

Edgartown Affordable Housing Trust Meeting
Tuesday, December 6, 2022

Members in attendance: Chairman Jason Mazar-Kelly, Mark Hess, CJ Moriarty, Maria Ventura, Art Smadbeck

Others in Attendance: Juliet Mulinare, Jack Collins

Chairman Mazar-Kelly opened the meeting at 4:30 PM and welcomed Art Smadbeck to the Trust

Minutes: Mark Hess moved to accept the November 16th, Tuesday, 2022 minutes. Maria Ventura seconded the motion and the motion passed with one abstention.

Bills:

The Chairman informed the trust that since the last meeting, he and Mark Hess had some conversations with James Hagerty and Jack Collins in regards to the Affordable Housing Manager's request for paid family medical leave. The Chairman went on to state that the town did not believe that the decision of the trust was not in the purview of the Personnel by-laws and because of that there was a concern that if the proposal was approved and then acted on, there would be an opportunity for there to be potential litigation for the town, as the town does not provide paid family medical leave outside of the sick days that are regularly accrued. The Chairman added that the topic of discussion around that was in regard to, if Ms. Faria's position falls under the purview of the town by-laws as an employee of the AHT and AHC. Chairman Mazar-Kelly stated that it was the opinion of Mr. Hess and himself that Ms. Faria did not fall within the purview of the personnel by-laws given certain communications and documentation from the personnel files. However, upon further consideration and discussion with the town, there was additional push back that in fact, Ms. Faria was going to fall under the purview of the by-laws. The Chairman stated that he had discussed this with Mr. Hess and while the Chairman still has his own questions in regards to the inconsistencies in the documentation in regards to what constitutes an employment contract, what would constitute someone falling under the by-laws, the benefits provided to Ms. Faria. In another email it was stated that the position created by the trust would be out of the town purview and off the classification, that said the trust Chair would like to mediate this issue as best they can. The Chairman informed the trust that currently, the proposal that was approved upon is not able to move forward, given the town's legal counsel. The Chairman invited Jack Collins, the town's employment attorney, to add any context to what the Chairman had just mentioned. The Chairman went on to say Ms. Faria is taking off this week and plans to come back next week. Working remotely as best as she can and they are actively working to try and figure out and consider how to move forward, both with any type of employment contract with the trust and how that relates to the town and other contracting opportunities. Mark Hess asked Mr. Collins to state for the record the simple reasons why the trust cannot grant the request and why the trust exceeded their authority.

Mr. Hess went on to say that through a lot of good discussions with Mr. Hagerty, Ms. Faria and the Chairman, he believes everyone is on the same page at this time and it is possible the committees overstepped their authority, all be it unknowingly.

Jack Collins stated that he was asked whether or not this particular person, whom he doesn't believe he has met, though he is unsure, would fall under the town's by-law or might somehow be exempt from that. Mr. Collins took a look at the law and took a look at the by-laws and he knows that people have had different communication, he asked to keep in mind that a year or three ago the committee received a report from town counsel that said it's possible to spend trust money on various things, including

consultants and things like that. In the memo to the town it also stated that, the committee should probably call Jack Collins and find out if this employee falls under the by-law and that never happened. Mr. Collins stated that the first time he was asked that was a couple of weeks ago. Mr. Collins believes the Chairman is correct in stating there have been conflicting, or at least confusing statements by various people over the past year or two because they were doing the best they could, given the information they had. So if he were asked that a year or two ago, this might not have happened. The person is, at this point in time, working for the Town of Edgartown, it doesn't matter whether or not the money ultimately gets reimbursed to the town, comes from tax payers, which would be tax funds, comes from the federal government via grant or comes from the state government which might be grant or comes from the trust. Once the money comes into the town's treasury and goes out to pay someone to do the work, they are a town employee. Mr. Collins states that there are a whole lot of other reasons why that is so, despite what other people might have been told periodically. Mr. Collins asked the trust to think of it from the standpoint that, are they a town committee and the answer is yes. Mr. Collins looks at the trust's letterhead, which states Committee is the Town of Edgartown, Edgartown Affordable Housing Trust. If the Trust were to be sued today by someone that isn't happy with what the committee is doing, would you look to the town counsel, or to him or the town's insurance policy to defend you? Of course, you'd say hey, I'm a volunteer or whatever you are. So you can't ultimately say, I want this person to be exempt. It might have been better to do certain things a little bit differently but at the moment, the person is getting paid on a scale that is set through the town personnel compensation plan, even though they are not listed because the money doesn't come from the town. If the town had gotten this money all from the tax revenue, clearly they would have put that name or that position on the town compensation plan, it would say housing administrator or housing coordinator or whatever title you are going to get for the person but that didn't happen. The fact that it didn't doesn't change the present. One of the questions that has come up has been, would it be possible for us as a town trust to be able to end up having an employment contract with this person. The answer is no. The next question that comes is could we use her as an independent contractor with a contract for that and there are a bunch of reasons why not but Mr. Collins will give the trust one and they would have to decide if they need to put the position out to bid and get some bids on it and secondly, Mr. Collins takes it that even though he heard today the person is working remotely, at some point in time there is this person's desk or office or place of work and those kind of positions are not eligible for third party contract situations so it gets more and more complicated as you go along. Bottom line is that when it's a duck we call it a duck, there may be a couple of issues here, a few feathers out of line but it quacks, it flies, it lays eggs, whatever you want to call it this is a duck. Mr. Collins assumes that no one wants to debate whether or not all the words were correct up to now but the long and the short of it is that this is a town position, it basically comes under the town by-law. A town committee cannot give a town employee time off with pay unless it goes under the town by-law, for instance if someone had accrued personal time, if someone had bereavement days or sick days. So what's been happening, as Mr. Collins understands it, that the majority of the things that the town by-law controls have applied to this position. We keep track of how many sick days, how many vacation days. We move it from one step to the other on a pay grade on an annual basis. So one can't, as a town committee all of the sudden say somehow we are going to override that by-law so even though it's possible that if the person was under the statute allows you to have a contract you won't be able to do that, that's not possible. First, you don't have a contract and secondly you can't have one. It wouldn't be a legal contract so bottom line, no matter how many times Mr. Collins states it, the position is a town position, there's nothing that can be done to change that. If you had an outside company, and some places do, between the housing trust and the committee, the vast majority don't have staff, what they do is they borrow someone from another part of the town, just as Juliet is doing now and is taking notes at a meeting, fielding correspondence or keeping track. The treasurer's office might take care of the book keeping and the

accountants office so there are several but only several that have staff that does what apparently as yours does virtually none of which are full-time but some of them borrow here and there, different hours but those people are still all town employees. It is possible for the trust to somehow go out to bid and say look, we would like an outside company to come in, as some towns do, like Aquinnah did for example, to do it's assessing. So they say, we're not going to have an assessor anymore so we're going to go out to bid and have a company come in and handle the assessing duties or handle whatever kind of duties. That would be possible, I'm not saying that you couldn't do that in the future but it couldn't be for the present person that's doing it. Mr. Collins commented, there we are for whatever it's worth. We (the administration and employment counsel) had this conversation with several of you independently for a while. It seems to me, whatever it's worth, from what I've seen, Mr. Collins obviously worked for dozens and dozens of towns, the committee's got a group of dedicated people who all want to do the right thing and it would help, I think at some point in time, for the committee, with Mr. Collins or somebody else, to clarify all these things going forward. Having said procedures, we're going to follow, have some guidelines on how we're going to handle things here. Work with the state because they'll give the committee some free services in terms of looking at this and saying how it should be done. Some of the places Mr. Collins works with, the housing trust,s just take the money that comes in from the state, the ten percent and they spend it. Other places, they end up going out to bid, he hasn't had enough experience with the Edgartown Affordable Housing people right now quite frankly to know what their focus has been or what areas you've been working on or what you want to work on so he's not implying that he would know any better than they do, he certainly doesn't, but putting all this together he thinks it would be beneficial at some time so everyone does not stumble across these situations in the future because everyone wants this to succeed.

Mark Hess replied that Mr. Collins gave a very good succinct explanation and he thinks everyone understands it. The bottom line is that Mr. Hess thinks the committees clearly overstepped their bounds, the committees didn't think it through thoroughly but down the road the committees would like a bit more clarification about the employee's position and that's the committees fault for not defining it further. The point is they had a problem, they tackled it thoroughly and are in a very nice friendly way with all the parties concerned and he thinks they've come to an agreement. Mr. Hess thinks it's been resolved and aside from the employees off the record health issues, Mr. Hess thinks they're going to be able to get through this and the committees have all learned from it.

Chairman Mazar-Kelly asked Jack to stay on for another moment to add on to what Mark stated. The Chairman appreciates (Mr. Collins) going through and summarizing all of that for everyone at the meeting and could not have done it with as much clarity as (Mr. Collins) provided, the other thing, that he thinks is important going forward, that (Mr. Collins) made a comment to, is sitting down with (Mr. Collins) and having a process in place and some clarity in place around the various types of positions that the trust can work with there as that is definitely something he has taken away from this experience is that there's a need for having process flow and having that be something that is a little more formal so that the committees know how to have that procedure as well as even just clarity of how the committee, as a trust is utilizing funds to get projects done. The Chairman went on to say who are those people that we are utilizing in whatever various fashions that we may be utilizing them. Whether it's going out to bid or having some sort of employee representative and really figuring out what's the best model to engage with all that serves the people that have served the committees and the people that the committees will be serving as they go into the future.

Mr. Collins replied, one of the challenges they found elsewhere is that there is a housing trust and a housing committee and clearly defining the different roles with each of them and what are they doing and who's doing what and who does the person work for and things like that, small things, they haven't

been a problem and they don't want to make them a problem but sometimes, again clarification in advance, prevents problems in the future, problems from happening so that is another area the committees want to look at.

The trust thanked Mr. Collins for his time.

Chairman Mazar-Kelly asked the trust if there were any other questions as it relates to previous items. Mark Hess asked if they should vote to approve the salary for December. Chairman Mazar-Kelly added not only that, but also, does the trust need to do anything in regards to the approval they made last meeting, since that has changed or does the discussion suffice.

Mark Hess made a motion that the trust rescind their offer and motion that they made at the last meeting in regards to paid sick leave. Art Smadbeck seconded the motion and the motion passed unanimously.

Art Smadbeck moved to approve the salary for December. Mark Hess seconded the motion and the motion passed unanimously.

Chairman Mazar-Kelly asked if there were any questions or comments in regards to the Munis report. Mark Hess replied that he's not sure that Mr. Smadbeck had the opportunity to get acquainted with the accounts or if he saw the reports that were sent out for this meeting but if he had any questions on that, trust members can certainly hear them. Mr. Hess added that there is an AHC meeting at five o'clock that most everyone at the current meeting will be attending and he is willing to let this meeting go later in but he would also request that the chairman leaves time for Mr. Smadbeck to make any comments that he may have about joining the committee and what his interests are.

Mr. Smadbeck thanked Mr. Hess and started by thanking Margaret Serpa for her service on the trust from its inception, as she serves as the Selectman's representative to the community preservation committee and she's been a great colleague to Mr. Smadbeck. Mr. Smadbeck thanked Ms. Serpa for the opportunity to join this committee for the community as Mr. Smadbeck has a big interest in affordable housing. Mr. Smadbeck stated, in fact, the last committee that he served on with some of the people here was the 6th street properties and he is really looking forward to getting more involved with everyone as far as this is concerned and he appreciated the opportunity to do it. A couple of things that Mr. Smadbeck would like affordable housing to take a look at in the short term: the community preservation act provides for the town to have up to 3 percent surcharge on our taxes that amount of money, plus what the state (which used to be a dollar for dollar match but isn't anymore) provides Edgartown in round number this year approximately 1.4 million dollars, there are three buckets, community preservation, open space and affordable housing. Each of those buckets requires the CPC to give ten percent. The other seventy percent is at the discretion of the town which leaves in round numbers somewhere in the neighborhood of a million dollars every year available to us for affordable housing. The CPC has done as good of a job as they can, utilizing that money but the town has never utilized it all and Mr. Smadbeck thinks that he would like some concentration in finding affordable housing projects, that we can be brought to the CPC and utilize this money. There's no reason why, at this point in time, given the crisis the island has in affordable housing, and the need that we have in Edgartown, that we cannot find suitable projects. They can be anything from rent subsidies, to infrastructure to get a lot ready to be put into affordable housing. Mr. Smadbeck went on to say that personally, he went and got the list of lots that the town has available and the town owns that could be used and he'd like to do a pilot project. As he mentioned before, he worked on a project for 3 lots on 6th street that he believes was a very successful program and there are three people in those houses now and these are the kinds of things that he hopes that the trust can work on going forward. Mr. Smadbeck

would like to be a part of it and he plans to be of any use that the trust would like to make of him. Whatever support the trust needs from him or the Selectboard he would like to do. Having said all that, the trust plays a very important roll, it is the repository of funds other than CPC funds, not that the trust can't get CPC funds, so if there are projects that the affordable housing committee itself can work on they are appealing to the trust for money, the trust can apply to the CPC for those additional funds for the trust to hold for the affordable housing committee. Mr. Smadbeck stated that he was probably telling the committee things the committee already knows but he is the new guy on the block and so he's going to have his enthusiastic hat on for a while.

Mark Hess stated to the chairman that they should pen a letter to Ms. Serpa thanking her for her service and number two that they start having the trust committee meetings at 4:00 PM to accommodate discussions such as this one.

Chairman Mazar-Kelly expressed his appreciation for Mr. Smadbecks notion to utilize all the funding that we do have available to the best of the committee's abilities and getting those projects moving.

Mark Hess made a motion to adjourn. Art Smadbeck seconded and the motion passed unanimously.

Munis Report: October 2022

Meshacket Fund: (Account #8310) \$500,686.28

Main Account: (Account #8300) \$749,165.13

Contributions & Donations: \$119,000.00

Earnings on Investments: \$778.83

FY20 Operating Budget Summary:

Salaries: \$47,428.96

Town Counsel: \$5,115.00

Acct/Audit Expenses: \$4,200.00

Advertising: \$3,000.00

Office Supplies: \$350.00

BDP Rehab Funds: \$1,707.46

Property Purchase: \$0.00

Special Projects: \$9,775.00

Special Services: \$0.00

Respectfully Submitted,
Arielle Faria