

**Natural Resources Board
111 West Street
Essex Jct., VT 05452**

**Act 250 Jurisdictional Opinion
4-285**

This is a Jurisdictional Opinion based upon available information and a written request from the Landowner/Agent or Other Person. Any Notified Person or entity will be bound by this opinion unless that person or entity files a request for reconsideration with the District Coordinator (10 V.S.A. § 6007 (c) and Act 250 Rule 3 (b)) or an Appeal with the SUPERIOR COURT, Environmental Division within 30 days of the issuance of this opinion

☒ I hereby request a jurisdictional opinion from the District Coordinator or Assistant District Coordinator regarding the jurisdiction of 10 V.S.A. Chapter 151 (Act 250) over the project described below: **Andy Rowe, PE, Lamoureux & Dickinson Consulting Engineers, Inc.**
andy@ldengineering.com

PROJECT DESCRIPTION:

Construction of a new multifamily condominium building - a total of 20 residential condominiums within a single building footprint. The overall project parcel is currently owned by the City of Winooski and is the current location of the O'Brien Community Center, library, community health center, and other tenants. Champlain Housing Trust (CHT) will be acquiring about 0.47 acre for construction of the new multifamily condominium building, out of the 2.94 acre overall parcel. No existing buildings will be demolished for construction of the new building.

CHT will sell each of the 20 two and three bedroom dwelling units, each of which will be subject to the CHT Condominium Housing Subsidy Covenant. The new multifamily condominium units will meet or exceed the minimum affordability requirements for owner occupied housing under Act 250 – the owner occupied dwellings will comply with the definition of mixed income housing as contained in 10 V.S.A. Section 6001 (27).

The project is located in a designated Neighborhood Development Area on a portion (new Lot 2) of the property at 32 Malletts Bay Avenue in Winooski.

Existing Act 250 permit: **No Act 250 found**

Project Type: ☐ Commercial ☒ Residential ☐ Municipal/State ☐ Mixed

AN ACT 250 PERMIT IS REQUIRED: ☐ YES ☒ NO

BASIS FOR DECISION:

The proposed project does not constitute development as it is a Priority Housing Project (PHP) under 10 VSA §6001(3)(A)(iv)(I).

SIGNATURE:  DATE: **March 9, 2021**

Stephanie H Monaghan, District Coordinator
Environmental Commission District #4
111 West Street, Essex Junction, VT 05452
802-879-5662
stephanie.monaghan@vermont.gov

This is a jurisdictional opinion issued pursuant to 10 V.S.A. § 6007(c) and Act 250 Rule 3(B). Reconsideration requests are governed by Act 250 Rule 3(B) and should be directed to the district coordinator at the above address. As of May 31, 2016, with the passage of Act 150, Act 250 Rule 3(C) (Reconsideration by the Board) is no longer in effect. Instead, any appeal of this decision must be filed with the Superior Court, Environmental Division (32 Cherry Street, 2nd Floor, Ste. 303, Burlington, VT 05401) within 30 days of the date the decision was issued, pursuant to 10 V.S.A. Chapter 220. The Notice of Appeal must comply with the Vermont Rules for Environmental Court Proceedings (VRECP). The appellant must file with the Notice of Appeal the entry fee required by 32 V.S.A. § 1431 which is \$295.00. The appellant also must serve a copy of the Notice of Appeal on the Natural Resources Board, 10 Baldwin Street, Montpelier, VT 05633-3201, and on other parties in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings.

From: [Andy Rowe](#)
To: [Monaghan, Stephanie](#)
Subject: RE: JO request - 32 Malletts Bay Avenue, Winooski
Date: Thursday, February 11, 2021 1:28:49 PM
Attachments: [image002.jpg](#)
[image004.jpg](#)
[Condominium Housing Subsidy Covenant.pdf](#)
[CHT shared equity program.pdf](#)

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

H Stephanie –

Attached is the CHT Condominium Housing Subsidy Covenant that will apply to all 20 of the new homes. I've also attached CHT's web page summarizing their shared equity program. With this program, the down payment on the home is subsidized – representing 20-30% of the home's value.

While the CHT program likely does comply in practice, I think that all of this documentation probably falls short of clearly demonstrating compliance with the mixed income housing definition (10 V.S.A. Section 6001(27)) since it was not developed with that specific language or goal in mind.

To answer your questions, all 20 units will be sold at mixed income housing prices as all of the units will be subject to the Covenant and receive a subsidy (no market rate homes). Buyers are subject to income eligibility requirements (HUD guidelines).

If needed, I can get an email or letter from CHT stating that the proposed condominiums will meet one of the following:

- (i) *at least 15 percent of the housing units have a purchase price that at the time of first sale does not exceed 85 percent of the new construction, targeted area purchase price limits established and published annually by the Vermont Housing Finance Agency; or*
- (ii) *at least 20 percent of the housing units have a purchase price that at the time of first sale does not exceed 90 percent of the new construction, targeted area purchase price limits established and published annually by the Vermont Housing Finance Agency.*

I spoke with Scott Dillon at DHP earlier this week. I've provided him with information on the project and will forward his reply (probably next week).

Andy Rowe
Lamoureux & Dickinson
(802) 878-4450

From: Monaghan, Stephanie <Stephanie.Monaghan@vermont.gov>
Sent: Tuesday, February 9, 2021 2:36 PM
To: Andy Rowe <andy@ldengineering.com>
Subject: RE: JO request - 32 Malletts Bay Avenue, Winooski

Hi Andy –

A couple of clarifying questions:

1. Are there any historic preservation concerns on the project site? It looks like there will be no demolition and that the new building will be constructed in an existing parking lot. Nevertheless, are we sure that this is not an historic district?
2. Will all 20 units be sold at mixed income housing prices? Could you elaborate on the rates?



Stephanie H. Monaghan, District 4 Coordinator
stephanie.monaghan@vermont.gov

Natural Resources Board
District 4 Environmental Commission
111 West Street
Essex Junction, VT 05452
[website] <http://nrb.vermont.gov/>

Note: I work until 12:00PM on Mondays, Wednesdays and Fridays.

From: Andy Rowe <andy@ldengineering.com>
Sent: Friday, February 5, 2021 2:35 PM
To: Monaghan, Stephanie <Stephanie.Monaghan@vermont.gov>
Subject: JO request - 32 Malletts Bay Avenue, Winooski

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Hi Stephanie –

We are working with The Snyder Construction Company, LLC and Champlain Housing Trust (CHT) on the construction of a new multifamily condominium building to be located on a portion of the property at 32 Malletts Bay Avenue in Winooski. The overall project parcel is currently owned by the City of Winooski, and is the current location of the O'Brien Community Center, library, community health center, and other tenants. Champlain Housing Trust will be acquiring about 0.47 acre for construction of the new multifamily condominium building, out of the 2.94 acre overall parcel.

Attached is the draft subdivision plat showing the location of the project (Lot 2) on the City property. The multifamily condominium building will be constructed within a portion of the existing parking lot serving the Community Center and other uses. No existing buildings will be demolished for construction of the new building. This overall parcel was formerly a shopping center owned by the Pomerleau Family Partnership. The parcel has been owned by the City of Winooski since 2007. We have found no evidence of prior Act 250 jurisdiction on this property.

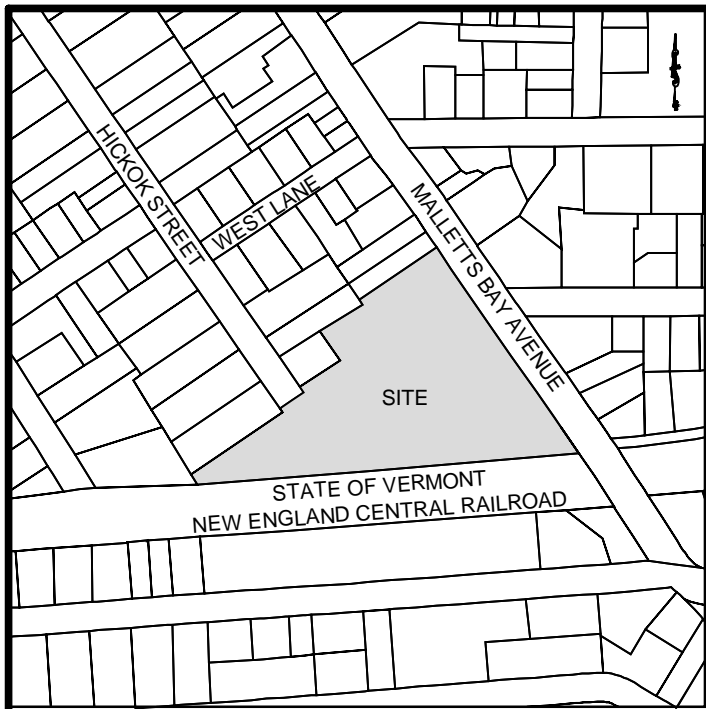
The project is located in a designated Neighborhood Development Area – see attached map. The City of Winooski has an approximate population of 7250 persons. Therefore, the Act 250 priority housing project cap is 75 units. The 20 dwelling units proposed are less than the priority housing

project cap.

A total of 20 residential condominiums will be constructed within a single building footprint. The intent of CHT is to sell each of the 20 two and three bedroom dwelling units. The new multifamily condominium units will meet or exceed the minimum affordability requirements for owner occupied housing under Act 250 – the owner occupied dwellings will comply with the definition of mixed income housing as contained in 10 V.S.A. Section 6001 (27).

We are requesting a jurisdictional opinion confirming that this project meets the requirements of a priority housing project and will therefore not be subject to Act 250 review. Please let me know if you need any additional information.

Andy Rowe
Lamoureux & Dickinson
(802) 878-4450



LOCATION PLAN



UNION STREET

RICHARD E.
AND
MARY ANN LESAGE
N/F
BK. 69 PGS. 98-100

IPF, 0.5' A.G.
VT LS 638

61-63 MALLETTS BAY AVENUE, LLC
N/F
BK. 244 PGS. 249-50

CMF
0.3' AG

MAPLE STREET

CMF
FL

LENA & NORA TAMER
N/F
BK. 10 PG 389

OFFENHARTZ, INC.
N/F
BK. 206 PGS. 678-9

OFFENHARTZ, INC.
N/F
BK. 206 PGS. 688-9

KIMBERLY M. & JOSHUA B. QUINLAN
N/F
BK. 243 PGS. 688-9

HICKOK STREET

SARAH CONE
N/F
BK. 224 PGS. 276-7

JOHN & BINA M. MAILLOUX
N/F
BK. 137 PGS. 193-4

PROPOSED SHARED
ACCESS AND PEDESTRIAN
EASEMENT TO LOT 2

JACK R. LEVY AND
ROBERT K. FLOYD, Jr
N/F
BK. 113 PGS. 383-4

COLDEN R. MCCLURG
AND
KRISTINE FOLEY
N/F
BK. 246 PGS. 413-4

LOT 1
2.473 ACRES

PROPOSED ACCESS EASEMENT
TO LOT 2 FOR INGRESS/EGRESS
BETWEEN THE SHARED ACCESS
EASEMENT AND THE ENTRY TO THE
SURFACE PARKING AND GARAGES
ON LOT 2. THE LOCATION OF THE
ACCESS MAY VARY WITH THE
FUTURE REDEVELOPMENT OF LOT 1

EXISTING BUILDING

LOT 2
0.470 ACRES

PROPOSED 6' WIDE
PEDESTRIAN ACCESS
EASEMENT TO LOT 2

EDGE OF PAVEMENT

STATE OF VERMONT
N/F
(CENTRAL VERMONT RAILROAD)

NO EASEMENT OR LEASE AGREEMENT OF
RECORD WAS LOCATED FOR EXISTING
IMPROVEMENTS WITHIN THE RAILROAD PARCEL

LANDOWNER / APPLICANT
CITY OF WINOOSKI
27 WEST ALLEN STREET
WINOOSKI, VT
DEED REFERENCE: VOL. 185, PGS 700-2
PARCEL AREA = 2.94 ACRES ±

TO THE BEST OF MY KNOWLEDGE, THIS PLAT IS BASED
ON INFORMATION ABSTRACTED FROM PERTINENT
DEEDS AND/OR OTHER OFFICIAL RECORDS, AND
MARKERS EVIDENT ON THE PROPERTY, AND
CONFORMS WITH THE REQUIREMENTS OF 27 VSA
§1403. DATED THIS ____ DAY OF ____, 2021

GRAPHIC SCALE



(IN FEET)
1 inch = 50 ft.

LEGEND

- PROJECT BOUNDARY
- PROPOSED PROPERTY LINE
- ABUTTING PROPERTY LINE
- CHAIN LINK FENCE
- RAILROAD TRACKS
- CMF
- IPF
- IRS
- IPS
- NO MARKER FOUND OR SET
- N/F
- AG
- FL
- CONCRETE MONUMENT FOUND
- IRON PIPE FOUND
- IRON BAR SET
- IRON PIPE SET
- NOW OR FORMERLY
- ABOVE GRADE
- FLUSH

NOTES:

- THIS PLAT WAS COMPILED FROM FIELD SURVEYS AND RECORD RESEARCH INCLUDING THE USE OF THE FOLLOWING PLATS:
 - "PLAT OF LANDS OF RICHARD LESAGE REVOCABLE LIVING TRUST, 75 MALLETTS BAY AVENUE, WINOOSKI, VERMONT.", DATED MAY 2020, BY RICHARD W. BELL LAND SURVEYING, INC.
 - "PLOT PLAN FOR MICHAEL CRETE & ROBERT GUILLETTE (TRACKSIDE RESTAURANT) 14-18 MALLETTS BAY AVE. WINOOSKI, VERMONT." DATED MAY 26, 1983, BY PALMER COMPANY, LTD. . AS RECORDED IN SLIDE 21 OF THE CITY OF WINOOSKI LAND RECORDS.
 - STREETS OF WINOOSKI, LOCATED, BOUNDED, AND PLOTTED BY THE VILLAGE TRUSTEES UNDER THE DIRECTION OF J.B. SMALL, 1884-1885 AS FILED IN THE CLERK'S OFFICE OF THE CITY OF WINOOSKI.
 - "RIGHT-OF-WAY AND TRACK MAP, CENTRAL VERMONT RY. CO. OPERATED BY THE CENTRAL VERMONT RY. CO., DATED JUNE 30, 1917 SHEETS V8C2-4.
- BEARINGS SHOWN ON THIS SURVEY ARE BASED ON GPS OBSERVATIONS RECORDED IN OCTOBER, 2020.
- THIS PROPERTY MAY BE SUBJECT TO OTHER EASEMENTS AND/OR RIGHTS-OF-WAY.
- A CLOSED TRAVERSE SURVEY WAS COMPLETED IN OCTOBER, 2020. THE METHODS AND THE RESULTING ERROR OF CLOSURE MEET OR EXCEED THE MINIMUM PRECISION REQUIREMENTS FOR URBAN SURVEYS.
- MONUMENTATION FOUND IS AS NOTED ON PLAN. IRON PIPES SET ARE 1" DIAMETER WITH A PLASTIC CAP.
- THE RIGHTS-OF-WAY FOR MALLETTS BAY AVENUE OF 60 FEET, AND HICKOK STREET OF 50 FEET ARE BASED ON THE PLANS REFERENCED IN NOTE 1C ABOVE.

APPROVED BY DECISION OF THE DEVELOPMENT REVIEW BOARD,
CITY OF WINOOSKI, VERMONT, ISSUED ON THE ____ DAY OF
____, 2021, SUBJECT TO ALL REQUIREMENTS AND
CONDITIONS OF SUBDIVISION AND PLAT APPROVAL.
SIGNED THIS ____ DAY OF ____, 2021 BY
____, CHAIRPERSON

CITY CLERK'S OFFICE
CITY OF WINOOSKI, VT. _____, 2021 RECEIVED
FOR RECORD AT ____ O'CLOCK __ M., AND RECORDED IN
SLIDE# ____
ATTEST: _____ CITY CLERK

date	description	by
REVISIONS		
THESE PLANS WITH LATEST REVISIONS SHOULD ONLY BE USED FOR THE PURPOSE SHOWN BELOW:		
<input checked="" type="checkbox"/>	SKETCH/CONCEPT	
<input type="checkbox"/>	FINAL CITY REVIEW	
LANDS OF		PROJECT NO.
THE CITY OF WINOOSKI		20080
MALLETTS BAY AVENUE WINOOSKI, VERMONT		SURVEY
		MJB
		DESIGN
		DLH
		DRAWN
		DLH
		CHECKED
		DJG/ABR
		DATE
		01-19-21
		SCALE
		AS NOTED
		SHT. NO.
		1



LAMOUREUX & DICKINSON
Consulting Engineers, Inc.
14 Morse Drive Essex
Junction, VT 05452
802-878-4450
www.LDengineering.com



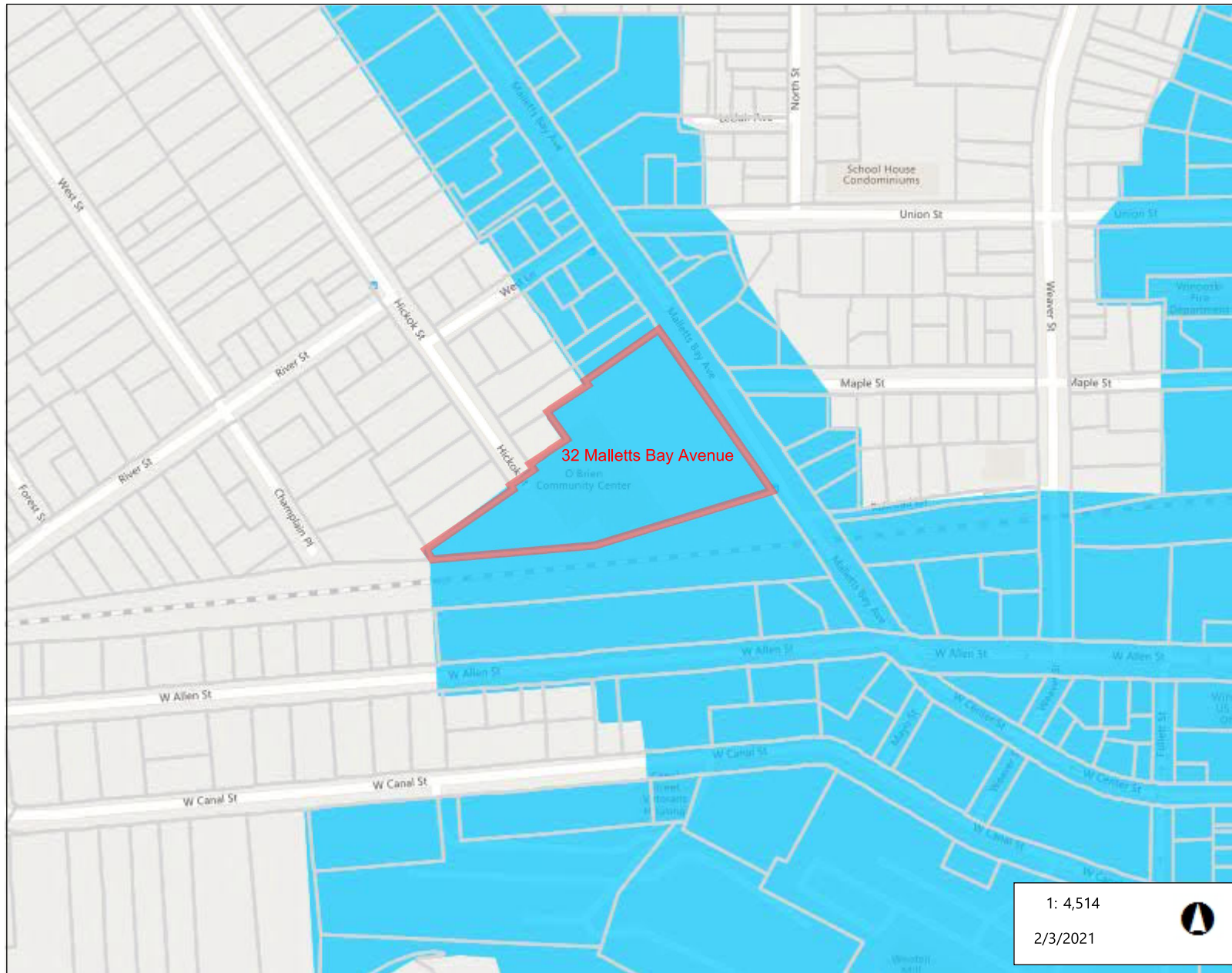
Planning Atlas

Provided by the Planning Atlas Dept. of Housing & Community Development



Legend

- Neighborhood Development Area
- Town Boundaries
- VT State Boundary



1: 4,514

2/3/2021



0.1 0 0.07 0.1 Miles

WGS_1984_Web_Mercator_Auxiliary_Sphere
© 2017

THIS MAP IS NOT TO BE USED FOR NAVIGATION

This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

Notes



February 25, 2021

District \$4 Environmental Commission
111 West Street
Essex Junction, VT 05452

Re; Development of 32 Mallet's Bay Avenue, Winooski – Butternut Station Condominiums

Dear Sir or Madam,

Champlain Housing Trust is developing 20 condominiums at 32 Mallet's Bay Avenue. The project is known as Butternut Station Condominiums. All 20 of the homes will be part of CHT's permanently affordable Shared Equity Program. With this program, CHT provides down payment assistance to help lower the price that a buyer pays to make the homes affordable. In return, the owners agree to sell the home for less than its value in the future.

There are three types of homes in the development – 8 row houses, which will have a net price of \$180,500, 8 townhouses, which will have a net price of \$160,500, and 4 flats that will have a net price of \$145,500. All 20 of the homes will be below 85% of the VHFA purchase price limit of \$350,000.

Sincerely,

Robert Leuchs
Director of Homeownership Programs
(802) 861 7336
Rleucha@getahome.org

CONDOMINIUM HOUSING SUBSIDY COVENANT

KNOW ALL PERSONS BY THESE PRESENTS that _____ of the [Town/City] of ____, County of _____, State of Vermont (hereinafter the "covenantor") for valuable consideration, including, but not limited to, a housing subsidy grant in the amount of \$__ (hereinafter the "VHCB Grant") from the Champlain Housing Trust, Inc. (hereinafter "CHT"), a Vermont nonprofit corporation, awarded to CHT by the Vermont Housing and Conservation Board (hereinafter "VHCB"), a public instrumentality of the State of Vermont, pursuant to 27 V.S.A. §610, does hereby subject the following described premises owned by the covenantor to certain covenants and restrictions which shall run with the premises and shall be perpetual, unless sooner terminated by reason of the terms and conditions hereof.

Said premises are all and the same property conveyed to the covenantor by Champlain Housing Trust, Inc. by Warranty Deed of even date herewith and recorded herewith in the ____ Land Records and being the condominium apartment unit No. ____ (hereinafter the "Unit" or the "premises"), located at ____ (street address, including town) ____, Vermont.

The covenantor's lender, _____ (hereinafter the "Bank"), joins in this Condominium Housing Subsidy Covenant solely for the purpose of acknowledging its rights and obligations provided for herein. The mortgage deed and note from covenantor to the Bank (the "Note and Mortgage") is expected to be assigned to the Vermont Housing Finance Agency, in which case it shall assume the rights and obligations provided to and undertaken by the Bank in this Condominium Housing Subsidy Covenant.

Said covenants are as follows:

I. COVENANTOR'S DUTIES AND OBLIGATIONS

(1) The covenantor shall use the premises as a primary residence, and shall occupy the premises for at least six (6) months of each year. If the covenantor desires to lease or vacate covenantor's Unit for a period exceeding six (6) months in one year, covenantor must seek prior written approval from CHT. Occupancy by the covenantor's children or other family members or dependents shall be deemed occupancy by the covenantor.

(2) The covenantor shall not cause or suffer waste upon the premises.

(3) In consideration for the grant awarded herein, the covenantor shall become a member of CHT and pay an annual membership fee of \$540.00, payable in monthly installments of \$45.00 due on the first of each month. Membership entitles the covenantor to certain services and benefits that include, but are not limited to: (i) receipt of CHT's newsletters and annual reports; (ii) serving as and voting for members of the Board of Directors of CHT; and (iii) technical assistance in meeting the obligations of this Condominium Housing Subsidy Covenant. If CHT does not receive the full amount of the monthly installment by the end of fifteen (15) calendar days after the date it is due, covenantor shall pay a late charge in the amount of five percent (5%) of the outstanding membership fees.

(4) Upon receipt of notice from the executor of the decedent covenantor's estate given within ninety (90) days of the death of covenantor, CHT shall, unless for good cause shown, consent to a transfer of the premises to and by one or more of the eligible heirs of covenantor listed below as "a," "b," or "c," provided that said heir(s) enters into a new Homeland Condominium Housing Subsidy Covenant with CHT.

- a) the spouse or civil union partner of the covenantor; or
- b) the child or children of the covenantor; or
- c) member(s) of the covenantor's household who have resided upon the premises for at least one year immediately prior to covenantor's death.

Any other heirs, legatees or devisees of covenantor must, in addition to entering into a new Homeland Condominium Housing Subsidy Covenant with CHT as provided above, demonstrate to CHT's reasonable satisfaction that they are Income-Qualified Persons as defined below, or, if unable to do so, shall not be entitled to possession of the premises but must transfer the premises in accordance with the provisions of subsection (5) below.

"Income-Qualified Person" shall mean a person or group of persons whose household

income does not exceed One Hundred Percent (100%) of the median household income for the applicable Standard Metropolitan Statistical Area or County as calculated and adjusted for household size from time to time by the U.S. Department of Housing and Urban Development (HUD) or any successor.

(5) Whenever the covenantor (or covenantor's heirs, successors or assigns) shall desire to sell the Unit described herein, covenantor shall provide CHT written notice of said intent to sell. Upon receipt of said written notice, a market valuation of the Unit and the covenantor's pro rata interest in the common elements shall be performed by a mutually acceptable, licensed property appraiser. The appraisal shall consist of an analysis and comparisons of comparable properties, disregarding the resale restrictions contained in this Condominium Housing Subsidy Covenant. The cost of the appraisal shall be shared equally between covenantor and CHT.

Upon commencement of marketing the Unit, CHT shall have a period of three hundred sixty five (365) days to purchase the Unit from covenantor for the option price set forth in Section II below for the purpose of resale to an eligible household willing to purchase the Unit from CHT for the option price set forth in Section II below, plus administrative fees, as allowed by VHCB.

An eligible household shall mean a household having an income at or below 100% of the median income for households residing in the Burlington Metropolitan Statistical Area ("Burlington MSA") or the State of Vermont, whichever is higher, adjusted for household size. Said median incomes and Burlington MSA shall be as set forth in regulations promulgated by the United States Department of Housing and Urban Development pursuant to 42 U.S.C. Sec. 1437 et seq., or a substantially similar publication should these regulations no longer exist.

Said conveyance to an eligible household must be expressly made subject to this or a similar Condominium Housing Subsidy Covenant

CHT and covenantor may extend the time in which CHT must exercise its option to purchase the premises, provided said extension is made by mutual consent as evidenced by a signed agreement. This provision shall not be construed to mean that CHT or covenantor must agree to an extension of time in which CHT must exercise its option.

Upon expiration of CHT's option to purchase the Unit the covenantor shall be free to sell the Improvements as set forth below.

Covenantor may sell the Unit for no more than CHT's Purchase Option Price to an eligible household as defined above. Said sale must be in compliance with any other Covenant(s) attached to the Property. Covenantor shall provide CHT with the name and address of the proposed purchaser together with such other information as CHT may require in order for CHT to approve the purchase, which approval shall not be unreasonably withheld. The new purchaser must be willing to sign a Housing Subsidy Covenant that includes a similar option price formula and resale restrictions.

The value added by any capital improvements qualifying for a Capital Improvement Credit, as defined in Section III(C) below, will not be included in calculating the appreciation in value of the premises for the purposes of the option price. The covenantor may receive a credit for capital improvements as described in Section III. The covenantor may not receive credit for capital improvements if covenantor has not adhered to the procedures provided for in this Condominium Housing Subsidy Covenant for added improvements.

Finally, in the event of the commencement of an action in foreclosure by any mortgagee or lien holder against the covenantor and related to the Unit, CHT shall have an option for a period of ninety (90) days from the date it receives notice of said action to purchase the Unit for the option price set forth below (the Foreclosure Option Price").

The Foreclosure Option Price shall be the option price set forth in Section II below plus the amount of any outstanding liens and debts against the Unit which were acquired prior to the commencement of the foreclosure action and which exceed the option price set forth in Section II below.

II. CALCULATION OF OPTION PRICE

The Covenantor's Option Price to Purchase the Unit shall be at a price equal to the LESSER of the following:

A. Calculation of the Covenantor's Option Price to Purchase the Unit:

1. Calculation of Market Value Appreciation/Depreciation:

a) The appraised value of the covenantor's Unit on or about the date of the covenantor's notification of desire to sell, minus any value added by capital improvements as defined in Section III below;

b) Minus the appraised value of said Unit as determined by an appraisal conducted on _____, _____ of \$ _____;

c) If this number is positive, it equals the total amount of appreciation in the value of the Unit for the purpose of calculating CHT's Option Price to Purchase the Unit. If this number is negative, it equals the total amount of depreciation in the value of the Unit for the purpose of calculating CHT's Option Price to Purchase the Unit.

2. Calculation of the Covenantor's Share of Appreciation/Depreciation:

a) Total amount of appreciation in the value of said Unit as calculated above and indicated by Section II(A)(1) (c) above being a positive number;

b) Multiplied by twenty-five per cent (25%);

c) Equals the covenantor's share of appreciation, where the value of the Unit appreciated;

d) In the event that the value of the Unit depreciated, as indicated by Section II (A)(1) (c) above being a negative number, the covenantor's share of the depreciation is 100% of the depreciation.

3. Calculation of CHT's Option Price to Purchase Unit:

a) Original purchase price of \$ _____;

Initial Initial

b) Plus any applicable capital improvement credit, as defined in Section III below;

c) Plus the covenantor's share of appreciation or minus the covenantor's share of depreciation as calculated in Section II(A)(2) above;

d) Minus the total housing subsidy grant(s) to the covenantor from CHT of \$ _____ (includes a \$ _____ VHCB Grant & a \$ _____ CHT grant);

Initial Initial

e) Minus outstanding membership fees, if any, with twelve percent (12%) interest, per annum, from the date of delinquency;

f) Equals the option price to be paid by CHT in order to foster resale to persons of low/moderate income; OR

B. The new appraised value (as defined by Section II(A)(1)(a) above) minus the total housing subsidy grant(s) (as defined by Section II(A)(3)(d) above).

(In addition, if the covenantor received a single family assistance loan from CHT and VHCB, as evidenced by a Mortgage Deed recorded herewith, said loan is due and payable to CHT upon resale, refinance, or any other conveyance or transfer of the covenantor's interest in the premises.)

III. CREDIT FOR CAPITAL IMPROVEMENTS

The Capital Improvement Credit described in Section II(A)(3)(b) above shall be calculated as described below.

a. Procedure.

If covenantor desires to receive a Capital Improvement Credit, covenantor shall, at the time of sale, provide to the appraiser commissioned to deliver the market value appraisal set forth in Section I(4) of this Covenant a list of all capital improvements to the Unit during covenantor's ownership. Capital improvements are understood to be work on the Unit that increase its market value and not general maintenance items such as the replacement of appliances, roof, doors, windows, siding, or repairs to walls and foundations or plumbing, heating and electrical systems. The appraisal shall specifically state the increased appreciation of the Unit attributable to the capital improvements.

Major Capital Improvement Notification: Prior to undertaking construction or modification of the Unit for which covenantor desires to receive a Capital Improvement Credit, and which the cost of the construction or modification will exceed \$10,000 (a "Major Capital Improvement"), covenantor shall first speak with CHT regarding this construction or modification. The Capital Improvement Credit will be determined at time of sale with any other smaller modification to the Unit. If covenantor does not speak to CHT prior to the Major Capital Improvement, CHT has the right to deny Capital Improvement Credit for this Major Capital Improvement.

A function of the Major Capital Improvement Notification process is to minimize the likelihood that Owner will make capital improvements to the Unit which are of a nature which would limit the pool of available purchasers, or which add such value to the Unit that it becomes no longer affordable to low and moderate income purchasers. **However, covenantor acknowledges that the actual Capital Improvement Credit, if any, cannot be determined by CHT until after an appraisal has been completed following covenantor's notice of their desire to sell. Covenantor further acknowledges that notifying CHT of a Major Capital Improvement does not guarantee that a Capital Improvement Credit will be included in the CHT Option Price.**

b. Limitations:

Maximum Capital Improvement Credit: Regardless of the value which the capital improvements have added to the Unit, the actual Capital Improvement Credit allowed by CHT may be less, if, in the sole determination of CHT, a Capital Improvement Credit in the full amount described above, will result in a purchase price that is unaffordable to an eligible household. In that event, the Capital Improvement Credit shall be in an amount, reasonably determined by CHT, which shall not cause the purchase price to be unaffordable to an eligible household.

c. Calculation of the Capital Improvement Credit

- 1) If the overall value of the Unit has depreciated during the time that covenantor has owned the Unit, covenantor will not be eligible for any Capital Improvement Credits.
- 2) If the value of the Unit has appreciated during the time that covenantor has owned the Unit, the Capital Improvement Credit shall be the LESSER of the following:

- a) The market value added by the Capital Improvements as stated in the appraisal under Section I(4); OR
- b) The total increase in value of the Unit; OR
- c) The Maximum Capital Improvement Credit as determined by CHT.

Covenantor agrees that the Capital Improvement Credit as determined by the procedures and formulas described herein constitutes fair compensation for all construction or modifications to covenantor's property. In the event CHT exercises its option to purchase the Unit pursuant to Section I, CHT agrees to include such Capital Improvement Credit in its option price provided the procedures set forth herein are followed.

IV. PURPOSE

The purpose of the above covenants, including the option price, which limits the covenantor's share of appreciation in the Unit, is to encourage the development and continued availability of affordable rental and owner-occupied housing for low and moderate income persons.

V. DURATION

Unless otherwise discharged by its terms, this Condominium Housing Subsidy Covenant shall terminate if one of the following conditions shall occur:

- 1. Upon CHT's execution of its option to purchase the premises; or
- 2. As provided in Section VI below; or
- 3. Upon written agreement between the covenantor and CHT and VHCB.

Otherwise, this Condominium Housing Subsidy Covenant shall run with the land and shall be enforceable according to its terms.

VI. LENDERS' OBLIGATIONS

- 1. In the event of a default in any of the covenantor's obligations under the Note and/or Mortgage, the Bank shall notify CHT in writing of such fact at the same time notice is given to covenantor, and CHT shall have the right (but shall not have the obligation) within thirty (30) business days after the time period provided to the covenantor to cure such default in the covenantor's name and on the covenantor's behalf.
- 2. In the event of the commencement of an action in foreclosure by the Bank against the covenantor, the Bank acknowledges and accepts all of CHT's option rights, including its foreclosure option rights, set forth in Section I above.
- 3. In the event of the commencement of an action in foreclosure by the Bank, the Bank shall not ask the court to reduce the redemption period to less than one hundred eighty (180) days from the date of entry of judgment of foreclosure, unless, in the Bank's reasonable opinion, the Unit is in jeopardy for any reason, including, but not limited to, waste.
- 4. The Bank acknowledges that this Covenant runs with the land as a matter of law and that CHT shall have a right of redemption in the event of foreclosure of the Mortgage.
- 5. At any time subsequent to the filing of a foreclosure action by the Bank and prior to the expiration of the redemption period granted to covenantor, CHT shall be entitled to purchase the Note and Mortgage for a price equal to the then-outstanding principal balance of the indebtedness, with all costs, expenses, and interest to date, in which event the Bank shall assign the Note and Mortgage to CHT or its designee.
- 6. This Condominium Housing Subsidy Covenant shall terminate if the covenantor's period of redemption expires and neither CHT nor any other person exercises a right of redemption granted in the Decree of Foreclosure.

In all other respects, this Condominium Housing Subsidy Covenant is subordinate to the Mortgage Deed. This Condominium Housing Subsidy Covenant is also subordinate to the covenantor's mortgage deed securing the VHCB Grant from CHT and VHCB, provided VHCB affords CHT the same rights as provided for in this Section. This Condominium Housing Subsidy Covenant is also subordinate to the covenantor's mortgage deed securing a single family

assistance loan from CHT and VHCB, if any, provided VHCB affords CHT the same rights as provided for in this Section.

VII. ENFORCEMENT OF COVENANTS

It is expressly understood and agreed that, with regard to the restrictive covenants contained herein, it shall be lawful for CHT and/or VHCB, their successors and assigns, to institute and prosecute any proceeding at law or in equity against the person or persons, or agencies violating or threatening to violate same and that any decree judgment or damages awarded thereon, in addition, shall include a reasonable attorney's fee.

VIII. NOTICE

All notices, demands, or other writings required to be given by the parties hereto pursuant to this Condominium Housing Subsidy Covenant shall be sufficient if mailed certified mail, return receipt requested, and addressed as follows:

CHT: P.O. Box 523
Burlington, VT 05402

COVENANTOR: (buyer)
(address of property)
(town), VT

BANK: (lender name)
(address)
(town), VT.

Each party hereby agrees to notify the other of any changes in their address. CHT and the Bank hereby agree that notice to their respective agents, as recorded with the Office of the Secretary of State, will satisfy the notice requirements herein, as long as copies of said notices are also sent to their respective addresses as provided for herein.

IX. MISCELLANEOUS PROVISIONS

This instrument shall be recorded with the Land Records of the [Town/City] of _____. Any amendment to or termination of this instrument shall be executed and acknowledged by all parties hereto, or their heirs, successors and assigns, and recorded with the [Town/City] of _____ Land Records.

This instrument shall inure to the benefit of, and shall be binding upon, each of the parties hereto and their respective heirs, successors, and assigns.

Dated at _____, Vermont, this _____ day of _____, ____.

In The Presence of

CHAMPLAIN HOUSING TRUST, INC.

Witness

By: _____
Its Duly Authorized Agent

(LENDER NAME HERE)

Witness

By: _____
Its Duly Authorized Agent

COVENANTOR

Witness (as to both)

(buyer 1)

(second buyer if applicable)

STATE OF VERMONT
_____ COUNTY, SS.

At _____, in said County and State this ____ day of _____, _____, personally appeared _____, known to me to be the duly authorized agent of Champlain Housing Trust, Inc. and he acknowledged the foregoing Condominium Housing Subsidy Covenant, by him sealed and subscribed, to be his free act and deed and the free act and deed of the Champlain Housing Trust, Inc.

Before me,

Notary Public, My Commission
Expires 2/10/19

STATE OF VERMONT
_____ COUNTY, SS.

At _____, in said County and State this ____ day of _____, _____, personally appeared _____, known to me to be the duly authorized agent of (lender name) and he/she acknowledged the foregoing Condominium Housing Subsidy Covenant, by him/her sealed and subscribed, to be his/her free act and deed and the free act and deed of (lender name).

Before me,

Notary Public, My Commission
Expires 2/10/19

STATE OF VERMONT
_____ COUNTY, SS.

At _____, in said County and State, this ____ day of _____, _____, personally appeared (buyer) and he acknowledged the foregoing Condominium Housing Subsidy Covenant by him sealed and subscribed, to be his free act and deed.

Before me,

Notary Public, My Commission
Expires 2/10/19

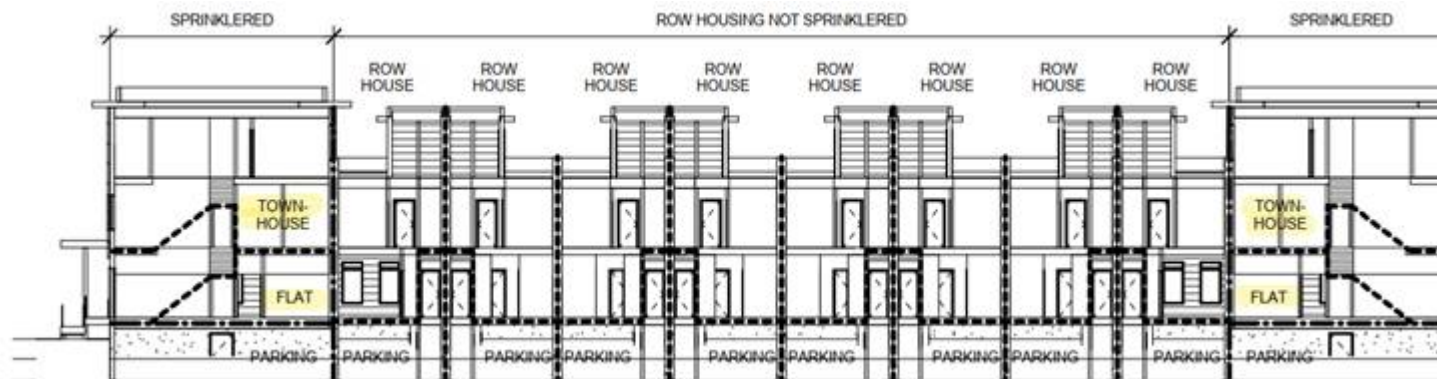
Monaghan, Stephanie

From: Andy Rowe <andy@ldengineering.com>
Sent: Tuesday, March 9, 2021 11:26 AM
To: Monaghan, Stephanie
Subject: RE: Malletts Bay Avenue PHP

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Hi Stephanie –

The proposed building is comprised of two towers at each end, with 8 rowhouses in between. Each tower has 2 flats (4 flats total) at street level, with 4 townhouses (8 townhouses total) on the 2nd & 3rd floors. The cross section & elevation below gives the general location of each unit within the building.



Andy Rowe
Lamoureux & Dickinson
(802) 878-4450

From: Monaghan, Stephanie <Stephanie.Monaghan@vermont.gov>
Sent: Tuesday, March 9, 2021 11:05 AM

To: Andy Rowe <andy@ldengineering.com>

Subject: Malletts Bay Avenue PHP

Hi Andy –

I'm wrapping up my JO. I noticed on the attached letter that CHT references row houses, townhouses, and flats. Where will the row houses and townhouses be located?

Stephanie H. Monaghan, District Coordinator

District 4 Environmental Commission

Vermont Natural Resources Board

111 West Street | Essex Junction, VT 05452

stephanie.monaghan@vermont.gov

[website] <http://nrb.vermont.gov/>

Note: I work until 12:00PM on Mondays, Wednesdays and Fridays.