

**Responses to Council Affordability Questions from March 23, 2022 Public Hearing
Jay Street and Trinity Court Conditional Zoning Applications**

The responses below are intended as a response to questions concerning long-term affordability that staff heard from Council during the public hearings for the Trinity Court and Jay Street projects. This information has been previously shared publicly and focuses on reiterating the intent of the projects to provide housing that is 100 percent affordable for the long term.

- When is the appropriate time, and in which type of agreement, should the Town expect to confirm that the Town’s interest in providing long-term affordable housing on Town land is fully realized?

Response: The April 27 vote on the conditional rezoning for the Jay Street and Trinity Court projects is focused on the proposed land uses for these parcels, which also stipulates that the projects will be 100% affordable. Per the Option to Ground Lease Agreements that Council authorized on January 12, the Town has committed to entering into a ground lease agreement with each developer for 99 years, if and when all conditions of the option agreement are met. The ground leases will memorialize all affordable housing restrictions on the property, which will be finalized when financing is secured for the projects. Staff anticipate negotiation of the ground leases to occur over the next 12 months.

Once LIHTC funding is awarded to each project, staff will also begin negotiating a development contract with the development teams, the terms of which will be brought to Council for consideration by Spring 2023. This agreement could be drafted simultaneously with the ground lease, or separately, and will cover the details on the disposition of the site, the development of the site, the roles of the Town and the developer, the project budget, representations and warranties, and defaults, remedies and dispute resolution. The development contract will confirm any additional affordability parameters not already covered in previous agreements (e.g., funding agreements, ground lease, etc.).

- Please provide more clarity around the ground-lease provisions and how we will maintain the affordability of this project for 99 years. What happens when the buildings need to be replaced? Can the Town be given the Right of First Refusal?

Response:

The ground lease will contemplate scenarios such as 99-year affordability, restrictions on the sale of the buildings, and offering the Town a right of first refusal. Town staff have consulted with the Town Attorney’s Office, the Town’s outside counsel (Sanford Holshouser), and the developers and their attorneys on the questions posed about ensuring these projects achieve long-term affordability. All parties have indicated their willingness to work toward meeting the Town’s interest in the negotiations of their agreements, but advised that ground leases are typically not finalized until after all financing has been secured.

Sanford Holshouser has advised the Town that the ground lease will offer the following assurances to the Town:

- The Ground Lease will include a 99-year affordability plan including a Right of First Refusal (ROFR) to the Town
- Each developer will have their own restrictive covenants included as part of the negotiated ground lease that will include terms to keep the project affordable for the 99 years.

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- Developers will not be able to freely sell the property due to the Ground Lease AND the ROFR.

The Town expects to finalize the ground lease by Spring of 2023 and will update Council before settling on the final terms.

- Why are you proposing to serve 80% AMI households?

Response: Serving a mix of incomes within a property is considered a best practice. There is substantial data demonstrating the negative outcomes associated with concentrating poverty. And, financially, balancing 30% AMI units with the rental revenue that 80% units can bring to help subsidize the project. The Town has a critical need for affordable housing at all levels.

- Does the affordability mix depend on the 9% tax credit? If the project doesn't get the 9%, will you have to change the affordability mix?

Response: Yes, the currently proposed affordability mix is attached to the 9% tax credit financing scenario. If either project is not awarded a 9% project in August 2022, the developers will communicate with Council about any associated impacts to the project's proposed affordability or funding needs and will seek Council's feedback as they re-assess an alternative path forward.