

TOWN FARM

FINAL REPORT

*Prepared for the Town of Milton Selectmen as Trustees of
the Governor Stoughton Trust, Dated July 6, 1701*

*The Governor Stoughton Trust Land Committee
(Final Draft for Review by Trustees)*

Draft Report Date: October 7, 2009

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FINAL REPORT

A. Purpose of this Report

This document represents the final report of *The Governor Stoughton Trust Land Committee* (“Committee”). Our purpose is to summarize and catalogue the Committee’s deliberations, recommendations and findings after nearly two years of work. The *Deliberations* represent a broad array of discussion, analysis, guest presentations, committee study, and third party study which we have tried to faithfully reproduce without editorial comment from the Committee. The *Recommendations* represent a specific course of action that the Committee recommends the Trustees of the Governor Stoughton Trust (the “Trustees”) follow from this point forward. The *Findings* represent various facts, conclusions, opinions, and insights that the Committee has gleaned from its proceedings that informed the recommendations.

This report is by no means conclusive. While the Committee studied the challenges of the Town Farm in great breadth, we did not isolate and analyze any one recommended approach in-depth. Instead, the Committee views its purpose as dissecting and outlining the myriad issues surrounding the Town Farm and framing a general approach which we hope leads the Trustees to initiate a specific action plan to ensure proper stewardship of this precious community resource in perpetuity.

B. Appointment and Charge

The Committee was appointed in January of 2008 by the Trustees (see Appendix A) with the charge of providing an advisory opinion and recommendations to the Trustees regarding possible future use of the Governor Stoughton Trust Land (the “Town Farm” or the “Property”) in keeping with the charitable purpose expressed in Governor William Stoughton’s Last Will and Testament (the “Will” – see Appendix B). The Property was given by Governor Stoughton under the Will in charitable trust (the “Trust”) in 1701 *“for the benefit of the poor of that Town as the Selectmen thereof shall judge best.”*

The Trustees also instructed the Committee to adhere to the following goals in evaluating possible acceptable uses for the land:

- Adhere to the specific directive(s) under the Last Will and Testament of Governor Stoughton that the land be used to “benefit the poor of Milton” (See Appendix B);
- Committee recommendations can address but are not limited to generating income for the Trust and providing funding for affordable housing in Milton;
- Any proposal shall be mindful of State laws and regulations, Town bylaws, zoning and building codes, but may also propose changes in Town regulations to the Board of Selectmen, if applicable.

Furthermore, the Trustees provided additional guidance and direction to the Committee when formulating their recommendations, including the following items being considered (but not exclusive) in the Committee’s deliberations:

- Past use of the property;
- Area traffic issues (present and future) and access to public transportation;
- Protection of the area environment and air and water quality standards;
- Use vs. transfer of Trust land's development rights;
- Present and anticipated infrastructure changes;
- Fair market value of the land under various uses and options;
- Number of residents (past and future) who may be benefited or adversely affected by any proposal.

The Committee believes that in both in its deliberations and this report it has faithfully adhered to this charge and addressed each of these directives as appointed by the Trustees.

C. Summary of Deliberations

(i) Meetings & Hearings

The Committee conducted its first meeting in February of 2008, and continued meeting on a regular monthly basis until the issuance of this report in October of 2009. The Committee attempted to adhere to MGL Open Meeting Law in all respects and was advised as to this matter from time to time by Town counsel John Flynn. During these meetings, Committee members were joined by the able assistance of Town Planner William Clark. All meetings were publicly posted, open to the public and were routinely attended by numerous Milton residents, immediate neighbors of the property and other interested parties and guests. In February of 2009 the Committee began adjourning public discussion and continued discussion in Executive Session solely for the purpose of discussing the potential value of real estate. Minutes were kept of all meetings.

The Committee also conducted two (2) public hearings at which the public was invited to provide their comments, concerns, and suggestions on the future of the property. The first was held at Cunningham Hall on June 3, 2008 and over 100 citizens attended and dozens voiced their opinions. The Committee also received several written comments. The Committee held the second public meeting on _____ at _____ during which the public was again invited to comment on this Draft Final Report to the Trustees. Again, the Committee appreciates the efforts of those interested and concerned individuals.

(ii) Guest Presentations and Analysis

Several individuals and groups representing a broad range of constituencies were invited to meet with the Committee and provide their relevant expertise and knowledge. The Committee wishes to express its sincerest appreciation to the following persons:

- John Cronin, Former Town Administrator
- Marvin Gordon & Deborah Felton, Fuller Village
- Tim Martin, formerly Milton Residents for the Elderly (MRE)
- Judy Lieberman, Brookwood Farm
- Dianne Ferrari, Town Social Worker and Advisor to Selectmen

- Louise Galante, Milton Housing Authority
- Murray Regan, J. Murray Regan & Associates
- Robert Daylor, Tetra-Tech Rizzo Associates
- Indian Cliffs Neighborhood Group
- Mike Kelly, private citizen, Traffic Analysis
- Meredith Hall, Chair, Milton Historical Commission
- Tom Callahan, Executive Director of Mass Affordable Housing Alliance
- Jerry McDermott, Executive Director of South Shore Habitat for Humanity
- William Clark, Town Planner, on the Historical Curative Program from DCR

Certain members of the Committee also conducted analysis consistent with their respective areas of expertise and presented their findings to the Committee:

- Webster Collins, valuation & appraisal
- David Hall, land use analysis for development
- Bob Simmons, historic preservation & funding, condition of existing structures
- Julie Creamer, affordable housing financing and development
- Mark Boyle, methods of land conveyance

(iii) Neighborhood and Community Input

In addition to public hearings already noted, the Committee's regular meetings were open to the public and regularly attended by a significant contingent of neighbors and other interested parties. At each meeting the floor was opened to public comment and open, lengthy and at times vigorous discussion ensued. The Committee gleaned a great deal of insight during these exchanges, much of which is reflected in the Recommendations and Findings.

Also, on May 13, 2009 a group of neighbors mainly from Indian Cliffs made a formal presentation to the Committee on their recommended land use for the Property. This group, named *Milton Friends of the Town Farm*, as well as other neighbors were regularly heard by the Committee.

(iv) Appendices of Materials

A volume labeled *Appendices of Materials* is attached to this report representing a complete cataloging of all minutes, reports and analysis related to the Committee's meetings and deliberations. The Appendices contain additional analysis and supporting detail that is of essential importance to any reading and understanding of this report.

D. Primary Recommendation

The Committee can best summarize its conclusions by defining a “Primary Recommendation” which represents an over-arching objective, and then list certain other supporting recommendations we feel the Trustees should follow under various scenarios.

The Committee’s Primary Recommendation to the Trustees is the following action plan:

The Trustees are advised to immediately initiate an “action plan” to endow the Trust with sufficient funding to (i) preserve and maintain the existing historic buildings on the property to the extent possible, and (ii) provide for the permanent benefit of the “Poor of Milton” at a meaningful financial level and in a manner consistent with the Will.

The Committee has made some preliminary estimates of the level of initial endowment funding required to meet the objective, and finds this figure to be:

\$5,000,000

This sum (the “Endowment Principal”) is an initial estimate that represents the initial capital required to (i) save the historic buildings, (ii) cover operating costs at the property and (iii) serve the Poor of Milton at a meaningful level. While further analysis may inform some adjustment to this figure, the Committee feels this sum is a good proxy around which the Trustees might build its endowment action plan.

To simplify the analysis of the Trust's financial benefit to the poor of Milton on an annualized basis, the Committee created **Table 1** to compare sources and uses of funding available to the Trust under current and proposed scenarios. This analysis demonstrates the potential for the proposed Initial Endowment Principal to generate nearly a 15-fold increase in annual benefit to the poor of Milton over the status quo.

Table 1 – Sources and Uses of Funds		
	CURRENT	PROPOSED
SOURCES		
Initial Endowment Principal		\$ 5,000,000
Current Balance of Trust	\$ 389,000	\$ 389,000
Capitalized Value of RENT Revenue ⁽¹⁾	\$ 384,000	\$ 1,344,000
Total Sources	\$ 773,000	\$ 6,733,000
USES		
Capital Improvements ⁽²⁾	\$ 364,000	\$ 1,286,000
Operating / Maintenance Costs - Capitalized ⁽³⁾	\$ 76,800	\$ 268,800
Funds disbursed through GST	\$ 332,200	\$ 5,178,200
Total Uses	\$ 773,000	\$ 6,733,000
Funds available for disbursement through GST as a yearly contribution ⁽⁴⁾	\$13,570	\$211,480

Table 1 Notes:

1. *The Capitalized Value of the Rent Revenue represents the rent generated by the use of the existing buildings on property on a capitalized basis utilizing a capitalization rate of 7.5%*
2. *The Capital Improvements are the cost of the work required to renovate the current structures so that they may generate rental income. Under the proposed assumptions, the renovations are based on RDS Level 2 restoration and matching MPTF grants estimates (see Appendix I). The proposed renovations would result in more rental units within the current structures.*
3. *The Operating / Maintenance Costs are the capitalized value of the costs incurred during the operation of the rental units located on the property. This annual cost is based on an industry standard of 20% of collected rental revenue and the assumption that the property would still not be required to pay real estate taxes.*
4. *The Funds available for disbursement by the GST represents the annual investment return of the Fund's balance based on 4% investment rate in perpetuity.*

In making this recommendation, the Committee believes the appropriate starting point is best centered on a *financial challenge*. Given that the Trustees control a parcel of prime, developable property, it would be natural to leap to a myriad of land-use and development options to determine the best action plan. But, the Committee concluded that this would be self-limiting. The core mission of the Trustees must be to provide permanently for the poor of Milton through good financial stewardship of a precious and historically significant resource – and this must be done within the “context” of the current environment (neighborhood, market, and citizenry). And while development may be a means to that end, it is certainly not the only option available to the Trustees.

Within the universe of fund-raising alternatives, the Committee believes in broad terms there are really only three (3) options to raise the Endowment Principal, as follows:

1. **Private Donations:** Establish a capital campaign and raise the Endowment Principal from Milton families, areas businesses and institutions through donations. These sums could be augmented by grants from various Federal and State historic preservation programs.
2. **Municipal Bonding:** Issue a long-term municipal bond to raise the Endowment Principal. The general obligation debt would be collateralized by the Town Farm and serviced by taxpayers. These sums could be augmented (or the level of bonding reduced) by grants from various Federal and State historic preservation programs.
3. **Development of The Property:** Enter into a long term “ground lease” with a third party developer structured to raise the Endowment Principal through either an initial lump-sum payment or ongoing periodic payments.

The Committee recognizes that many will consider both options 1 and 2 as virtually impossible given the state of the economy and our personal and Town finances. And we know from our deliberations that option 3 will be both challenging given the state of property and financing markets today and controversial given the posture of many neighbors. So are the Trustees really without any good options? Has the Committee recommended a Hobson’s choice?

The Committee does not believe so. We take the long view and believe the Trustees and Town at large can meet the challenge and face the necessary trade-offs the choices represent no matter how difficult they appear at present.

E. Supporting Recommendations

Beyond this primary recommendation, the Committee also offers the following list of supporting recommendations to the Trustees:

If the Town Farm is developed in order to raise the Endowment Principal:

- The Trustees (or any Town of Milton entity) shall not attempt to self-develop the Property. Third-party, qualified developers only;
- Reasonably scaled buildings with classic New England styled architecture and quality materials. Buildings shall be set within the context of the site and respect its natural beauty;
- Scale and density of development should be modest in scale, with no large, high density uses;
- No commercial development of any type permitted; residential only
- No tax-free institutional development permitted (e.g. Church, School);
- At least a 100 foot buffer zone must be preserved along abutting residential properties. Respect all wetlands and “cluster” buildings to maintain open space. Limit wholesale land clearing – open space areas shall retain most existing trees;
- At least 20-25% of units shall remain “affordable” in perpetuity with deed restrictions tied to land and buildings. Specific levels of affordability to be determined;
- The Town should seriously re-consider adopting the *Community Preservation Act* as an ideally suited source of funding for affordable housing, historic preservation and open-space component of any plan.
- Developers should be required to preserve and rehabilitate the existing historic structures, to the extent feasible;
- Some communal garden should be set aside and maintained and used by the community respecting the site’s use as a Poor Farm, to the extent feasible;
- Any impacts to the Indian Cliffs and other surrounding neighborhoods and the Town at large shall be mitigated by the developer.
- Primary access to the property shall be from Unquity Road and not Canton Avenue/Gov Stoughton Lane (see Appendix C - Preliminary Traffic Study).
- A thorough developer selection process and open permitting and public vetting process shall ensue.
- The Trustees shall strive to lease the land as opposed to an outright sale, forever maintaining ownership of the land.
- Property taxes and other municipal fees generated would be collected and retained by the Town for municipal purposes (and not directed to the poor).

If the Town Farm remains undeveloped with Endowment Principal raised from other sources:

- A portion of funds should be directed toward preserving and rehabilitating the existing historic structures, and those structures should continue to be occupied by needy Milton residents/families;
- The Town should seriously re-consider adopting the *Community Preservation Act* as an ideally suited source of funding for the historic preservation and open space components of any plan.
- The land should not remain dormant, but should be actively used and programmed with events/uses/activities consistent with its history as a Poor Farm (see Alternate Uses in Findings section);
- The current animal shelter should be relocated, as soon as practical.

- The property and buildings shall be restricted from use by the Town itself (e.g. no maintenance, materials or equipment storage, no DPW use, etc)

Whether the Property is developed or not, The Endowment Principal shall:

- Be dedicated for the benefit of the poor of Milton as determined by the Trustees
- Professionally managed and conservatively invested for principal preservation and income by a third party investment advisor according to a specific plan
- Allocations of 100% of income from the Trust after all expenses shall be disbursed to the poor of Milton each year in a manner determined by the Trustees

The balance of this report will involve an explanation of how the Committee arrived at these conclusions and other ideas as to how its implementation might better succeed.

F. Summary of Findings:

In its deliberations, the Committee arrived at some key findings, and believes the best way to frame these is by presenting some key questions, and associated “suggested” answers. The Committee does not presume it has all the answers and acknowledges up front that certain questions are unanswerable, and certain answers involve interpretation, opinion and supposition and are not always based on knowable fact. The Committee also acknowledges that certain of its findings presented here overlap into professional disciplines including trust law and real estate law, demographics, affordable housing public policy, as well as real estate development, planning & engineering, finance, appraisal and valuation. While certain expertise in these areas was represented on the Committee and sought out from third parties during deliberations, the Committee does not purport to have completed the level of in-depth study in these specific areas to make any finding or recommendation conclusively. With these caveats, the Committee presents the following “Q and A” styled discourse as supporting background:

1. “How can we interpret Governor Stoughton’s true intent in making his Will?” Governor Stoughton made his intent clear – that his “40 acre wood lot” shall be endowed as the asset which shall generate benefits in perpetuity for a named constituency – “the poor of Milton.” But written in old English and in a different time, what do we think certain words meant?

Governor Stoughton’s intent as expressed in the Will cannot be known, only interpreted. The Will reads that he intended that his “*great Wood Lot there forty acres...the whole improvement thereof to be for the benefit of the poor of that Town as the Selectmen thereof shall judge best.*” It is the Committee’s interpretation that, (a) by “*the whole improvement thereof*” he meant any physical or economic use of the entirety of the 40 acre property, and (b) by “*poor*” he meant indigent, needy and nearly destitute people, and (c) by “*of that Town*” he meant to limit benefits to the poor residing in Milton, and (d) by “*as the Selectmen... shall judge best*” he meant to give sole discretion to the Trustees in determining who the poor of Milton are. While no time period was suggested in the Will, the Committee feels that Governor Stoughton surely meant that these conditions be met in perpetuity. It is important to note that, as to item (c) above, it may not have been the intent of Governor Stoughton to be exclusionary but rather the intent of the language “poor of that Town” was in keeping with town governance of that period. In a modern day setting, programs used to provide housing to low-income citizens involves assistance from federal, state and local government. These programs require adherence to fair housing policy, some allow for local preference, but cannot, by law, restrict

housing to Milton residents only. In an effort to balance the intent of the Will with the current needs of improving local housing for low-income citizens, many municipalities within the Commonwealth and throughout the United States, have utilized similar “town farm” sites for affordable communities by implementing federal, state and local programs.

2. “What is the historic genesis of poor farms? How did they come to be and what was their purpose? How does that translate to how we help the poor today?” It is not just the old buildings on the property that are considered historic. We need to understand how and why such parcels of farmland were dedicated and used in this way, and appreciate the cultural importance and historical context of the time, and thus better understand Governor Stoughton’s intent.

Historically local governments accepted sole responsibility for the care and housing of their poor, giving rise to a statewide system of “poor farms” or “town farms.” As noted in the letter from Phillip Bergen of the Massachusetts Historic Society, *“The Milton Town Farms represents a rare remaining example of an early form of public welfare, in which communities were charged with the responsibility of looking after the indigent, the elderly and those citizens in need of assistance”* (see Appendix D). Today, Towns help support the poor through food banks, community gardens, fuel oil assistance, direct grants, and the provision of affordable housing either through development or housing subsidy.

3. “Who are the Poor of Milton?” Few can question what the Will says – but just who are the poor of Milton and how can this group be defined and identified so the benefits intended by the will can properly flow into the right hands?

The Committee cites the American Dictionary of the English Language, by Noah Webster 1828 in defining the word “**poor**”: *“destitute of property or not having property sufficient for a comfortable subsistence; needy. It is also applied to persons who are not entirely destitute of property, but are not rich; as a poor man or woman; poor people.”* To reach this conclusion, the Committee is looking to a common definition used around the time of the Will. We believe it is reasonable to assume that Governor Stoughton intended for benefits from the use of his land to flow to the truly needy and indigent person in the community without identifiable means of subsistence. The dual definition by Webster also suggests that he meant in effect *the inverse of rich people – poor people* – which introduces the possibility of people of modest means, not totally indigent but simply not rich.

The Trustees may also look to other measures of qualifying income used for local, state and federal programs such as (i) free meal programs in our schools, (ii) State affordable housing programs administered by *The Department of Housing and Community Development (DHCD)* (iii) federal programs as administered by *Housing and Urban Development (HUD)* and (iv) the federal poverty level.

4. “Why did Governor Stoughton Appoint the Milton Selectmen as Trustees and by doing so did he effectively establish a Public Trust?” The Trustees are the Milton Board of Selectmen. By putting a governmental body in place as Trustee, can it be reasonably interpreted that the bequest was intended as some form of public trust to benefit not just the stated benefactor but also the Town itself?

A simple reading of the Will shows that Governor Stoughton specifically gave the land to the Town of Milton and he elected to have the Selectmen serve as Trustees because they were in the best position to identify the poor of Milton. So the Town Farm is indeed an asset of the Town held in public trust for the specific charitable intent of serving the poor of Milton. Notwithstanding their role as public officials, the Selectmen as Trustees have the same obligation as any private trustee would have – and that is to honor the word of the Will and the presumed original intent of the donor. The fact that the land is a Town asset and the Trust is a public trust does not mean that the property could readily be put to other municipal uses. On this point, reference is made to correspondence from Town counsel John Flynn dated May 3, 1999 to the Town and an attached letter from the office of the Attorney General dated April 29, 1999, (see Appendix E). Here, the Town was looking to construct a school on the Property and sought an opinion of the Attorney General under the “doctrine of cy pres” - meaning “as near to.” The opinion from both Town counsel and the Attorney General was that such use was not in keeping with the intent of the Will and the burden of proof that such change of use would place on the Trustees was sufficiently high as to open the Town up to considerable legal challenge of reversal.

5. “What are the legal ramifications of all this? What steps must the Trustees follow to change the use of the Town Farm? How is the Town exposed to challenges if the Trustees either (i) do nothing with the Property, or (ii) pursue a land use that is inconsistent with the Will?”

The Committee believes that virtually any new plan for the Town Farm will need to be formally proposed first to the Attorney General and then in effect *litigated* before the court under the doctrine of cy pres described above. Jurisdictionally, the state Attorney General represents the Commonwealth in all so-called cy pres cases, which are adjudicated before either the Probate Court or the Supreme Judicial Court. The Trustees need to set forth a plan that demonstrates a general charitable intent to serve the poor that is “as near to” the specific intent expressed in the will.

If the Trustees propose a use of the land that is not consistent with the Will (as above with the school proposal) then the Trustees could be challenged legally on several fronts. Descendants of Governor Stoughton could make a claim to reverse the Will because its intent was not being met, and they, as would-be benefactors of the estate, have clear standing before the court, and could prevail in having the gift forfeited by the Town. Taxpayers also have standing under a so-called “ten taxpayer suit” to challenge any use proposed by the Trustees. Even if the Trustees propose a plan and the Attorney General accepts and defends it before the Court, there is no obligation for the Court to accept this plan and indeed the court could adopt an alternate plan.

The Committee believes that doing nothing is also inconsistent with the specific charitable intent of the will, so the Town is exposed to the same outcome under the status quo.

The foregoing findings are legal in nature and are set forth by the Committee based on its review of available materials and brief and informal consultation with Town counsel John Flynn.

6. “Is there a need for affordable housing in Massachusetts and in Milton?” What do current income demographics and housing costs statistics in the Town tell us about the need for affordable housing?

The Committee can cite numerous statistical and anecdotal points to demonstrate there is an extreme and urgent need for more affordable housing in our Town. The need for affordable housing in Massachusetts has been well documented. Recent studies of housing choices in the Commonwealth suggest that many residents, primarily young families, are making the decision to relocate elsewhere based in part on the availability of affordable housing. The unmet need for affordable housing burdens the state's economy and presents serious difficulties for the most vulnerable of our community -- young families, elders and the poor

One of the primary indicators of a town's success in address the housing needs of *all* of its residents, is the Subsidized Housing Index (SHI). The Department of Housing and Community Development (DHCD) maintains a SHI for the communities of the Commonwealth which is used to measure their progress towards meeting the state affordability criteria. The state mandated goal requires that 10% of a communities housing stock be affordable to households with incomes at 80% of Area Median Income. The current percentage of affordable housing units in Milton is 4.7% (or 427 of the 9,142 housing units) with a large majority of these units being designated for the elderly. *Of more concern is the lack of progress by the town of Milton in reaching this state mandated goal.* The number of affordable housing units rose by less than 1% from 1997 through 2005 and less than 1/2 % since then.

Compounding the unmet need for affordable housing choices is the limited supply of rental housing in Milton. With the majority of vacant land in Milton being zoned single family "as-of right", development of multi-family housing becomes costly and requires zoning relief too risky and time consuming to be economically viable. As demand for rental housing rises in the supply constrained Milton market, rents rise resulting in many rent-burdened residents. These residents, required to pay a larger percentage of their income on rent, are force to forego or seek assistance in paying other utility bills or living costs. While much of Milton hasn't witnessed the painful affects of the foreclosure crisis, rental and multi-family housing in Milton has. Foreclosures have impacted the affordable rental market, uprooting families required to find housing elsewhere.

A focused effort towards supporting the creation of affordable housing units in Milton would strengthen the town's readiness to promote diversity and provide for its citizens.

7. "Does developing housing with an affordable component on the Property meet the intent of the Will?" Understanding that the Trustees control a piece of buildable real estate and are limited by the Will to use that real estate to benefit the poor, and there is an extreme need for affordable housing in Town -- it is quite natural that one might say that developing low-income housing is the obvious answer. But, does "low-income" as defined in current land use statute for affordable housing in Massachusetts constitute "poor" as Governor Stoughton might have intended? Or shall we keep the land-use decision wholly separate and distinct from the intent of the Will?

The Committee finds that attempting to determine whether occupants of affordable housing are "poor" as Governor Stoughton might have intended would not be a useful exercise. Instead the Committee believes that the Trustees are best served by leaving the land use decision up to normal Town processes for zoning and entitling real estate. Like any other land owner looking to develop property, the Trustees should make a proposal to the Town suggesting its development plan, and the Committee believes affordable housing should be included as a

component. *However, the Trustees should not suggest to the Town that the application of the word and intent of the Will in any way obligates or compels the inclusion of affordable housing in any development plan.* Instead, the Trustees meet the word and intent of the will by simply ensuring that any and all net financial benefits flowing from any land use are 100% dedicated to the poor of Milton. As an alternative way to meet the need for affordable housing in Town (but not burden the Town Farm as a means of physically providing it), the Trustees could direct financial resources from the Endowment Capital to subsidize affordable housing elsewhere in Town (see Appendix G).

8. “Are the Existing Buildings Historic and should they/can they be saved? How is saving an historic structure consistent with the Will? The current structures are no doubt old, but how does one determine their historic value? How shall the Trustees weigh and balance the value of expending scarce resources to save a piece of history against the primary mission to benefit the poor of Milton? What grant programs are available for historic preservation?”

In consideration of the fact that many in the community to support the restoration and preservation of the original historic structures and site features present, their preservation, as either housing structures, or alternative-use buildings has been included in all of the housing schemes analyzed by the Committee. On this point, reference is made to the Letter from the Milton Historical Commission dated June 11, 2009 (see Appendix H). Further, the Committee took into consideration the cost and feasibility of completing a ‘Level 2 Restoration’ of the existing buildings in its tabulation of the needed Endowment Principal. Please see Appendix I for a table detailing potential rehabilitation costs.

As to sources of grants available to fund historic preservation, the Committee has identified several, including:

- Community Preservation Act
- Massachusetts Preservation Projects Fund
- Massachusetts Historic Preservation Tax Credit
- Preservation Massachusetts
- Historic New England (formerly Society for the Preservation of New England Antiquities – SPNEA)
- Department of Conservation and Recreation Historic Curatorship Program
- National Park Service : Historic Preservation Tax Incentive

A detailed table of these sources of funding is contained in section M of the Appendices.

9. “What is the general pre-disposition of residents of the Town toward developing the Town Farm?” Setting the Will and the financial imperatives facing the Trustees aside, would the Town and its residents see it as beneficial to develop the property? If so, what kind of development is acceptable and are the potential impacts manageable?

During the course of deliberations, the Committee has heard loudly and clearly that immediate abutters, close-by homeowners, and others simply do not support development of any kind. Instead they believe the Poor Farm is a property of growing national historic significance (See Appendix D). Hence, they are strongly in favor of both restoring the existing structures and preserving the

remaining fields, orchard, pasture, paths, loading platforms and wood lot in their entirety (See Appendix J). If any development were allowed, these neighbors would want it limited to single-family homes consistent with the Town's current A zoning regulations.

While the neighbors' stated motive for opposing development is historic preservation, the Committee believes their position is also consistent with "not-in-my-backyard" type reactions by neighbors as is regularly encountered in Milton and elsewhere when development is proposed. The Committee would further characterize the neighbors' collective posture with respect to development as particularly strident and well organized leading the Committee to conclude that any development on the Property will be contentious and controversial.

Further, committee members often speak to others in the community that are not nearby homeowners and we would unscientifically conclude that, while there is certainly a mix of opinion and some support development, on-balance residents Town-wide would seem to oppose any kind of major development on the Property.

There is a meaningful constituency in Town that believes the Town needs more development to generate tax revenue to save/improve services and to lessen the burden on existing homeowners. The Committee would conclude that, while certain individuals may support (or not object to) developing the Property, there is an identifiable constituency in Town that strongly supports developing the Property with an affordable housing component as a social mission which they believe is well aligned with the word and intent of the Will. As to impacts, the most often cited objections are additional costs of school-aged children and other Town services and traffic related to the inaccessibility of the property from Governor Stoughton Lane. *The foregoing are anecdotal observations only – the Committee did not take a statistically significant sampling of opinions on development to reach the above conclusions.*

10. “If development were approved, what kind of development would be financially feasible and generate the most revenue for the Trust?” Of potential commercial land uses – office, retail, hotel, and light industrial – would any of these work? If residential, what kind of residential? How many units and what is the net land value for each unit of housing?

The Committee finds that the site would simply not support commercial development of any kind due to market and site/location constraints. Of the range of residential development options available (single family homes, multi-family for-sale/condominium, multi-family rental apartments, age-restricted/senior housing) the Committee feels each could be viable in the future and all warrant further study. Further, the committee feels a mix of housing types may be both viable and desirable. However, the Committee feels high-density, large scale development of any type would not be supportable on the Property.

As to unit numbers, the Committee makes no recommendation as to the number of residential units that may be suitable on the Property from an impact and land planning standpoint. Instead, the Committee offers the table below which specifies an appraised, per-unit land value for each housing type with an associated unit count that would generate the proposed Endowment Principal.

The committee has applied the work product of Webster A. Collins, MAI and J. Murray Regan (see Appendices K(i) and K(ii) respectively). In column #4 in the following table, the concluded value per unit is derived. The initial endowment as shown in column #1 is divided by per unit values in column #4 to indicate the number of units (column #3) to support the type of development suggested in column #2:

Table 2 – Development Options to Meet Action Plan

Column #1	Column #2	Column #3	Column #4
Endowed Principal	Unit Type	Net Land Sale per unit/lot	\$ Price Market Rate/Unit/Lot
\$5,000,000	Single Family Lots	26 single family lots	\$400,000 to \$440,000 each
\$5,000,000	Multi-family apartments	135 units	\$36,853/unit
\$5,000,000	Attached town homes	120 units plus 9 single family lots	\$35,000/unit, \$400,000 to \$440,000 single family
\$5,000,000	Condominiums	104 Units	\$48,000

Source: CBRE/J. Murray Regan

The foregoing table illustrates how the fixed endowment principle of \$5,000,000 can be raised using estimated land values per unit of housing under the various development scenarios studied and appraised. It is important to note that these concluded values are all for “market rate” units. The appraisers agree that the concluded land value per unit for an affordable unit is effectively zero. Hence, the inclusion of affordable housing would necessitate either higher unit densities or some alternate source of funding or subsidy.

The Committee reviewed several various residential schemes in its deliberations (see Appendices K and L). *These schemes are not put forth by the Committee as recommended development plans.* Instead they are offered to the Trustees as examples of the type, scale, density and mix of residential land-use options that would reasonably “fit” within the existing property constraints.

11. “If no development is approved, what alternate uses could be considered that would meet the intent of the Will?” Assuming the Endowment Principal is raised by methods 1 or 2 above (e.g. no development) would the Town just leave the land dormant or could some other alternate, low-impact and desirable use be considered?

The Committee feels that many creative, highly desirable and low-impact uses could be considered for the Property. Some of the alternative uses suggested from within the community and the Committee include:

- Community-Supported Agriculture -- Food Bank Support / Rent Income
- Parkland / Conservation Land -- Land-Swap for future Affordable Housing on another site
- Hiking/Biking/Equestrian Trail Use
- Equestrian Riding, Boarding and Pasturing Use -- Discounted to Poor Residents / Rent Income
- Animal Shelter Expansion -- Jobs / Rent Income
- Town Farm Museum
- High School Agricultural/Equestrian Programs
- Wind Power Site -- Free Power to Poor through credits

The Committee also notes that while certain of these may be income producing and may augment the Endowment Principal modestly, none are believed to be economically feasible in and of themselves nor consistent with the Will in absence of the Endowment Principal.

A detailed summary of these alternate uses can be found in Potential Non-Residential Uses, in Appendix , and Potential Funding Sources, in Appendix M.

12. “How can funds be raised from development of the Property without selling the land to a developer?” Should raising the most money be the primary objective or should the Trustees settle for less and never give up ownership of the land?

The Committee finds that the preferred method of any conveyance of the property be accomplished via a long term (85-year) ground lease. This approach is preferable as a way for the Trustees to maintain continuing control over the development of the property. Notwithstanding any zoning or permitting approvals, the lease would contain certain restrictions which protect the future of the parcel, its abutters, the community, and the Trustees from undesirable and objectionable uses or conditions. The lease can also safeguard and uphold any ongoing public benefits derived from development of the property such as open space access, housing unit affordability, historic preservation, etc.

The Committee also believes a ground lease provides financial benefits to both the prospective developer and the Trust. Rather than requiring a buyer to pay the full acquisition cost up front at closing under a sale, a lease would allow a stream of payments over time. This allows the developer to borrow/finance less at closing, and spread land costs throughout the life the lease, including to subsequent owners/tenants. Moreover, a lease with annual payments would provide the Trust with a steady and predictable stream of revenue, upon which they can plan and potentially borrow against. Assuming the lease would have an inflationary escalation clause, it will also allow the Trust to realize the benefits of appreciation over the long term”.

On the other hand, as time passes on a long term ground lease, the developer’s ability to re-finance the project increases in difficulty. While less of an issue at the beginning of the lease, as the decades pass the risk presented by an expiring ground lease generally leads to discounted valuation of land and buildings thereon. The Trustees are advised that most property experts would find that higher proceeds would be available by outright sale of land than by the comparable “present value” of long term ground lease payments.

This valuation concern notwithstanding, Committee believes the ground lease remains the preferable conveyance method under any development scenario.

13. “If the Trustees pursue municipal bonding as a means of raising the Endowment Principal, what are the terms of financing and how would the average homeowner’s tax bill be affected?”
What are other potential benefits of the bonding approach?

The Committee requested a simple calculation given the current municipal bond market from Treasurer James McAuliffe. He determined that raising \$5,000,000 in general obligation bonds of the Town of Milton would likely carry the following financing terms and resulting impact on the Town’s budget and real estate taxes:

Term: **20 years** Interest Rate: **3.0%**
Estimated Annual Cost of Financing to Town: **\$473,100**

Estimated Annual Increase to Average Homeowners RE Tax Bill: **\$57.00 per year**

Total Increased Tax over 20 Year Life of Bond to Avg Homeowner: **\$1,140**

The Treasurer's estimate is preliminary and would be subject to change in the volatile financing and interest rate environment in today's market.

The Committee also finds that, among the possible approaches to raising the Endowment Principal, the bonding approach is the most universal and "democratic." If indeed the Town at large values the preservation of this precious resource, then the burden of doing so is best spread proportionately across all residents. Other approaches will tend to be more specialized, with strong support by certain interest groups and strong objection by immediate neighbors. Recalling that Governor Stoughton gave the land to the Town and by doing so he established a *public trust*, perhaps a general bonding is the fairest approach.

14. "In this economic environment, is it feasible to think that any of the proposed methods to raise the Endowment Principal are feasible?" Real estate markets are in free fall, credit is tight, individuals and families are strapped financially, charitable endowments and trusts have lost large chunks of value, the Town passed on override in June 2009 but services are still being cut – so how can this work?

The Committee acknowledges that none of the three options it is recommending as methods to raise the Endowment Principal appear to be feasible in today's environment. Whether through a capital campaign for private donations, municipal bonds, or development – it is difficult to project success of such initiatives in this unprecedented economic downturn. However, Governor Stoughton made his bequest in 1701 and it was meant to be a perpetual instrument that no doubt must be sustained through inevitable economic cycles. So, taking the long view, the Committee is recommending that the Trustees forge ahead in determining which of the proposed methods would be the Town's preference. As the economy gradually improves, the Committee believes the Trustees should begin weighing these alternatives and planning the necessary steps for implementation.

G. Conclusion

In presenting this financial challenge to the Trustees and the Town, the Committee is respectfully attempting to focus and streamline the debate over "what to do with the Town Farm?" by focusing all constituencies on the reality of the situation and the pros and cons of a set of clear, finite and imperfect choices. The Committee believes this report reflects a thorough, objective, independent and impartial study pursuant the *Charge* given the Committee by the Trustees.

No one wants to suggest that the Town incur further indebtedness to float bonds to endow the Trust, but if our community genuinely wants to preserve these structures and leave the land as open space then this choice has costs – and those costs are either fewer services and/or higher taxes for all residents of Milton. Under this option, the Town as a whole would opt for preserving a precious natural and historic resource, forego development and its impacts and continue to serve the poor with the money raised as directed by the Trustees.

The same result can be achieved through private donations. This would take the persistent and dogged effort of a team of dedicated volunteers to establish a campaign and raise the money. Evidencing the success of the recent Library campaign, we know it can be done but we also know it will be supremely difficult in this environment, because we perceive a general sense of “fundraising fatigue” among the populace. Our wallets, and those of the generous institutions that have helped the Town before, are stretched, and it seems every “good cause” is always on the “ask.” The Committee also feels there may be a sense that preserving open space and historic buildings on an isolated parcel used by very few townspeople would be perceived as less of a public benefit than our beautiful free Library.

Developing the Property with residential housing at densities sufficient to raise the Endowment Principal is the only of the three options that actually uses the value of the land itself to generate the funds needed – and this was Governor Stoughton’s unambiguous intent. In this way the Trustees would be leveraging an asset that it controls and sparing the townspeople or other private interests of having to bear the cost. However, large-scale development creates impacts and will be highly controversial and is clearly unwanted by a vocal constituency of neighbors.

So if we stipulate as fact that (i) the Trustees must act and doing nothing is not an option, and (ii) it is essential and unavoidable that the Trustees must raise the Endowment Principal, then the Trustees and the Town at large have choices. We hope this report serves as a good “road map” outlining these choices and describing the “context” – the current environment and key issues – within which such difficult choices regarding the Town Farm must be made.

H. Next Steps

While the Committee is confident in placing its focus on the crucial need for an “action plan” to endow the Trust, we indeed recognize the somewhat inconclusive nature of this report. No doubt a neatly organized, financially feasible and “consensus-built” land use plan for developing (or otherwise using) the property to serve the poor would have been desirable here. However, we found this to be quite unrealistic given the basic “stalemate” between development and preservation that emerged day one and never relented. The consequent shift to a financial challenge and evaluation of choices and tradeoffs was unavoidable.

As to a path forward, we deliberated on outlining a set of “next steps” for the Trustees to follow hereafter. We concluded that these steps should be determined by the Trustees themselves. Whatever the specific steps, the Committee is resolute in recommending that they should (i) proceed quickly, (ii) involve a thorough Town-wide dialogue concluding in a binding, referendum-type decision point, and (iii) be informed by continuing guidance from the office of the Attorney General.

Perhaps what makes this undertaking so difficult is the modern context in which these challenges must be faced. But in its truest sense, the charge put to the Trustees by Governor Stoughton on July 6, 1701 is quite simple, put forth in simpler times. And the guiding principles of “trusteeship” have not changed in the centuries since. Trustees of the time were to emulate the actions of what is known as the “*Old Boston Trustee*” responsible for the care and management of the estate placed in its hands:

- *“To wisely use that asset, in the maximization of its stated use”*

A Trustee approach is a top down approach which begins with the high points of the plan and the elimination of any elements as “you shall judge best” that do not fit the intent of the trust.

A Trustee approach requires the following of standards expected by its peers – to act like business people assigned to completion of the task.

And finally, we believe that as written, the Trust charges you as Trustees to think how Governor William Stoughton might have thought, and to carry out his wishes “as near to” his original intent as possible.

Respectfully Submitted,

The Governor Stoughton Trust Land Committee

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Vanessa Calderon-Rosado

Webster Collins

Julie Creamer

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