

August 18, 2015

Thomas Gleason,  
Executive Director  
MassHousing  
One Beacon Street  
Boston, MA 02108

RE: "Thorndike Place," Arlington, MA

Dear Executive Director Gleason:

Please accept this letter on behalf of the Board of Selectmen ("Selectmen") of the Town of Arlington ("Arlington") in reference to the application for project eligibility/site approval submitted to MassHousing by Arlington Land Realty, LLC (the "Applicant") for a development of two hundred and nineteen (219) units off of Dorothy Road in Arlington, Massachusetts ("Development"). For the reasons set forth in detail below, the Board of Selectmen respectfully advises that the Applicant's request for project eligibility/site approval cannot be granted under the standard of review employed by MassHousing. Accordingly the Board urges MassHousing to deny the Applicant's request for project eligibility/site approval.

In summary, our recommendation is based on our review of the Application, our personal knowledge of the locus and the immediate neighborhood, including the history of the site; of relevant environmental and infrastructural constraints; and of Arlington's robust and documented planning for affordable housing and growth management to reach two conclusions:

First, the Application fails to satisfy threshold requirements and policies of MassHousing designed to protect the public's interest and properly promote affordable housing. Second, and most importantly, the Application fails to address substantive issues particular to the site in a manner that would give this Board any confidence of the appropriateness of this project. As articulated by an Arlington resident who had expressed she had an "open mind" at the outset of a public meeting on same, presenting the "bare minimum" to MassHousing, this Board, and the public is not sufficient or acceptable given the very real and demonstrated threats to public health and safety posed by the proposed project.

As we discuss in detail below, while this Board appreciates the Applicant's efforts to present this project to us, and indeed we support the development of further affordable housing in Arlington, there is no rational support for issuing project eligibility approval for this project at this location given both threshold technical and substantive deficiencies readily apparent. Therefore, we urge MassHousing to deny the application.

### History of the Thorndike Place Site

As an initial matter, the Selectmen believe it important for MassHousing to understand the character and history of the site in question. (A detailed timeline of the Town's records of ownership and use of the site is annexed hereto as Attachment "A"). The Mugar family initially acquired 17.7 acres of land in the early 1950s with the intention of building a Star Market. At the outset, the Mugar family promised they would not develop the site with access through the residential streets abutting the property. Following the reconstruction of Route 2 in the 1960s, the Mugar family sought and were granted several zoning changes and special permits for various projects to develop the site over the thirty years that followed (a 20-story apartment building with 5-story office building, a 325,000 square foot office complex, and a 17-lot single family residential plan in 1990), all of which were eventually abandoned.

In 1992 the Metropolitan District Commission ("MDC") Land Acquisition Program ranked the site as the 12<sup>th</sup> highest priority acquisition target for conservation in its 37-municipality service area. See MDC Conservation Target Acquisition Letter, annexed hereto as Attachment "B-1." The Mugar family continued to explore development options, but Arlington began working to find means of acquiring the site for such conservation and open space purposes. Eventually, Arlington's 2000 Town Meeting voted to negotiate the purchase of the land (and again to "protect" the site in 2001), but at that same approximate time the Mugar family began forwarding a new proposal for a 300,000 square foot office complex. As with prior efforts to develop the locus, the proposed office complex development was abandoned.

Meanwhile, the MDC (now the Department of Conservation and Recreation) continued to stress the Thorndike site's priority for protection, noting in an October 19, 2000 letter to the Executive Office of Environmental Affairs that the site was one of the most significant undeveloped open spaces in the Boston Metropolitan area. See MDC-EOEA Letter annexed hereto as Attachment "B-2." Following receipt of the instant application, Arlington confirmed with the Department of Conservation and Recreation that the site was and is identified as a priority for protection and preservation. See July 21, 2015 Letter of DCR Commissioner Sanchez annexed hereto as Attachment "B-3." Protection of the locus is not a new idea, nor borne out of reaction to the current proposal. For over fifteen years, the Town, the Arlington Land Trust, and the Trust for Public Land have made good faith and credible offers to purchase the site.

Similarly, the Town has expended considerable time and resources developing both a Master Plan and Open Space Plan, which both codify the Town's decades-long position that the site in question must be conserved and preserved as flood-prone open space. As such, whenever the present developer approached Town officials about developing the site, they were encouraged instead to look at other sites to redevelop in Arlington, especially the former Symmes Hospital site which was fully permitted and available for a number of years.

The history between the Town and various parties seeking development of the site has never reflected a lack of respect for the Mugar family nor opposition to development, including affordable housing in Arlington. Quite the contrary. Throughout the Fifties, Sixties, and Seventies, the Town largely supported the Mugar's designs. However, as evidenced by the Commonwealth's own determinations relating to this site as far back as 1992, much has been learned about conservation and environmentally sustainable, smart, and appropriate municipal planning and development. As discussed in detail below, the proposed project for this locus is anything but sustainable, smart or appropriate and we trust that MassHousing will reject the application for project eligibility approval now, before additional private and public resources are expended.

1. The development does not qualify for the program under which it has applied, nor does it have any eligible federal or state subsidy as required under GL. c. 40B

The Applicant has ostensibly filed an "Application for Chapter 40B Project Eligibility/Site Approval for MassHousing-Financed and New England Fund (NEF) Rental Projects." On the Application Checklist, the Applicant has checked the box indicating that it has submitted an "NEF Lender Letter of Interest." Such submission is required under Section 5.1 of the Application, which calls for a "letter of interest from a current Federal Home Loan Bank of Boston (FHLBB) member bank," containing "confirmation that the Bank is a current FHLBB member bank and will specifically use NEF funds for the proposed development."

There is no letter of interest from a current FHLBB member bank confirming that NEF funds will be used for the project. Instead, there is a letter from TD Bank *explicitly stating that it is not an NEF member bank*. Where the Applicant has not submitted even the fig leaf of a federal subsidy that is an NEF letter - while baldly asserting that it has - MassHousing should conduct no further review of Application. Certainly no approval of this Application can be forthcoming where - as clearly stated on the application form - "[i]n order to issue Site Approval, MassHousing must find (as required by 760 CMR 56.04 (4)) that the Proposed Project is . . . fundable under the applicable program."

The Applicant has submitted no evidence of any other federal or state subsidy, without which the project does not qualify for *any* approval by MassHousing. The Application should be denied on this ground alone.

2. The Applicant has failed to submit evidence of Site Control and accordingly is ineligible for any approval

As a second threshold deficiency for project eligibility/site approval, the Applicant also failed to demonstrate site control. Absent evidence of site control, MassHousing should deny further review of the Application, and certainly cannot grant approval.

In Section 4, the Applicant has checked the box indicating that the project site is “Owned (or ground leased) by the Development Entity or Applicant.”<sup>1</sup> The Applicant is Arlington Land Realty, LLC. There is no documentation of the claim that Arlington Land Realty, LLC owns (or has a ground lease for) the project site, or otherwise has the requisite site control.

The Applicant has attached a 2009 deed into the Arlington Land Realty Trust (consideration: \$10.00). The Applicant attaches no deed, option, or purchase and sale agreement purporting to convey the project site to the Applicant, Arlington Land Realty, LLC.

Under the application section for “Deeds or Ground Leases,” the Applicant provides only the following information: “November 12, 2009 - transfer to LLC May 19, 2015,” and a purchase price of \$1,500,000. Again, there is no *evidence* of any transfer of the project site into the Applicant - perhaps the “LLC” referenced above - on May 19, 2015, also the date of the Application to MassHousing. Nor is there any documentation to support the \$1,500,000 purchase price referenced with respect to the May 15, 2015 “transfer.” Further, to the extent the Applicant is attempting to pass off the deed into the Arlington Land Realty Trust as evidence of site control, the Applicant has failed to submit “copies of all plans referenced” in the deed, as explicitly required in the application. The Applicant's claim to “ownership” of “the entire site as shown on the site layout plans” is thus wholly unsupported.

The Selectmen are aware of the low evidentiary bar applied by MassHousing during the project eligibility/site approval process. Yet we assume that a *notation on the application itself* stating “transfer to LLC May 19, 2015” cannot possibly suffice as evidence that the Applicant has site control. The fact that the entities are reported as related does not obviate the need for some such evidence. Hence, as there is no support in the Application for a finding that the Applicant controls the site, as required by 760 CRM 56.04 (4), the Application must be denied.

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<sup>1</sup> Confusingly, the Applicant has indicated that the terms “Grantor/Seller” and “Grantee/Buyer” are “N/A,” or not applicable, but has checked the box indicating that the “Grantee/Buyer” is the “Developer Entity.” In the section for Purchase and Sale Agreements or Option Agreement, the Applicant has identified the Grantor/Seller as Arlington Land Realty Trust, and the Grantee/Buyer as Arlington Land Realty LLC, but has also indicated that the terms Grantor/Seller and Grantee/Buyer are “N/A.” There either exists a Grantor/Seller and a Grantee/Buyer, or there does not; there exists either a deed, or a purchase and sale agreement - or perhaps neither - but there should be a single answer.

3. The Application on its face violates MassHousing's Land Acquisition Value policy

As noted above, the Applicant has stated a purchase price for the project site of \$1,500,000. See Section 4 of the Application, "Site Control." Elsewhere in the Application - see Section 5, "Financial Information" - the Applicant indicated a site acquisition cost of \$4,100,000.00. The Applicant provides the figure of \$4,100,000 not only as the "pre-permit land value" - unsupported by any appraisal - but also as the "Actual Acquisition Cost" - that is, the amount the Applicant *in fact* has paid, or will pay for the property.<sup>2</sup> See p. 14-15 (emphasis supplied). There are no documents supporting the assertion that the Applicant has paid, or will pay \$4,100,000 for the project locus.

The Applicant's claim to a totally fictitious site acquisition cost violates MassHousing's Land Acquisition Value policy. Further, it calls into question the validity of other pro forma values provided by the Applicant, and prevents MassHousing from making the required findings that the project is "financially feasible" and "consistent with Chapter 40B Guidelines." As MassHousing is aware, a fictitious and inflated land valuation (in addition to being a possible violation of federal and state law) was grounds for the agency's withdrawal of a site approval letter for a comprehensive permit project in Sharon. In this case, the agency is aware of the Applicant's inflated land value *prior* to issuing any approval, and should deny the application outright based on this misrepresentation.

4. The Initial Capital Budget contains unsupported and contrived costs that serve to disguise the true costs of the project and profit to the developer

As a related threshold matter, the Initial Capital Budget provided by the Applicant includes vague and unexplained expenses, which intentional or not, serve to obscure the true costs of the project, and the profit to the developer. The hard costs portion of the pro forma include a \$2,203,440.00 contingency, and an additional \$2,250,000.00 for unidentified "Unusual Site Conditions/Other Site Work (fully half of the site work cost). The soft costs portion of the pro forma contains a \$295,000.00 contingency; \$42,000.00 in unidentified "costs to others"; and an *additional* \$1,540,922.00 in unidentified "other development soft costs."<sup>3</sup>

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<sup>2</sup> Again, there being no documentation of the alleged transfer to the Applicant, it is unknown when such transaction has occurred or will occur.

<sup>3</sup> To the extent the Applicant's explanation for hard costs in particular is rooted in concerns about unknown "unusual" site conditions rather than ambiguous budgeting, this Board is made only that much more concerned that the site is substantively inappropriate for a development of this scale. At our August 12, 2015 Meeting with the Applicant Selectman Byrne inquired as what such costs represent, and the Applicant responded that they would not discuss it at this time.

Simply stated, this Board suggests that contingency costs within a comprehensive permit pro forma are nothing other than a means to increase the project's costs on paper, so as to justify an increased number of units "needed" for the project to be financially feasible. The same is true of unidentified "other site work," "other costs," and "costs to others." In this case, the pro forma's contingency and unidentified costs including a total \$4,306,362 serve no more than to disguise developer profits for which comprehensive permit projects are renowned.<sup>4</sup> In sum, where the Application at best reflects a lack of transparency on site control, land valuation, and budgeting, the Board trusts that MassHousing can appreciate that each these threshold deficiencies individually and collectively merit denial of this Application.

5. The proposed development is ill-suited to the project site, which is comprised largely of unbuildable wetlands and is located in a Flood Hazard Zone

According to the Applicant, the total area of the project site is 17.7 acres. Of this total area, the Applicant states that 11.5 acres, plus or minus, are wetlands.<sup>5</sup> The Applicant indicates that the wetland resources are "BVW/BLSF" - Bordering Vegetated Wetlands and Bordering Land Subject to Flooding, but as no application has been made to the Arlington Conservation Commission for a delineation or Order of Conditions under the Wetlands Protection Act or the Arlington Wetlands Bylaw, the accuracy of the Applicant's

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<sup>4</sup> As MassHousing is aware, any profit in excess of that allowed by the subsidy program is required to be returned to the municipality, not retained by the developer. The Selectmen are advised that the Town of Grafton was recently successful in settling a \$54M lawsuit regarding the retention of excess profits from a developer in a NEF project. Without suggesting any inappropriate involvement on its part, we note that the 40B consulting firm on that project prepared the instant Application, highlighting that even if MassHousing considers these pro formas standard practice in the past, such vague budgeting at the outset present real dangers for mismanagement with weighty consequences.

<sup>5</sup> The Applicant appears to have no understanding of the function or value of wetland resources and insults the residents of Arlington—and the citizens of the Commonwealth—regarding their concerns for the protection of the same. The Applicant describes the site as "wild, unkempt, and illegally dumped on for years" and promises that "the proposed project greatly improves site conditions." Setting aside the question of how construction of six buildings, parking, roadways and related infrastructure in and adjacent to wetlands will "improve" the resource, how else should functioning wetlands appear, other than "wild"? As for the property being "illegally dumped on for years," one might ask why the Arlington Land Realty Trust - owner of the property since 2009 and an entity related to the Applicant - allowed the property to accumulate refuse, as depicted in the photographs submitted. Based upon the condition of the wetland resources, it appears as if there have been and continue to be, violations of the Wetlands Protection Act and the Arlington Wetlands Bylaw. The Town reserves all rights to pursue enforcement of these apparent violations before the Department of Environmental Protection and the Courts.

estimate has not been confirmed, nor has the presence of additional wetland resources protected under the Act or Bylaw been ruled out. Further, the Applicant's estimate fails to take into consideration resources protected under Arlington's Wetlands Bylaw and Zoning Bylaw. Even using the Applicant's figure of 11.5 acres of wetlands on the property, this leaves a buildable area of 5.6 acres, into which the Applicant proposes to cram 219 units in six buildings, required parking, related construction and extensive site clearing and grading. The constraints imposed by the predominance of wetlands on the site—including well documented flood hazard zones—necessitates a crowding of buildings, roadways, parking, and infrastructure onto a small portion of upland, virtually covering it with impervious surface. In fact, the project plans illustrate that the proposed project cannot even be wedged into the upland area of the property. Portions of several buildings are located in resource areas and in buffer zones and the project will require the filling of wetlands in a manner and quantity the Applicant has failed to disclose. The agency cannot possibly conclude that “the conceptual project design is generally appropriate for the site on which it is located . . .” See 760 CMR 56.04(4)(c).

Further, the Applicant has requested waiver of provisions in the Arlington Wetlands Bylaw and Zoning Bylaw, including those pertaining to the Inland Wetland District, a resource area located on the property. Simply put, the project cannot be built without destruction of a significant resource area protected under the Bylaw, *even if* the project could be constructed in conformance with the Wetlands Protection Act<sup>6</sup>.

Waiver is sought from the Bylaw's prohibition on new habitable structures in the Inland Wetlands District, and from the prohibition on earthwork in the District. Again, the project cannot be built without destruction of a significant resource area protected under the Bylaw. The Applicant provides no assessment or even acknowledgment of the negative impacts on this protected resource area. In fact, the Applicant is so dismissive of the Bylaw's protection of the Inland Wetland District that it has not bothered to indicate its boundaries on the project plans submitted. Without information regarding the Inland Wetland District and the impacts of the proposed project on this resource, MassHousing is in no position to approve site eligibility. In fact, MassHousing is in no position to evaluate site eligibility. It would be against basic tenets of public policy, let alone common sense, for MassHousing to approve an application for project eligibility approval where the applicant freely admitted to the Board of Selectmen on August 12, 2015 that it has no idea—none—whether the undisputed extent of wetland resources on the locus make constructing the project possible. The Town's engineering and wetlands consultant has informed the Board that they question “the ability of the Site to accommodate the project”. We logically ask, therefore, how MassHousing could issue project eligibility approval

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<sup>6</sup> The applicant has provided no information—none—that the project can be constructed in compliance with the federal Clean Water Act or the Commonwealth's Wetland Protection Act and based upon our knowledge of the immediate and surrounding land areas, we believe that the project is not able to so comply.

where the applicant itself has provided no information upon which site eligibility can be evaluated. Approval must accordingly be denied.

The Applicant seeks numerous waivers from other provisions of the Zoning and Wetlands Bylaws and Wetlands Regulations - for example, from requirements regarding compensatory flood storage; from environmental design review (on the grounds that the ENF "will provide the same level of review and comment" - a falsity); and, generally, "a waiver to forgo full compliance with the Arlington Wetlands Bylaw." Arlington's Wetlands Bylaw and Regulations are the result of a careful process of resource evaluation, and comprise a rational scheme to protect wetland resources of great value to the locus, neighborhood, Town and region. The proposed project makes no attempt to comply with such rational requirements - in fact, the Applicant presumes their irrelevance. G.L. c. 40B allows the possible relaxation of certain local requirements where "consistent with local needs," but nowhere in the law is found support for ignoring such regulations wholesale.

Further, and as the Applicant has observed, the site lies in a Flood Zone and both the project parcel and adjacent properties are subject to flooding. Any normative review of these facts would result in a conclusion that intensive development of the site proposed is inappropriate. Even the review performed pursuant to 760 CMR 56.04 should result in such finding, where it is beyond debate that construction in such areas poses a threat not only to such construction but also to adjacent properties. For this reason, MassHousing should deny project eligibility approval as the proposed project cannot comport with the requirements of 760 CMR 56.04(4)(c) ("that the conceptual project design is generally appropriate for the site on which it is located, taking into consideration factors that may include proposed use, conceptual site plan and building massing, topography, environmental resources, and integration into existing development patterns.")

6. The proposed development is entirely inconsistent with Arlington's Comprehensive Plan

Arlington has an extensive history of master planning for growth and development through a robust public process, culminating most recently in the update of the Town's Comprehensive Plan. The Comprehensive Plan balances residential and commercial growth with preservation of natural resources and open space, according to sound planning principles and in consideration of Arlington's existing development patterns. Even the Housing Appeals Committee has recognized the legitimacy of such planning efforts. See 28 Clay Street v. Middleborough Board of Appeals, No. 08-06, September 28, 2009.

The Comprehensive Plan designates certain areas of Arlington appropriate for increased or intensive housing development. The proposed site is decidedly not one of them. The proposed site is not located within or near an existing area of concentrated development, nor is it within or near any area designated in the Comprehensive Plan as appropriate for future concentrated development. To the contrary, it is a parcel located significantly distant from any commercial activity. This is directly *contrary* to numerous goals and strategies of the Comprehensive Plan, including but not limited to: the promotion



of concentrated development, the reuse and revitalization of existing buildings, the creation of transit-oriented development and the promotion of walkable development<sup>7</sup>.

Although MassHousing is not a planning agency, surely the agency recognizes that consistency with a municipal comprehensive plan is a means to measure a project's compliance with 760 CMR 56.04(4)(c): "that the conceptual project design is generally appropriate for the site on which it is located, taking into consideration factors that may include proposed use, conceptual site plan and building massing, topography, environmental resources, and integration into existing development patterns." Inconsistent with Arlington's Comprehensive Plan, this project fails such measure and the Application must be denied.

7. The Project fails to comply with Arlington's Housing Plan

Arlington also has an extensive history of planning for, encouraging, and producing affordable housing including historically and currently, supporting the use of the comprehensive permit statute. Its most recent Housing Plan contains goals and strategies for the development of affordable housing for particular populations whose needs have been documented in a housing study.

The proposed project meets none of these goals. Inconsistent with Arlington's Housing Plan, this project fails the measure of 760 CMR 56.04(4)(c) and the Application must be denied.

8. The proposed project violates the Town's Open Space Plan

As part of its master planning process, the Town has developed an Open Space Plan to balance its expected growth, development, and intensified built environment.<sup>8</sup> As a substantially built-out community, Arlington has limited opportunities to preserve the open space that is vital to communities - a value that even G.L. c. 40B recognizes as significant. See G.L. c. 40B, s. 21 (including, as a component of consistency with local needs, "the need to . . . preserve open spaces").

For decades, both the Commonwealth and the Town have identified the proposed project site as a priority parcel for acquisition due to its unusually high value as an environmental resource within the greater Boston metropolitan area.

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<sup>7</sup> Contrary to any suggestion by the Applicant, this is an entirely car-oriented development. It is located adjacent to Route 2 and is not walkable to stores, restaurants, or services.

<sup>8</sup> The Open Space Plan has been adopted and endorsed by both the Conservation Commission and Planning Board entitling the Plan to various presumptions found in 760 CMR 56.00 et seq.

The proposed project entails the crowding of buildings, parking, and related development at the front of the parcel; the filling of state jurisdictional wetlands; and the obliteration of locally-protected wetlands. Further, it proposes a virtual wall of buildings - four stories and fifty feet in height - across the entire frontage of the parcel. Together with its location remote from existing development, the project manages to speak negatively to *every factor* MassHousing purports to consider in the site approval process. See 760 CMR 56.04(4)(c) ("that the conceptual project design is generally appropriate for the site on which it is located, taking into consideration factors that may include *proposed use, conceptual site plan and building massing, topography, environmental resources, and integration into existing development patterns*") (emphasis supplied).

9. The proposed development is wholly out of character with its neighborhood with respect to density, scale, massing and height of buildings

Adjacent to the project site is a neighborhood of single and two family homes. The Applicant proposes a 219-unit project on a buildable parcel of five or so acres, yielding a density, by the Applicant's estimation, of 43.8 units per acre. This density is entirely out of character with the adjacent residential neighborhood, with no context or justification other than maximizing developer profit. There are areas of Arlington with existing dense development, or targeted by the Town for such dense development. The project site is not one of them. Moreover, the density of the neighborhood proposed for this project exceeds the density required by G.L. c.40R, et seq. and, remarkably, 22% of the housing units within the immediate neighborhood are included in the Town's Subsidized Housing Inventory as maintained by the Commonwealth. Adding a 219 unit residential project to this immediate neighborhood is completely inconsistent with one of the most well accepted principles of constructing affordable housing, that is, to ensure even distribution of the same throughout the municipality and not concentrated in any particular neighborhood.

There are no large-scale residential or commercial buildings proximate to the upland portion of the site. The project introduces into the existing single-family neighborhood massive, wall-like buildings that are also wholly out of scale and character with the adjacent homes and streetscape. The two main buildings—with a highly austere design stretch across the width of the property, near its frontage, to a height of fifty-three (53) feet. That several townhomes are proposed in front of a portion of the fifty-three foot buildings does not mitigate the visual impact of the larger buildings. The massing, scale and height of these buildings dwarf neighboring residences and wall off the wetlands area behind the project.

Unless MassHousing has concluded that the character and fabric of existing neighborhoods are irrelevant; that visual impacts on a streetscape and neighboring residences are irrelevant - in short, that the context of a proposed project may be ignored in its entirety - this Application must be denied. See 760 CMR 56.04(4)(c) ("that the conceptual project design is generally appropriate for the site on which it is located, taking

into consideration factors that may include proposed use, *conceptual site plan and building massing, topography, environmental resources, and integration into existing development patterns*")(emphasis supplied).

10. The proposed development will generate traffic far in excess of what its location can sustain

The project site is constrained by Route 2 along one side and Town-owned land along part of another. All ingress and egress from the project site will be to the local road network that currently serves the surrounding single-family neighborhood. This road network does not have the capacity - nor can it be improved to have the capacity - for the hundreds of car trips to be generated daily by this project. The road network of this neighborhood is constrained by the simple lack of space for expansion or improvement.

In addition, for decades the Board of Selectment has been asked by neighborhood residents to stop the use of the neighborhood as a "cut-through" between Lake Street and Massachusetts Avenue. It defies common sense to endorse a project in an area that cannot accommodate existing traffic and cannot be conditioned to make needed improvements. As MassHousing should know by its site investigation, there is no traffic engineering improvements that are feasible to safely shoehorn this project into this neighborhood.

The Application should be denied where it is clearly not "generally appropriate" for the site.

11. The Project Scores Zero (0) on MassHousing's Smart Growth Criteria Scorecard.

Contrary to the Applicant's claims, this project does not represent "Sustainable Development." Instead, it fails to meet each of MassHousing's "Smart Growth Criteria," which incorporate the Commonwealth's "Sustainable Development Principles."

- The project does not "contribute to revitalization of town center"
- The project does not "preserve and reuse" historic structures;
- The project does not have a "letter of support from the Chief Elected Official";
- The project cannot be said to "concentrate development" - unless by "concentrate" is meant "*cover the entire upland area and portions of wetlands with buildings, parking lots and infrastructure*";
- The project does not "restore and enhance the environment";
- The project is not "fair"; it does not "improve the neighborhood" or include a "concerted public participation effort";

- The project does not “conserve resources”;
- The project provides few realistic "transportation choice[s]”; contrary to the Applicant's suggestion, the site is not walkable to the Red Line; the project is isolated from commerce and car-dependent; and a bike trail is not a realistic year-round transit option
- The project does not “increase job opportunities”;
- The project does not “foster sustainable businesses”; and
- The project does not “plan regionally”.

With a score of zero (0) on MassHousing's own “Scorecard,” we assume that the agency cannot but reject this Application. If approval is granted notwithstanding the project's failure to conform to the criteria, the criteria are effectively rendered meaningless..

12. The Applicant has failed to provide a complete application

The Applicant has failed to include with its application a number of required documents and information. The following is just a sampling:

- The Applicant has declined to provide a Marketing Study, stating that it available only on request. This is a requirement of the Application.
- The Applicant has declined to provide a Flood Insurance Rate Map for the project site . This is a requirement of the Application.
- The Applicant has failed to provide an Existing Conditions plan stamped by a registered engineer. This is a requirement of the Application. Instead, for an Existing Conditions Plan, the Applicant has submitted an unstamped plan bearing the notation: “This document is provided by Borrego Solar Systems Inc. to facilitate the sale and installation of a solar power system from Borrego Solar Systems Inc. Reproduction, release, or utilization for any other purpose without prior written consent is strictly prohibited.”
- The Applicant has failed to identify the 40B projects in which consultant SEB "has had an interest," including information as to whether such projects have been constructed and whether cost certification has been conducted. The Applicant states only that “Consultant SEB/has many

years/40B experience”; the brochure-type addendum on SEB provides no further information, although it does have a photograph containing a dog.<sup>9</sup>

- The Applicant has failed to explain the status of the twelve for-sale townhouse units proposed. This Application is ostensibly for approval of a 219-unit rental project. Yet there is a hand-scrawled note - "Addendum to Rental Application - Twelve Townhomes for Sale" - on an unnumbered page after p. 29. This component of the project appears to have its own budget - including *a separate land acquisition cost of \$1,000,000*. There is no effort to explain how the budget for this 12-unit ownership project relates to the budget for the rental project. In fact, it is unclear whether the 12 townhouses are part of the 40B project.
- As noted above, the Applicant has failed to provide a NEF lender letter. This is a requirement of the Application.
- As noted above, the Applicant has failed to provide evidence that the Applicant, Arlington Land Realty, LLC has site control. This is a requirement of the Application.

For all the reasons noted above, we see no rational means of MassHousing issuing a project eligibility letter for the proposed project. Assuming *arguendo* that MassHousing does not enforce its own regulations, policies and normative guidelines for land development and issue a project eligibility letter for this proposal, we request that the following minimum conditions be imposed:

1. The Applicant should be required to provide evidence that has site control and a NEF member bank lender;
2. The Applicant should be required to provide evidence that the land's value *and purchase price* equals \$4,100,00 as stated in its development budget, and otherwise complies with MassHousing's Land Acquisition Value Policy;
3. The applicant should be required to submit supporting documentation for its development budget, and submit a revised pro forma without inclusion of contingency costs or unidentified "other" costs;

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<sup>9</sup> It is not disputed that SEB generally, and Robert Engler in particular, have been involved in hundreds of 40B projects over many decades and that James Stockard, a former partner of SEB, is a member of the Housing Appeals Committee. The point is that the Application requires detailed information on the experience of all "team members," which the Applicant asserts SEB to be and precisely how SEB was introduced to the Board of Selectmen during the applicant's minimal presentation on August 12, 2015.

4. The Applicant should be required to submit a revised project application consistent with the Town's Comprehensive Plan and Housing Plan;
5. The Applicant should be required to submit a revised project application with a proposed density, scale, massing and height consistent with the context of the project site;
6. The Applicant should be required to submit a revised project application that both indicates the boundaries of the Inland Wetland Resource areas and demonstrates that the project can be constructed consistent with the Arlington Wetlands Bylaw and relevant provisions of the Zoning Bylaw;
7. The Applicant should be required to submit a revised project application that is consistent with the MassHousing's "Smart Growth Criteria"
8. The applicant should be informed that the Town of Arlington will not grant wholesale waivers from local regulations designed to protect wetland resources or those designed to protect public health and safety.
9. The applicant should be informed that the Town of Arlington has achieved the "1.5.% safe harbor" provision of the relevant regulations (760 CMR 56.00 et seq.) and that the Board of Appeals will have the lawful ability of invoking the same should an application for a comprehensive permit be submitted for this project.

### Conclusion

During the Applicant's cursory presentation before the Board of Selectmen on August 12, 2015, it was apparent that neither the applicant nor its consultants have any understanding of the extent to which wetland resource areas dominate the locus or limitations such dominance has upon locus' development potential.

Similarly, it was clear that the Applicant has no understanding of the celebrated traffic and flooding issues surrounding the locus and immediate neighborhood. Any first year planning student, any credible developer and any competent site designer knows that developing a site requires as a first—*not as a final step*—the determination of a site's constraints and limitations. Outrageously, in this case, the Applicant has done the opposite. They have proposed a massive project first—without even a rudimentary evaluation of the site's constraints—and now seek local, state and federal endorsement of the same and its attendant drain of taxpayer resources.

Having been lectured to by the Applicant and its agents as to how the proposed plans are "preliminary" and "details will be provided during the Board of Appeals process", we ask MassHousing to prevent any further waste of public and private dollars and the potential destruction of a parcel of land agencies of the Commonwealth have long ago recognized as unique and deserving of perpetual protection.

We know, that MassHousing knows, that once a project eligibility letter is issued, the Applicant has little incentive to work with the host community and little incentive to do anything but wait out the hearing process for a chance to appear before the Housing Appeals Committee. We have little doubt that such a harsh and sad conclusion is accurate in the present case. MassHousing has an opportunity to end this process now for this ill fated and wholly inappropriate project.

We ask that MassHousing reject this application as the agency must—it violates every requirement, policy and standard the agency has established. Granting project eligibility approval for this project would make clear to the Commonwealth's 351 cities and towns that no project eligibility application would ever be bad enough to warrant disapproval.

On behalf of the Board of Selectmen of the Town of Arlington, please let me know if you have any questions or would like additional support for any of the comments made above. They are made with utmost seriousness.

Very truly yours,

On behalf of the Arlington Board of Selectmen as its Chairman,

Kevin F. Greeley

cc: Sen. Kenneth J. Donnelly

Rep. Sean Garballey

Rep. David M. Rogers