



Town of West Newbury

Board of Selectmen

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August 7, 2020

Michael Busby
Relationship Manager
Massachusetts Housing Finance Agency
1 Beacon Street
Boston, MA 02108

Dear Mr. Busby,

The Board of Selectmen offers these comments in response to the substantially revised application for 40B Site Approval submitted by Cottage Advisors LLC for property located at 28 Coffin Street and 566 Main Street in West Newbury.

At the outset, the Board would like to emphasize the significance of the amendments to the Plan Set Cottage Advisors submitted on June 30, 2020, amendments that render significant portions of the earlier application inapplicable. Yet the newly submitted plan lacked all attachments included in the initial proposal, thereby providing an incomplete application as the basis for our review. As you are aware, Cottage Advisors submitted its Site Approval application on March 27, 2020, and the Board of Selectmen submitted a comment letter to MassHousing on June 16, 2020. Following the substantial time and effort expended by the community, Cottage Advisors submitted a new Plan Set that substantially changed the original Plan Set, and MassHousing provided the Board an opportunity, within a limited period of time, to provide additional comment on the new plan. Based on the scope of changes from the original proposal, and as per the July 2nd letter from our Town Counsel to MassHousing, we believe that the June 30th proposal should have been considered a new submittal, with a new comment period, and requiring developer resubmittal of all of the supporting materials appended to its initial proposal.

While the Board will endeavor to provide its best assessment of the materials submitted and will relay the comments of Town officials and residents, our ability to meaningfully comment on this application is significantly hindered by its ever-changing nature and the short time provided to respond to what is essentially a new proposal. Further, much of the information and materials submitted pertain to a 152-unit development, yet the plan now involves a proposed 92-unit development. Several portions of the original application

materials have not been updated to reflect the specifics of the new proposal, such as the Financial Information contained in Section 5 of application, which we believe is critical to MassHousing’s feasibility determination. For these reasons, the Board again requests MassHousing treat the latest submission as a new application.

Nevertheless, the Board has made our best effort to work within the time provided for comment, and has found this time was essential to our coordination with others reviewing this latest proposal. While we would have appreciated additional time to conduct a more thorough assessment of the significant changes made to the initial proposal, the Board, Town officials and community members have been able to identify critical issues and concerns we have with respect to the revised application.

Since receiving the revised Plan Set, we have hosted additional public meetings regarding the Plan Set and the overall proposal, continued to analyze and work through the proposal with our outside counsel KP Law, provided regular public updates at Board meetings and via the Town website, and provided new research and information to the various Town officials who would be involved in the 40B process.

In addition to the hundreds of public comment letters regarding this proposal that this office has received and provided in its June 16th submittal, we have received a new wave of public comments, the substance of which are reflected throughout this letter. In addition, the technical expertise of our Town departments, Boards, Commissions, Committees and residents adds substantive value to the comments we provide, and we have appended to this comment letter the comments received from others.

We have organized our comments as follows:

1. Process
2. Substantive Review
3. Primary Concerns
4. Requests and Recommendations

While we do not wish to reiterate points made in our June 16, 2020 comment letter, given the significant changes made to that submission, we repeat certain points as they relate to the modified Plan Set, additional comments received, and current circumstances.

Process

- a) The application indicates that there has been a “Concerted public participation effort (beyond the municipally required public hearings).” To the best of our knowledge, and continuing to this date, the Applicant has made no effort to reach out to residents abutting and proximate to the proposed development, nor to seek public input regarding the proposal. We have heard from several abutters that

- have not had, but seek, an opportunity to discuss the proposal with Cottage Advisors directly.
- b) Cottage Advisors continues to provide limited information to project abutters and West Newbury residents and officials. The Board has tried to make information broadly available, via an initial public mailing to site abutters, a regularly updated page on the Town website (which contains the public’s only access to the newest Plan Set), periodic email updates, special Board of Selectmen meetings dedicated to this project, and regular updates at Board of Selectmen meetings. While the developer and/or his representative “virtually attended” some of the initial public Board meetings and its 40B workshop, the developer has not been present at meetings since submitting the new proposal on June 30th. The only information available to residents and other Town entities without direct jurisdiction remains the developer’s written application, and information received from Town staff, which the revised Plan Set shows is subject to ongoing revision and provides limited insight.
 - c) The developer did not communicate with site abutters and other West Newbury residents directly early in the process or prior to filing with MassHousing, which is bound to result in misinformation and misunderstanding. The developer’s only public communication or interaction remains posting a “fact sheet” to one of the local Facebook sites, the information in which included some debatable and incorrect information. In fact, the Board has received public comments seeking to clarify or correct several misstatements in the application and documents made available to the public, including the complete lack of public transportation in the vicinity of the property, and the wide, electric transmission line easement held by New England Power Company that runs through the property.

Substantive Review

- a) The proposed development would be, by far, the largest residential development ever in West Newbury. Our largest residential development, to date, has 56 units (of which six are affordable, pursuant to a local inclusionary zoning bylaw). A review of residential building permits issued locally shows an average of approximately 16 new units/year over the past decade. This modified proposal would be nearly twice the size of our largest residential development to date, and would increase the Town’s population by an estimated 6%.
- b) **Even in its reduced state, the Board of Selectmen believes that the proposed development is inappropriate for the proposed site, due to its scale and the extent to which it would require disturbance and/or development of virtually every square foot of the site that is not otherwise constrained (i.e. wetlands/buffer areas, steep slopes, easements, vernal pools, etc.).** While the very purpose if this type of development may be to increase housing opportunities, a goal the Town and its residents share, the density and character of this development is entirely out of place in this rural part of town, which contains

farms and wetlands and is only accessible by vehicle via a major road without sidewalks.

- c) **The site plan does not adequately account for drainage infrastructure, and the developer only recently added storm water basins to the latest plan. Recent public comments have raised serious concerns over flooding and drainage issues resulting from climate change, the effects of which are already being felt in this area of Town that abuts the Merrimack River. The Town’s DPW Director continues to raise concerns over the insufficient infrastructure information contained in the application.**
- d) The West Newbury Planning Board has provided detailed comments regarding the revised application and Plan Set, which are appended to and made part of this letter, and along with the Planning Board’s comments that were appended to and made part of our June 16th submittal, these comments are made with the intent of identifying elements of the plan that are deficient or that diverge from sound planning practices and the Town’s standards for development. These comments are further intended to facilitate a project that would fit better with its surroundings in terms of site and building design, open space and the natural environment, traffic, pedestrian, rider and cyclist safety, and existing development patterns.
- e) The West Newbury Open Space Committee has provided a thorough and considered comment letter which is attached and made a part hereof. The Open Space Committee letter considers how the revised application will diminish open space in the Town and threaten an important and safe recreation area. Significantly, as many commenters have noted, while the application materials promote the project’s recreational aspects and trail access, no such recreational space or trail access is reflected in the plans submitted. The developer’s amended application materials do not make clear how much land area will remain open space. However, while the project locus is approximately 75 acres, a preliminary analysis by the Planning Board indicates that only 38.8 acres would be considered “buildable,” and only 8.7 acres of the 38.8 acres would remain open for passive recreation. Further, we continue to question the value of the purported open space, as much of it is not contiguous, and raise concerns that nearly all of the land area that may be developed (i.e. that is not wetlands) will be developed under the modified Plan Set. Thus, nearly all of the potentially developable land will be disturbed and developed for roads, homes, the leaching field, leaching field utilities, parking, drainage, and other improvements, and the remaining undisturbed land on the proposed site consists of land areas that are already prohibited from development and have questionable value as open space. And, as noted above, it can be assumed that drainage structures and retention facilities will require significant space and utilize some portion of what the developer contends will be open space.
- f) Wetland boundaries have not been verified by the Town through the Conservation Commission. The West Newbury Conservation Commission has provided a comment letter describing this issue and others the application raises and that are within its jurisdiction, which is included with this letter and incorporated herein.

The applicant filed a notice of resource area delineation (NRAD) with the Commission, but the Commission has not yet opened its hearing nor conducted a site visit. The actual delineations may differ from those shown on the site plan and changes could affect the configuration of the project, including location of proposed infrastructure. This is of particular concern as comments we have received uniformly describe the unique and important habitat in this area of Town, and note that insufficient wetlands setbacks will create a significant threat to wetlands species and their habitat. The site plan application shows two proposed wetlands crossings. Such crossings are not authorized as a matter of right under the state Wetland Protection Act regulations. If crossings are allowed and wetlands are lost, replication areas will be required and must meet a number of criteria related to location, surface size, groundwater and surface elevation, and hydraulic connection to the wetlands associated with the lost area. No potential replication areas are shown on the site plan.

- g) The project locus contains what appear to be at least one, and potentially two, uncertified vernal pools. Work is ongoing with NHESP to see about certifying one or both potential vernal pools. Several comments from local residents, appended hereto, have expressed concerns over the future of these vernal pools should the land be intensively developed. Some commenters and Town residents with past experience and knowledge of the property are seeking to determine the exact location and delineation of the existing vernal pools, and hope to have this process complete when the natural vernal pool cycle next allows. **The Board requests that MassHousing require the applicant to initiate a vernal pool certification process, or cooperate with those already underway, through the Natural Heritage and Endangered Species Program.**
- h) The developer states that the location of the proposed development “is a pedestrian-friendly neighborhood with sidewalks that is within a mile from the Town Hall, Open Space and Trails, Playgrounds, and Schools,” which implies that residents will be able to walk to such areas easily. However, as raised in our earlier letter and in comments received from community members, there are no sidewalks from the development location to those facilities. In order to arrive at the cited areas, pedestrians and children would have to walk along State Highway 113, where there are limited shoulders, periodically high traffic volumes, and moderate-to-high vehicular speeds (posted 40mph). Many residents with experience in this area of Town cautioned against any person walking the stretch of road leading to the project locus.
- i) Regardless of the developer’s representations made in the application, the Board and the public comments it has received emphasize that there is no public transportation in West Newbury. Despite the Town’s requests to the Merrimack Valley Regional Transit Authority (MVRTA) over the years for alterations of bus routes in order to enhance public transportation options in West Newbury, no such alterations to bus schedules or routes are forthcoming.
- j) Counter to the application, there are almost no employment opportunities in West Newbury. West Newbury’s tax base is more than 97% residential. Access to any

employment opportunities outside of West Newbury without a vehicle is impossible.

Primary Concerns

- a) Project Size. Because West Newbury had 1,558 year-round housing units reported in the 2010 Census, the 40B Regulations at 760 CMR 56.03(6) define a large project in the Town as one that “involves construction of a number of housing units equal to 6% of all housing units in the municipality.” Thus, a project greater than approximately 93 units would qualify as a Large Project. Cottage Advisors revised Plan Set proposes 92 units. Though this reduction is a step in the right direction from the 152 units initially proposed, this proposal would still substantially overburden the site, which has significant environmental and infrastructure constraints. Further, the proposal does not reflect the sustainable design standards set out in the Town’s (June 2018) Housing Production Plan. The developer had verbally represented to the Town Manager early in this process that 152 units were necessary to make the project economically viable, yet now has reduced that figure by over one-third. The proposed number of units at the absolute threshold of a Large Project and the lack of candor from the developer suggest that this project would proceed without due concern for the community’s interests.
- b) Roadway Design. Multiple town officials have raised concerns about the roadway design. Specifically, the Fire Chief and the Building Inspector have concerns about the proposed roadway width and geometry and the sufficiency of same to accommodate emergency response vehicles. Additionally, the DPW Director expressed concern over the proposed sidewalk width and materials used for sidewalks. Given the scope of the proposal and the purported “pedestrian-friendly” nature of the project, the DPW Director suggests that greater specificity should be provided with respect to sidewalk placement, design, and materials. The Town’s Fire Chief continues to work to analyze the new proposal, and can be expected to advocate for adequate roadway width to provide for safe passage of emergency vehicles, and to seek clarification regarding whether and where on-street parking may be allowed. Moreover, these Town officials have requested that a traffic study be conducted at an early stage in the project, given the relatively high density of the project and the limited means of ingress and egress in the area. Specifically, the Town will need to plan whether any ways should be designated one-ways, and whether MassDOT will require roadway or sidewalk improvements on Main Street (Route 113).
- c) Public and Private Water Supply. The applicant has provided the fire flow analysis requested, and the Water Department’s analysis working with its consulting engineer is now underway. It is important to note that there are private wells near the project locus that serve local agricultural operations and residential abutters, who are rightly concerned that their water supply could be compromised by this large development. Based on anticipated water demands, and taking into account

known limitations on water supply, **the Board of Selectmen is concerned that the project’s water demands would exceed what the Town is authorized to draw pursuant to its DEP Water Management Act permit.** The process to amend its Water Management Act permit can take up to two years and cost tens of thousands of dollars, and is not presently budgeted nor part of the Water Department’s work plan. The Town has invested heavily in its water infrastructure, and at present is focused on overseeing two substantial capital upgrades including a new bedrock well and chemical treatment building, and a new water tower to replace the former aging tank (the combined cost of which approaches \$3M). Right now, in order to keep pace with current demand, the Water Commission routinely purchases water from Newburyport. Since 2008, the Town has purchased, on average, more than a quarter of its total water supply from the City of Newburyport, with that percentage increasing to, on average, over 30% per year since 2014. **This development would be expected to further exacerbate the Town’s need to purchase water from Newburyport to serve our local needs.**

- d) **Yield Plan.** While the updated Plan Set is not a proper Yield Plan, **the original Yield Plan included with the application and modified Plan Set appears to significantly overstate the site development potential based on the underlying zoning and other applicable regulations.** The Planning Board comment letters raise substantive concerns regarding the Yield Plan’s feasibility, and as previously noted the lack of definitive wetlands delineations causes significant uncertainty. To the extent the plan relies on a former 38-lot plan for valuation purposes, we have real concerns about conformity of that appraisal with existing industry standards. Further, the Town’s Health Department has witnessed numerous perc tests on this site over the course of years, and can attest to the challenging soil conditions. The Board of Selectmen remains skeptical that the development scenario shown on the Yield Plan, as modified, which would entail septic systems on each of the lots shown, is feasible. Our skepticism is further justified by a 2014 appraisal of the very same property (albeit minus the single-family house at 566 Main Street, which in the latest plan will remain) that concludes, after evaluating both an 8-lot and a 16-lot development scenario, that the 8-lot subdivision plan was a “more reliable planning model for appraisal purposes.” To the extent that the Yield Plan is of material importance to MassHousing’s determination of site suitability, and/or to the Board of Appeals’ determination of whether conditions imposed on the proposed project would render the project “uneconomic” (in the event of a local comprehensive permit filing and review), **we request that MassHousing require the applicant to provide updated financial information and respond to documented concerns regarding the feasibility of the development scenario shown on the Plan Set.** If the Board is correct in its understanding that the Plan does not have a reasonable probability of being permitted in the form shown, we are concerned about the effect this could have on subsequent determinations of land value and the project economics.

Requests and Recommendations

- a) Local preference. The Town is aware of the procedural steps necessary to justify the allowance for local preference for a percentage of the proposed affordable units. While we believe that the proposal substantially exceeds what could be supported on the subject site, we do wish to convey the importance of establishing local preference for whatever number of affordable housing units may result from this proposal, and appreciate the sample materials provided by Cottage Advisors thus far. We understand the very real need for moderately priced housing to existing West Newbury residents and employees, and it is very important to the Board that local preference be applied to the maximum extent allowable. Our staff will proceed with the work necessary to satisfy the requirements necessary to apply local preference.
- b) Soundness of Application. We request that MassHousing require the applicant, prior to or within any filing for comprehensive permit, to address the many deficiencies and discrepancies identified in this letter, the Planning Board review letters, public comments previously provided and incorporated herein, and the comments of various Town officials. It will be important for the Zoning Board of Appeals to be able to rely on the accuracy of the engineering and supporting information provided by the applicant within a local permitting process, and that such plans be affirmatively finalized before any such review. As this latest plan modification shows, the Town's concerns about the Plan's finality and fluctuation are well founded. We are concerned that, if the Plan continues to change and these deficiencies and discrepancies are not addressed prior to applying for local permitting, this could result in significant inefficiency and delays in the Zoning Board of Appeals' ability to conduct its review in accordance with its responsibilities.
- c) Balance of Site Use. The intensive development of this parcel would result in the severing of an existing wildlife corridor extending from the Merrimack River to protected open space on the south side of Route 113, thereby threatening the habitats and life cycles of many animals, birds and aquatic life. We are aware that this area has been a nesting area for bald eagles, and provides feeding and stopover grounds for songbirds, water birds and raptors, just to name a few. The site plan would be significantly improved with expanded, connected open space, increased sidewalks in the housing area, and new trails linked to existing adjacent trail networks. **The Board of Selectmen restates its request for the establishment and maintenance of a formal easement or right of way through the subject property to allow the Myopia Hunt Club's annual fox hunt through the Town to continue into the future.**
- d) Environmental Impact. We are concerned with how lawn fertilizers will be used near the defined wetland areas, as are other Town officials that have continued to comment on this pressing issue since our last comment letter. **Given the fragile and diverse ecosystem of the project locus, this concern cannot be overstated.** We recommend that predetermined snow storage areas be identified throughout

the development area to ensure that roadway snow runoff is treated before entering any wetland. We understand that issues such as this may properly be addressed within the local permitting process, but due to the sensitivity of the site and the extent to which the site is proposed to be developed/disturbed, we raise this particular concern now in hopes that the developer could incorporate mitigating elements into its eventual proposal. An organized group of abutters has submitted a well-conceived comment letter, despite the limited and incomplete application materials, and asserts that there are jurisdictional streams omitted from the application plans that have the effect of disguising the environmental sensitivity of the project locus. The Board of Selectmen also has significant concerns regarding the potential presence of vernal pools and protected species habitat within the project locus, and we believe that the question of whether protected habitat is present must be addressed prior to consideration of a local comprehensive permit. Notably, we have been advised that bald eagles have chosen this area along the Merrimack River for nesting and reproduction; while no longer endangered, this species is of great importance to the area and to our nation. **Due to the number and range of environmental concerns presented by the proposal in this location, it would appear to be beneficial to all parties if MassHousing were to require the applicant to file an Environmental Notification Plan under the Massachusetts Environmental Policy Act, including review by the Natural Heritage and Endangered Species program personnel, sooner than later to allow for a more comprehensive review of the project's proposed environmental impacts and potential mitigation.**

- e) Shared Septic Treatment. The proposal reflects significant reliance on uphill sewage pumping as needed to convey effluent from the housing units to the proposed shared package treatment plant. The Board of Selectmen has significant concerns about the viability of this proposal, including the financial impact of long-term system operations and maintenance on the residents of the development. Significantly, lift station 3 appears to be located within close proximity to wetlands and in an area of steep slopes. Additionally, the leaching fields are in close proximity to where the wetlands originate. A man-made dam exists on the wetlands area near the leaching field, which caused flooding of Coffin Street some years ago. Collectively, these circumstances create a concern that lift station 3 and the leaching field could contaminate nearby wetlands and wells. These wetlands flow towards core habitats and critical landscapes, as delineated by Massachusetts Biomap 2, and the Indian and Merrimack Rivers, and it is therefore critical that these resources be adequately protected. **The Board requests that MassHousing require the applicant to initiate the application process for a groundwater discharge permit with MassDEP, and to undertake a hydrogeologic evaluation as required under the Commonwealth's Clean Water Act regulations.** The Town would also seek that the developer establish a capital fund or long-term bonding to allow for repair of future issues with the sanitary system. A failure in such a system could severely impair the wells of abutting properties and the tributaries draining to the Merrimack River. If not managed (and funded)

properly, this proposed private sewage conveyance and disposal system could become a problem for the Town, including its mandate to adhere to our MS4 Stormwater Management Permit, yet its proposed status as a private conveyance and disposal system on private land could leave the Town with very limited options to address any system failure.

The Board has incorporated into this letter the many comments it continues to receive during the extended public comment period for this project eligibility / site approval process, including comments from local residents and Town Departments, Boards, Commissions and Committees.

In reviewing the totality of the application, including the significant discrepancies or uncertainties created by its recent amendment, pending before MassHousing, it does not appear that a Project Eligibility / Site Approval letter would be justified for the proposed project in the proposed location. **We would therefore urge MassHousing to deny the pending application.**

In the event that a Project Eligibility / Site Approval is issued, we would respectfully request that MassHousing give full consideration to our comments, to those comments we have incorporated herein, and to other comments you have or may have received through this process. Specifically, we request that MassHousing attach conditions to any Project Eligibility / Site Approval letter it may issue, if any, in order to ensure that the deficiencies, inconsistencies and other concerns reflected in our submittal may be addressed by the applicant prior to any local filing of a comprehensive permit.

In the event that this proposal does proceed to the comprehensive permitting stage, the Town corresponded with MHP in December 2019 regarding a technical assistance grant. If a comprehensive permit application is filed locally, we would intend to seek a technical assistance grant from MHP in support of the Town's project review and its management of the permitting process.

Thank you for your consideration of this submittal, and for the opportunity to comment.

Signed,



David Archibald, Chair
West Newbury Board of Selectmen

On behalf of the Town of West Newbury Board of Selectmen
Authorized by unanimous 3-0 vote on August 3, 2020

Attachments