

## Town of Southborough, Ma. Virtual Meeting of the Affordable Housing Trust Fund

June 4, 2024 Schedule for 9:00 AM

**Open Session**

1. Meeting Called to order at 9:07 Present were Ms. Cook, Ms. Jasinski, Mr. Dennington, Mr. Stivers, Ms. Landry and Mr. Hamilton
2. The minutes of the May 7, 2024 meeting were approved as follows:
  - Cook – Yea
  - Jasinski – Abstain
  - Dennington – Yea
  - Stivers – Yea
  - Hamilton – Yea
  - Landry – Yea
3. A motion was made and seconded to enter into Executive Session and not return to regular session to consider the purchase exchange lease or value of real property as the Chair has determined that an open meeting may have detrimental effect on the Towns position (Exemption 6). The motion was adopted as follows:
  - Cook – Yea
  - Jasinski – Yea
  - Dennington – Yea
  - Stivers – Yea
  - Hamilton – Yea
  - Landry – Yea

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June 4, 2024 Schedule for 9:00 AM

**Executive Session**

1. Present were Ms. Cook, Ms. Jasinski, Mr. Dennington, Mr. Stivers, Ms. Landry and Mr. Hamilton
2. Following the open session motion and approval to enter into Executive Session discussion was held related to the offer by Mr. David Foote to transfer his home to the Affordable Housing Trust Fund upon his demise. The terms of the offer are described in the letter attached.
3. Mr. Hamilton and Ms. Cook volunteered to meet with Mr. Foote to review his kind offer and ascertain the condition of the building and to discuss the status of the existing reverse mortgage.
4. A motion was made and seconded to adjourn at 9:30 and not return to open session. Said motion was approved as follows:

Cook – Yea

Jasinski – Yea

Dennington – Yea

Stivers – Yea

Hamilton – Yea

Landry – Absent

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# MIRICK O'CONNELL

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May 17, 2024

Kathy Cook (via email – [kecook@southboroughma.com](mailto:kecook@southboroughma.com))

David Foote  
61 Newton Street  
Southborough, MA 01772

Dear Kathy and David:

It was great meeting with both of you at Kathy's office to flesh out the way in which David's generous legacy gift to the Town of his home would work. According to my notes, David would be willing to make this legacy gift provided that:

1. The property that he gives is subject to an architectural restriction to ensure that the home will not be torn down and that any additions or other architectural alterations will be made in a way that is consistent with the current appearance of the home. There will be no limit, however, on the extent to which the home could be expanded and to which the interior of the home could be changed.
2. The entity receiving the property would be the Southborough Affordable Housing Trust. Kathy, as you know, David wants to make sure that his property will be conveyed to an entity that is not simply part of town government. When I looked at the affordable housing trust website, there was a list of the powers and duties of an affordable trust, which was referred to as part of an "act," which I assume means that the committee was either created through a separate act of the state legislature or through a general law that allows for these entities to exist. I would appreciate it if you could get me more information on that.

It was agreed when we spoke that a condition of this legacy gift would be that the property would be permanently "affordable." While it was not clearly stated during our meeting, it was assumed that the property would be owned by the occupants and that certain applicants would be given priority. Two possible categories that David mentioned were town employees and recent immigrants.

As we discussed, once these details are ironed out, it is David's intention to create an irrevocable trust and to transfer to the trustee of that trust a "remainder interest" in his home while retaining a "life estate" in it. The trust will give the trustee the ability, in the trustee's

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Kathy Cook  
David Foote  
May 17, 2024  
Page 2

discretion, to sell or to make a distribution of this remainder interest within five years of the date of when the deed is recorded. As we discussed, the reason for that is to ensure that, in the unlikely event that Mr. Foote needed to qualify for MassHealth during that five-year period, either because he needs nursing home care or because he needs a lot of care at home in order to avoid going to a nursing home, the trustee will have the ability to deed the property back to himself or to a third party so that the third party can then deed the remainder interest back to Mr. Foote, thereby "curing" the earlier gift and allowing Mr. Foote to qualify for MassHealth. At the end of that five-year period, this ability to transfer the remainder interest during Mr. Foote's lifetime will expire.

Following Mr. Foote's death, his life estate in the property will also expire. In the unlikely event that Mr. Foote has needed to qualify for MassHealth during his lifetime, the MassHealth lien on the property will also expire. You are aware, though, that Mr. Foote has an existing reverse mortgage, which he intends to keep in place so that he can borrow against the remaining line of credit on the property in the event that he needs it. Upon Mr. Foote's death, that reverse mortgage will become due and payable. The trust would specify that the trustee would convey the property to the Affordable Housing Trust at that time. However, that conveyance will be subject to the reverse mortgage in which the trustee will have no obligation to pay.

Once we have ironed out the question of whether the Southborough Affordable Housing Trust has efficient independence from the Town of Southborough that Mr. Foote is comfortable with making this legacy to it, we all agreed that Mr. Foote would schedule a time to come before the Affordable Housing Trust to discuss this matter and firm up the final terms of the deal. I am looking forward to working on this. Kathy, I think you and I agree that if this ends up closing, we should be trying to make other Southborough residents aware of this very generous contribution to the ongoing affordability of Southborough as a place to live. Hopefully, this will inspire others in Southborough to follow in Mr. Foote's footsteps.

Very truly yours,



Arthur P. Bergeron

APB/cb

cc: Jared Madison, Esq.