shall be conclusive and binding evidence to that effect, provided that in the case of the acquisition and disposition of any right, title and interest in real property, such affidavit is recorded with the appropriate Registry of Deeds or filed with the Registry District of the Land Court.

Section 8: Liability; Conflict of Interest

Neither the Trustees nor any agent or officer of the Trust shall have the authority to bind the Town, except in the manner specifically authorized herein. In accordance with the provisions of G.L. c.44, §55C, the Trust is a public employer and the Trustees are public employees for the purposes of G.L. c. 258. The Trust shall be deemed a municipal agency and the Trustees special municipal employees for the purposes of G.L. c. 268A.

Section 9: Town Treasurer as Custodian of Trust Funds

The Town Treasurer shall be the custodian of the Trust's funds and shall maintain separate accounts and records for said funds. The Treasurer shall invest the Trust's funds in the manner authorized by G.L. c. 44, §55B. Any income or proceeds received from the investment of unrestricted funds shall be credited to and become part of the Trust. The yearly approved budget, and any approved budget revisions, will be filed with the Town Treasurer. As custodian, the Treasurer shall issue checks or transfer monies as directed by the Trustees and approved by the Selectboard. In addition to the requirements of G.L. c. 44, § 55C, the Trust shall comply with all requirements, if any, of all the funds deposited into the Trust, and shall ensure that restricted funds, and any interest thereon, are appropriately segregated and reported.

Section 10: Duration of the Trust

This Trust shall continue so long as authorized under the Laws of the Commonwealth of Massachusetts. Notwithstanding the foregoing, this Trust may be terminated in accordance with G.L. c. 4, §4B, provided that an instrument of termination together with a certified copy of the Town Meeting vote are duly recorded with the Registry of Deeds and the Registry District of the Land Court, if applicable. Upon termination of the Trust, subject to the payment of or making provisions for the payment of all obligations and liabilities of the Trust and the Trustees, the net assets of the Trust shall be transferred to the Town and held by the Selectboard for affordable housing purposes except that any net funds generated pursuant to G.L. c. 44B which shall be returned to the CPA Fund for community housing. In making any such distribution, the Trustees shall, subject to the approval of the Selectboard, sell all or any portion of the Trust property and distribute the net proceeds thereof or they may distribute any of the assets in kind. The powers of the Trustees shall continue until the affairs of the Trust are concluded.

Section 11: Construction of Terms

In the construction hereof, whether or not so expressed, words used in the singular or in the plural respectively include both the plural and singular, words denoting males include females and words denoting persons include individuals, firms, associations, companies, trusts and corporations unless a contrary intention is to be inferred from or required by the subject matter or context. All the powers and provisions of the Trust herein contained shall take effect and be construed according to the laws of the Commonwealth of Massachusetts.

Section 12: Recording

This Declaration of Trust shall be recorded with the Franklin Registry of Deeds and the Franklin Registry District of the Land Court, as applicable.

Section 13: Amendments

This Declaration of Trust may be amended from time to time except as to those provisions specifically required under G.L. c.44, §55C, by an instrument in writing signed by a majority of the Trustees and approved at a meeting called for that purpose, and approved by the Selectboard, provided that in each case, a certificate of amendment shall be recorded with the Registry of Deeds and the Registry District of the Land Court, as applicable.

Section 14: Record to be Conclusive; Certificate as to Facts

Every contract, deed, mortgage, lease and other instrument executed in compliance with Section 7, as appears from instruments or certificates recorded with the Registry of Deeds and Registry District of the Land Court to be Trustees hereunder shall be conclusive evidence in favor of any person relying thereon or claiming hereunder, that at the time of the delivery thereof this Trust was in full force and effect and that the execution and delivery of such instrument was duly authorized by the Trustees except that delegations of authority pursuant to Section 7 hereof and instruments of amendment pursuant to Section 13 and an instrument of termination pursuant to Section 10 hereof shall be conclusive only if it appears that the delegations, amendments or termination have been executed by a majority of the Trustees. Any person dealing with the Trust property or the Trustees may rely on a certificate signed by any person appearing from instruments or certificates so recorded to be a Trustee hereunder as to the identity of the then current Trustees or as to the existence or non-existence of any fact or facts which constitute conditions precedent to acts by the Trustees or in any other manner germane to the affairs of the Trust.

Section 15: Titles

The titles to the various Sections herein are for convenience only and are not to be considered part of said Sections nor shall they affect the meaning or the language of any such Section.

Moderator declared the vote passed in the affirmative

A true record,

Attest:

Lynn M. Sibley, MMC, CMMC
Town of Whately