



Town of West Newbury

Board of Selectmen

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selectmen@wnewbury.org

June 16, 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 your letter of April 2, 2020, with regard to the application for 40B Site Approval submitted by Cottage Advisors LLC for property located at 28 Coffin Street and 566 Main Street in West Newbury.

The Board is appreciative of the extended time your office provided for comment, and we have found that this extension was absolutely necessary for our review, and our coordination of others' reviews, of this proposal. Since receiving the application, we have hosted a number of public meetings regarding the proposal, held an in-depth training on Ch. 40B led by our outside counsel KP Law, conducted a site visit, provided regular public updates at Board meetings and via the Town website, and through our staff have coordinated additional public meetings and trainings for our Board of Appeals. Our office has received more than two hundred public correspondences regarding this proposal.

This letter is accompanied by a number of correspondences we have received during this process, and which we append to and intend for inclusion with our letter. The technical expertise of our Town departments, Boards, Commissions, Committees and residents adds substantive value to the comments we provide, and in several instances we have incorporated others' comments by reference so as to minimize redundancy. In addition to your review of our letter, we urge you to carefully consider the attached correspondences.

We have organized our comments as follows:

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

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, 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.
- b) Information made available to project abutters and to West Newbury residents and officials has been piecemeal. We as a Board have tried to make information broadly available, via an initial public mailing to site abutters, a page on the Town website, periodic email updates, special Board of Selectmen meetings dedicated to this project, and regular updates at Board of Selectmen meetings. However, while the developer and/or his representative have “virtually attended” some of the public Board meetings and its 40B workshop, the developer has not yet presented the proposal publicly. Therefore residents, as well as other Town entities without direct jurisdiction, have needed to rely on the developer’s written application, and information received from Town staff, for information regarding the proposal.
- c) We would have expected that the developer would communicate with site abutters and other West Newbury residents more directly early in the process, and ideally prior to filing with MassHousing, in order to engage them in the process, and to reduce the potential for misinformation and misunderstanding. At one point since the current MassHousing process began, the developer did post a “fact sheet” to one of the local Facebook sites, but the information posted included some debatable, and in some cases incorrect, information.

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 proposal would increase the Town’s population by an estimated 10%.
- b) **The Board of Selectmen believe 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 etc.). Further, the site plan does not account for drainage infrastructure whatsoever, so does not appear to be feasible at the scale and configuration proposed.**
- c) The comments prepared by the West Newbury Planning Board, which are appended to and made part of our submittal, 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, and 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.
- d) The developer’s application materials represent that 66% of the property would end up as open space. However, upon examination of the plan, it appears that 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. The remaining undisturbed land on the proposed site consists of wetlands, areas of steep slopes, and areas located in or beyond an easement for high voltage transmission lines. Such land areas are already prohibited from development and have questionable value as open space.
 - e) Drainage structures and retention facilities are not shown on the site plan. It can be assumed that these facilities will require significant space and, therefore, that remaining open space within the developed areas will be utilized for this drainage infrastructure.
 - f) Wetland boundaries have not been verified by the Town through the Conservation Commission. The applicant filed an abbreviated notice of resource area delineation (ANRAD) 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, both location and number of housing units shown in close proximity to wetlands on the plan, and the number and extent of proposed wetlands crossings.
 - g) The application site plan 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 including 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.
 - h) The project locus is approximately 75 acres. However, a preliminary analysis undertaken by the Planning Board indicates that a total of about 38.8 acres – just over half of the total land area – would be considered “buildable” (i.e. not in wetlands or wetland buffers, slopes of less than 20%, not within or made inaccessible by the power line easement).
 - i) 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, it should be noted that there are no sidewalks from the development location to those facilities, and pedestrians and children would have to walk along State Highway 113, where there are limited shoulders, high traffic density, and high vehicular speeds to arrive at the cited areas.
 - j) Regardless of the developer’s representations made in the application, there is no public transportation in West Newbury. Despite multiple Town 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 in the foreseeable future.

- k) 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) Large Project Threshold. In West Newbury, which 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 as one that “involves construction of a number of housing units equal to 6% of all housing units in the municipality.” By this definition, a project greater than approximately 93 units would qualify as a Large Project. **This proposed project is 63% above that threshold.** In addition to exceeding the Large Project regulatory threshold, this proposal would substantially overburden the site, which has significant environmental and infrastructure constraints, and the proposal does not reflect the sustainable design standards set out in the Town's (June 2018) Housing Production Plan. The developer has verbally represented to Town representatives that the proposed development size of 152 units, give or take, is what he believes is necessary in order to make the project economically viable. If this is the case, because this scale of development substantially exceeds the Large Project threshold, it appears that the development may simply be infeasible in its proposed form.
- b) Public Water Supply. To date, information requested by the Water Department and necessary to conduct an analysis of the project's water needs has not been provided by the applicant. 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 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. 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.

- c) Yield Plan. The Yield Plan included with the application appears to significantly overstate the site development potential based on the underlying zoning and other applicable regulations. The Planning Board comment letter raises substantive concerns regarding the Yield Plan’s feasibility, and as previously noted the lack of definitive wetlands delineations causes significant uncertainty. 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 is highly skeptical that the development scenario shown on the Yield Plan, which would entail septic systems on each of the lots shown, is even remotely 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) 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 respond to documented concerns regarding the feasibility of the development scenario shown on the Yield Plan.** If the Board is correct in its understanding that the Yield 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) Site Control. It does not appear clear to the Board that the applicant has demonstrated site control as required in the 40B regulations. Prior to further consideration of the subject proposal, MassHousing should require that the applicant address this deficiency.
- b) 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 that may result from this proposal. 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.
- c) 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 the Planning Board review letter, a copy of which is appended to and incorporated by reference into this letter. It will

be important for the 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. We are concerned that, if these deficiencies and discrepancies are not addressed prior to applying for local permitting, this could result in significant inefficiency and delays in the Board of Appeals' ability to conduct its review in accordance with its responsibilities.

- d) Water Supply. We request that MassHousing require the applicant to provide the information requested by the West Newbury Water Department on April 27th to enable the local review of fire flow and domestic water capacity to continue.
- e) 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. The site plan would be significantly improved with expanded, connected open space. And, in the absence of sidewalks in the housing area, new trails linked to existing adjacent trail networks would benefit the public and the residents of the development. It should be specifically noted that the subject property has in the past been part of the route for the Myopia Hunt Club's fox hunt through the Town, an event that involves horseback riders and hounds. These events are significant to the historical and cultural flavor of the Town. **The Board of Selectmen strongly supports establishment and maintenance of a formal right of way through the subject property to allow this tradition to continue into the future.**
- f) Environmental Impact. We are concerned with how lawn fertilizers will be used near the defined wetland areas. 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. The Board of Selectmen also has significant concerns regarding the potential presence of 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. **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 (ENF) under the Massachusetts Environmental Policy Act (MEPA), including review by the Natural Heritage and Endangered Species (NHESP) program personnel, sooner than later to allow for a more comprehensive review of the project's proposed environmental impacts and potential mitigation.**
- g) 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. **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 seek that the developer establish a capital fund or long-term bonding to allow for repair of any 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 attaches to this letter many comments received by our office during the public comment period for this project eligibility / site approval process, including comments from Town Departments, Boards, Commissions and Committees, as well as from many local residents. The letters appended to our letter are incorporated into our submittal by reference, and in many instances include detailed review that we believe will be helpful to MassHousing in your consideration of this proposal.

In reviewing the totality of the application 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.**

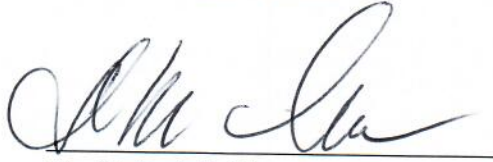
In the event that a Project Eligibility / Site Approval is issued, we would respectfully request that MassHousing give full consideration to our comments, to those comments we have appended hereto, and to other comments you have or may have received through this process. Specifically, we request that 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.

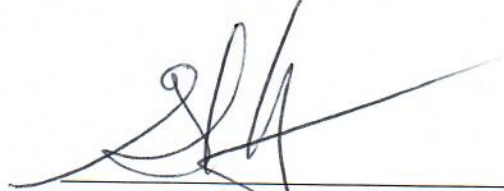
Thank you for your consideration of this submittal, and for the opportunity to comment.

Signed,

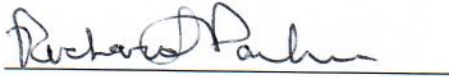
Board of Selectmen
Town of West Newbury



David Archibald
Chair



Glenn Kemper



Richard Parker

6/16/20
Date

Attachments