

Use of Neighborhood First Funds

Opinion of Town Counsel, Bond Counsel and the Finance Director

August 2019

The below is a summary of questions and answers to specific questions regarding the permissible uses of Neighborhood First funds and reflects the concurrence of Town Counsel, Bond Counsel and the Town's Finance Director.

Could Neighborhood First funds be used to subsidize development of affordable housing on existing Town-owned property (e.g., Old Fire Station site)?

In my opinion, if the Town decided to develop the Old Fire Station for affordable housing purposes, the Town would most likely issue an RFP for a long-term lease (perhaps as long as 99 years) and would retain an affordable housing restriction, using the same model that was used for developing Ticcoma Green. That approach would require a Town Meeting vote to either authorize the lease to a private entity or a transfer the property to the AHT. If the Town wanted to grant some form of a subsidiary for the redevelopment of the building, a portion of the funds from this appropriation could be used, in my opinion, for that purpose as long as the Town retains an affordable housing restriction of the property for the term of the ground lease. Under that circumstance, the funds would be used for the purpose of acquiring a restriction on the property for affordable housing, and thus would be "fundable" under the scope of the appropriation.

How would the grant agreement work with the Trust? Could funds granted under the Neighborhood First borrowing authorization from the Town to the NAHT be used for any purpose that falls under the NAHT authorizing statute – or would the grant agreement limit the use?

Expenditure of the grant funds must be consistent with the grant agreement and the appropriation vote at town meeting. They could not, in my opinion, be used for any other purpose for which the AHT may expend funds under G.L. c. 44, §55C.

Could Neighborhood First funds be used to buy-down the affordability of existing rental units (imposing a deed restriction yet not acquiring the property)?

Yes, because the acquisition of an affordable housing restriction is the acquisition of an interest in land. As long as the funds were used to purchase a restriction on private property, the funds would be used for the purpose of acquiring property for affordable housing purposes, and thus would be consistent with the vote.

There is also a question of where operating capital would come from during a ramping up period – could these be Neighborhood First funds (somewhat as illustrated in the spreadsheet)?

Yes, as long as the necessary operating capital is incidental and related to the costs associated with the development of the properties so acquired for affordable housing purposes.

Could Neighborhood First funds be used to acquire vacant land?

Yes. The motion states that the funds were being appropriated “for the purpose of acquiring existing properties for affordable housing purposes.” Since the origins of this article was through a citizens’ petition, I am not certain of the intent of the petitioners. There is nothing, however, in the wording of the motion that limits the appropriation to only properties with existing structures thereon. The funds can be used, therefore, to acquire vacant land as long as the land is dedicated to affordable housing. As we discussed previously, the motion does not authorize the Town to actually acquire any land; it merely appropriates money for that purpose and provides that the funds may be given as a grant to the Affordable Housing Trust. Pursuant to G.L. c. 44, §55C, the AHT is authorized without an express vote of Town Meeting to acquire land but only for affordable housing purposes. There are, therefore, both statutory limitations as well as limitations contained in the actual vote that insures that the funds may only expended for affordable housing purposes. The grant agreement should expressly contain this limitation as well.

Under the language of the funding authorizations is there any limitation to the number of units that could be developed at any given location?

No. The number of units on a particular parcel would be a determination made by the Town or AHT, subject to oversight by the Select Board as set forth in the vote, any specific conditions contained in the grant agreement, and, of course, applicable zoning and other land use requirements.

Can these monies be used for land acquisition? Planning / design? Permitting? OPM? Construction?

In my opinion, it is implicit in the vote authorizing the use of funds to acquire properties for affordable housing purposes that it includes the authorization to also use the funds to develop the properties so acquired to make them suitable for their intended use; i.e., affordable housing.

Can these monies be used for ongoing routine maintenance of the properties acquired under the program?

I would not interpret the vote as authorizing the expenditure of the funds for general ongoing maintenance. As stated above, however, as long as the properties require maintenance during a so-called ramp up period”, those costs would be incidental and related to the acquisition of property. Certainly, the AHT could use other funds available to it for ongoing maintenance of properties acquired under this vote.

Can these monies be used for capital improvements to properties acquired under the program?

Yes, for the reasons stated above.

Are there any other considerations the Advisory Committee should be aware of as to the use of these funds and the timing of their availability?

From the questions you have posed, I believe that the Committee is on the right track. As the Committee focuses on particular properties, I recommend we consult further with respect to specific properties or projects.