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**TOWN OF BERLIN  
SPECIAL TOWN COUNCIL MEETING  
Thursday, July 6, 2023  
John "Doc" McIntosh Room 113 (in person)  
Remote Meeting  
6:30 P.M.**

**A. CALL TO ORDER:**

Mayor Kaczynski called the Special Town Council Meeting to order at 6:31 p.m.

**B. PLEDGE OF ALLEGIANCE**

**C. ROLL CALL:**

Those in attendance were:

Councilor Sandra Coppola  
Councilor Casey Foster  
Mayor Mark Kaczynski  
Councilor Charles Paonessa  
Councilor Donna Risolo  
Councilor Peter Rosso – *arrived at 7:19 p.m.*  
Councilor Donna Veach

Also in attendance:

Town Manager Arosha Jayawickrema  
Corporation Counsel Jeffrey Donofrio

**D. NEW BUSINESS:**

- 1. Topic re: Authorize the Town Manager to execute the proposed final/execution versions of the deed and lease, respectively, based on the current structure of the transaction with the Berlin Housing Authority as discussed in the Special Meeting of the Town Council on July 6, 2023. – Housing Authority**

Town Manager Jayawickrema introduced this item stating that this item had been approved at the previous Town Council meeting but there were some developments that required the Council to meet and this provides the opportunity to ask questions. He asked Berlin Housing Authority Chairman Joe Bajorski to speak on the matter.

Mr. Bajorski stated that the Berlin Housing Authority's (the Housing Authority) Bond Counsel Marie Phelan and Legal Counsel Brian Kirsch were present for this meeting via Zoom along with Rob Cappelletti of Northeast Redevelopment.

Mr. Bajorski continued stating that funding is in place for the Senior Housing project with a closing scheduled for Tuesday July 11<sup>th</sup>. During this process a couple concerns arose, the first having to do with the reverter clause but as of today the reverter clause language was reviewed and was determined to be acceptable and should not jeopardize funding.

The second issue had to do with the transfer to a third-party entity at some point in the future.

The Housing Authority is issuing a \$34 million bond and Wells Fargo Statutory Trust is purchasing that bond to fund the project. When the project is complete, they will look at a permanent financing option. They are currently structuring this deal as a low-income housing tax credit deal but that doesn't necessarily mean that is the direction the permanent financing is going to take. They are also looking at energy tax credits which will provide 60% reimbursement on various components of the construction.

The low-income housing tax credit requires certain structures and part of that is creating a limited liability partnership with a tax credit investor and there are a lot of unanswered questions on how that will look down the road. Having a restriction on transferring the interest from the Housing Authority to other parties is going to be problematic on a long-term basis therefore they request that restriction be lifted.

As a reminder to the Town Council Mr. Bajorski explained that the Housing Authority is going to hold title to the property, they have created a 501c3 corporation called Berlin Affordable Housing, Inc which is a wholly owned subsidiary of the Housing Authority. This had to be done in order to take advantage of low-income housing tax credits. Moving forward Berlin Affordable Housing, Inc will probably need to create a limited liability partnership with a tax credit investor to be determined and which may or may not happen.

Mayor Kaczynski asked what will happen if that does not occur. Mr. Bajorski stated that nothing will happen as the Housing Authority has the 15-year \$34 million bond and if the interest rate is attractive to maintain the bond, they do not need to refinance them. He added that the low-income housing tax credits would add approximately \$14 million to pay down the bond and rents and other subsidies will also be used. Mr. Bajorski added as they move forward other sources of funding will also be pursued including grants and CIF funding so the bonding amount will be significantly lower than the \$34 million.

Councilor Veach inquired about how the process will work in regard to how the units will be rented out. Mr. Bajorski stated that when applications are received from prospective renters, they are looked at to determine if they qualify and the applicants are placed on a waiting list. This new complex will be ages 55 and older. There is currently also an internal transfer list for those living in the current housing units. If they refuse the new units, the Housing Authority will then move to the waiting list and once that is exhausted the units are then opened to the community.

There was discussion on whether the non-profit status of the Berlin Housing Authority, Inc would provide property tax exemption and Corporation Counsel stated that it would not under State Statute due to the property's residential use.

As a condition of site plan approval, the Town of Berlin Planning and Zoning Commission has placed an age restriction on this site and the Housing Authority has decided the property will be 55 and older as they have seen a need in that younger age range. Mayor Kaczynski inquired if that age could be increased to 65 in the future and Corporation Counsel Donofrio stated that it could if the Housing Authority agreed.

Mayor Kaczynski inquired about the reverter clause. Corporation Counsel Donofrio explained that the Housing Authority had proposed the reverter clause to give the Town Council a peace of mind that they were not just giving the property to the Housing Authority, and nothing would get built on it. The idea was to come up with a structure that a lender would be comfortable with to protect the Town so the way that the deed is currently drafted the reverter is tied to the completion of the project which is defined as a permanent unconditional certificate of occupancy.

Corporation Counsel Donofrio continued stating that if the certificate of occupancy is not issued four years from now then the reverter kicks in unless prior to or at the time the building permit is pulled the Housing Authority replaces the reverter either with a bond or cash payment equal to the fair market value established by the Town of Berlin Assessor's field card.

Mr. Bajorski inquired if there really was a need for the reverter clause. Mayor Kaczynski stated that there is always a possibility that the project does not get done and the Town has a fiduciary duty to protect its interests. Corporation Counsel stated that the reverter clause can be replaced with a bond or cash payment from the Housing Authority when the building permit is pulled. Mayor Kaczynski stated that he is still concerned about the possibility of the project not getting started and therefore believes in the need for the reverter clause asking if the Housing Authority would agree with a three-year clause as opposed to a four-year clause.

Attorney Marie Phalen explained that the low-income housing tax credit process would happen in the middle of the construction process and will take from six months to a year therefore Attorney Phelan and Mr. Bajorski have talked about immediately beginning the process with CHFA. Federal requirements state the property must be transferred to the limited liability partnership and that process takes a little while. She is concerned that if a three-year reverter clause is requested that may not be long enough for the project to be completed.

Attorney Phelan added that she spoke with Wells Fargo today and they were putting together the final closing documents to close on Tuesday. US Bank will hold the bond and it will be deposited in the depository trust company and there are investors that Wells Fargo as ready to go.

Attorney Kirsch added that once construction begins unforeseen circumstances may arise and although theoretically the project could be done in three years, the extra year in the clause will prevent it from kicking in while the Housing Authority is actively pursuing completion of the project.

Mr. Bajorski and Mayor Kaczynski both agreed that if in four years the project is not completed the contractor bond would guarantee the completion of the building construction and the reverter clause

would revert the property back to the Town. Corporation Counsel added that legally that is correct but practically that depends on a whole set of circumstances.

Corporation Counsel Coppola stated that she is concerned about future financing that could affect the type of housing that is allowed there. Attorney Kirsch stated that there are deed restrictions on the property that requires the property continue to be used as affordable senior housing for a period of 40 years from the date of the issuance of the building permit. Attorney Phelan added that if they go with the low-income housing tax credits CHFA will put a 15-to-30-year covenant on the property.

Mayor Kaczynski stated that the motion required tonight would keep the reverter clause in as written.

Councilor Paonessa moved to authorize the Town Manager to execute the proposed final/execution versions of the deed and lease, respectively, based on the current structure of the transaction with the Berlin Housing Authority as discussed in the Special Meeting of the Town Council on July 6, 2023.

Seconded by Councilor Veach

Vote being 7-0 (MOTION CARRIED)

**E. ADJOURNMENT:**

Councilor Paonessa moved to adjourn at 7:30 p.m.

Seconded by Councilor Veach

Vote being 7-0 (MOTION CARRIED)

Submitted by,

Kathryn J. Wall  
Clerk of the Meeting

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BERLIN TOWN CLERK

2023 JUL 10 AM 11:32

*Kathryn J. Wall*

BERLIN, CT.