



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

WESTERN MASSACHUSETTS DIVISION

1350 MAIN STREET

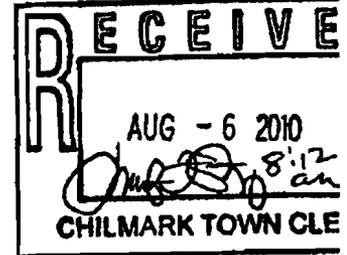
SPRINGFIELD, MASSACHUSETTS 01103-1629

MARTHA COAKLEY
ATTORNEY GENERAL
www.mass.gov/ago

TEL: (413) 784-1240

FAX: (413) 784-1244

August 2, 2010



Jennifer L. Christy, Town Clerk
401 Middle Road - P.O. Box 119
Chilmark, MA 02535

RE: **Chilmark Annual Town Meeting of April 26, 2010 - Case # 5489**
Warrant Articles # 28 and 29 (General)

Dear Ms. Christy:

Article 28 - We return the vote taken under Article 28 with no action by this Office. The vote under Article 28 was a vote to accept the provisions of G.L. c. 44, § 55C, a local option statute which provides for the creation and preservation of affordable housing in a municipality for the benefit of low and moderate income households. The vote under Article 28 is not a by-law and does not need to be reviewed and approved by the Attorney General pursuant to G.L. c. 40, § 32.

Please note that a Town Clerk must notify the Secretary of State's Office each time the Town accepts a general law. G.L. c. 4, § 5. Also, the Department of Revenue, Division of Local Services, requires town clerks to notify the Municipal Data Management/Technical Assistance Bureau of the adoption of various local option statutes. If you have not done so, you may need to submit the votes under this Article to the above mentioned state agencies. We suggest you consult with Town Counsel on this issue.

Article 29 - We return with the approval of this Office the amendments to the Town by-laws adopted under these Articles on the warrant for the Chilmark Annual Town Meeting that convened on April 26, 2010.

Note: Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the town has first satisfied the posting/publishing requirements of that statute. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date that these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were voted by Town Meeting, unless a later effective date is prescribed in the by-law.

Very truly yours,

MARTHA COAKLEY
ATTORNEY GENERAL

Margaret J. Flurley

by: Margaret J. Flurley, Assistant Attorney General
Chief, Central Massachusetts Division
Director, Municipal Law Unit
One Exchange Place
Worcester, MA 01608
(508) 792-7600 x 4402

POSTING Of New By Law

September 15, 2010

Warrant for Annual Town Meeting April 26, 2010

ARTICLE 28. To see if the Town will vote to accept the provisions of General Laws Chapter 44, Section 55C establishing a trust to be known as the **Chilmark Affordable Housing Trust Fund** to provide for the creation and preservation of affordable housing in the Town for the benefit of low and moderate income households
No Action Taken by FINANCE ADVISORY COMMITTEE

ARTICLE 29. To see if the Town will vote to establish the

MOLLY FLENDER - CHILMARK AFFORDABLE HOUSING TRUST FUND

a) In accordance with Massachusetts General Laws Chapter 44 Section 55C, Chilmark hereby establishes a trust to be known as the Molly Flender Chilmark Affordable Housing Trust Fund, in this Section called the trust. The purpose of the trust is to provide for the creation and preservation of affordable housing for the benefit of low and moderate income households in Chilmark.

Recognizing the unusually high disparity between median income and median housing costs in Dukes County, the trust may assist in providing housing for households whose income is below 150% of the Area Median Income for Dukes County as established annually by the U.S. Department of Housing and Urban Development.

b) There shall be a board of trustees of the trust established by the vote under Article 28 of the Warrant for the 2010 Annual Town Meeting, (the "board"), which shall include five (5) trustees, including one member of the Board of Selectmen, one member of the Housing Committee, one member of the Planning Board, one member of the Finance Advisory Committee, and one member at-large, all to be appointed by the Board of Selectmen. Trustees shall serve for a term not to exceed two years, and are designated as public agents for purposes of the Constitution of the Commonwealth;

c) The powers of the board, all of which shall be carried on in furtherance of the purposes set forth in this bylaw and General Law Chapter 44, Section 55C, shall include the following powers:

(1) to accept and receive real property, personal property or money, by gift, grant, contribution, devise, or transfer from any person, firm, corporation or other public or private entity, including but not limited to money, grants of funds or other property tendered to the trust in connection with any ordinance or by-law or any general or special law or any other source such as Community Preservation Act Funds, including money from Chapter 44B, with the concurrence of the Board of Selectmen.

(2) to purchase and retain real or personal property, including without restriction investments that yield a high rate of income or no income, with the concurrence of the Board of Selectmen.

(3) to sell, lease, exchange, transfer or convey any personal, mixed, or real property at

public auction or by private contract for such consideration and on such terms as to credit or otherwise, and to make such contracts and enter into such undertaking relative to trust property as the board deems advisable notwithstanding the length of any such lease or contract, with the concurrence of the Board of Selectmen.

(4) to execute, acknowledge and deliver deeds, assignments, transfers, pledges, leases, covenants, contracts, promissory notes, releases and other instruments sealed or unsealed, necessary, proper or incident to any transaction in which the board engages for the accomplishment of the purposes of the trust, with the concurrence of the Board of Selectmen.

(5) to employ advisors and agents, such as accountants, appraisers and lawyers as the board deems necessary, with the concurrence of the Board of Selectmen.

(6) to pay reasonable compensation and expenses to all advisors and agents and to apportion such compensation between income and principal as the board deems advisable, with the concurrence of the Board of Selectmen.

(7) to apportion receipts and charges between incomes and principal as the board deems advisable, to amortize premiums and establish sinking funds for such purpose, and to create reserves for depreciation, depletion or otherwise, with the concurrence of the Board of Selectmen.

(8) to participate in any reorganization, recapitalization, merger or similar transactions; and to give proxies or powers of attorney with or without power of substitution to vote any securities or certificates of interest; and to consent to any contract, lease, mortgage, purchase or sale of property, by or between any corporation and any other corporation or person, with the concurrence of the Board of Selectmen.

(9) to deposit any security with any protective reorganization committee, and to delegate to such committee such powers and authority with relation thereto as the board may deem proper and to pay, out of trust property, such portion of expenses and compensation of such committee as the board may deem necessary and appropriate, with the concurrence of the Board of Selectmen.

(10) to carry property for accounting purposes at other than acquisition date values, with the concurrence of the Board of Selectmen.

(11) to borrow money on such terms and conditions and from such sources as the board deems advisable, to mortgage and pledge trust assets as collateral, with the concurrence of the Board of Selectmen.

(12) to make distributions or divisions of principal in kind, with the concurrence of the Board of Selectmen.

(13) to compromise, attribute, defend, enforce, release, settle or otherwise adjust claims in favor or against the trust, including claims for taxes, and to accept any property, either in total or partial satisfaction of any indebtedness or other obligation, and subject to the provisions of this act, to continue to hold the same for such period of time as the board may deem appropriate, with the concurrence of the Board of Selectmen.

(14) to manage or improve real property; and to abandon any property which the board determines not to be worth retaining, with the concurrence of the Board of Selectmen.

(15) to hold all or part of the trust property uninvested for such purposes and for such time as the board may deem appropriate, with the concurrence of the Board of Selectmen.

(16) to extend the time for payment of any obligation to the trust, with the concurrence of the Board of Selectmen.

(d) Notwithstanding any general or special law to the contrary, all moneys paid to the trust in accordance with zoning ordinances or by-law, exaction fee, ordinances, or private contributions shall be paid directly into the trust and need not be appropriated or accepted and approved into the trust. General revenues appropriated into the trust become trust property and to be expended these funds need not be further appropriated. All moneys remaining in the trust at the end of any fiscal year, whether or not expended by the board within 1 year of the date they were appropriated into the trust, remain trust property.

(e) The trust is a public employer and the members of the board are public employees for purposes of General Laws chapter 258.

(f) The trust shall be deemed a municipal agency and the trustees special municipal employees, for purposes of General Laws chapter 268A.

(g) The trust is exempt from General Laws chapters 59 and 62, and from any other provisions concerning payment of taxes based upon or measured by property or income imposed by the commonwealth or any political subdivision thereof.

(h) The books and records of the trust shall be audited annually by an independent auditor in accordance with generally accepted accounting practices.

(i) The trust is a governmental body for purposes of sections 23A, 23B and 23C of General Laws chapter 39.

(j) The trust is a board of the town for purposes of General Laws chapter 30B and section 15A of General Laws chapter 40; but agreements and conveyances between the trust and agencies, boards, commissions, authorities, departments and public instrumentalities of the town shall be exempt from said chapter 30B.

k) The trust shall keep a record of its doings and at the close of every fiscal year make a report thereof to the Board of Selectmen and Annual Town Meeting. The report shall include a description and source of funds received and expended and the type of affordable housing programs or properties assisted with the funding. The trust shall also provide the Board of Selectmen with a copy of the trust's annual audit.