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March ___, 2021

By Electronic and First Class Mail

Ms. Jessica Malcolm
Manager of Planning and Programs
Massachusetts Housing Finance Agency
One Beacon Street
Boston, Massachusetts 02108

**Re: Notice of Proposed Revisions to “Thorndike Place,” Arlington, MA
(MassHousing ID #778/ #779)**

Dear Ms. Malcolm,

The Select Board of the Town of Arlington is in receipt of the March 8, 2021 Notice of Project Revision submitted to you by Arlington Land Realty, LLC (hereinafter “the Applicant”) relative to the Thorndike Place project proposed in Arlington. For the reasons set forth herein, the Board respectfully submits that the revisions to the project are both substantial and incongruous with MassHousing’s December 4, 2015 Site Approval/Project Eligibility determination. As such, this Board requests MassHousing determine that: 1) the changes submitted to you are substantial; and 2) that such changes materially and negatively impact your prior preliminary site approval.¹

The Board is aware of MassHousing’s stated policy that it will not normally revise or revoke a project eligibility letter in the interim period between the project eligibility and final approval stages. The Board believes such action is necessary here, however, in light of the material revisions the Applicant is now proposing in contradiction of the project eligibility findings.

¹ For the purposes of this letter, “site approval” and “project eligibility” are used interchangeably. A copy of your December 4, 2015 Project Eligibility/Site Approval Letter is annexed hereto for your convenience as Attachment “A.”

760 CMR 56.04(5) sets forth the standard for reviewing “substantial changes” to project which has received preliminary site approval and authorizes the Chief Executive Officer of a municipality (in Arlington, this Select Board) to request review before issuance of a decision on a Comprehensive Permit application. As noted in section 56.04 (5), “[o]nly the changes affecting the project eligibility requirements set forth at 760 CMR 56.04(1) shall be at issue in such review.” The three enumerated requirements are:

- (a) The Applicant shall be a public agency, a non-profit organization, or a Limited Dividend Organization;
- (b) The Project shall be fundable by a Subsidizing Agency under a Low or Moderate Income Housing subsidy program; and
- (c) The Applicant shall control the site.

760 CMR 56.04(1)(a)-(c).

With respect to criteria “(b)” it is important to reference the remainder of section 56.04(1), which states, “[c]ompliance with these project eligibility requirements shall be established by issuance of a *written determination of Project Eligibility by the Subsidizing Agency that contains all the findings required under 760 CMR 56.04(4)*, based upon its initial review of the Project and the Applicant’s qualifications in accordance with 760 CMR 56.04.”(emphasis added). Hence, these criteria include an examination of whether or not the Applicant’s proposed revisions are consistent with your previous findings of December 4, 2015 in order for the Project to continue to be “fundable by a Subsidizing Agency;” (i.e. MassHousing). Applied to this project, there are a wide range of proposed revisions that speak to MassHousing’s initial eligibility determination, which are now reviewable for their substantiality. A review of such revisions will show that they are substantial changes that conflict with the project eligibility findings.

In other words, contrary to the Applicant’s assertion in its notice letter, your examination of their proposed revisions should determine whether or not the Project as revised is substantially different from the one which you evaluated and approved as “fundable” under 760 CMR 56.04(4)(a)-(g). If you find the project is substantially different than the one you approved under such terms, you may then determine whether or not those substantial changes require modification of project eligibility or entirely void project eligibility. The Select Board believes the magnitude of the proposed changes warrants the latter determination; or alternatively, at a minimum the Applicant should be advised that the proposed revisions require modifications consistent with the terms of eligibility.

As applied to the Notice of Proposed Revisions, there are two categories of changes in which the revised project is both substantially changed from the Applicant’s original submissions for eligibility purposes, and further are materially inconsistent with MassHousing’s previous findings under 760 CMR 56.04(4):

- Removal of Six (6) “Transitional Zone” Townhouses from the Project; and
- Abandonment of Transit-Oriented Site Improvements and Access Points.

The Select Board appreciates that the 40B hearing process invites alterations and improvements based upon feedback from zoning boards, technical experts, and the public. It also respects the Arlington Zoning Board of Appeals' jurisdiction and hard work to evaluate a complex project under the rubric of c. 40B. In this instance however, these alterations stem from the site constraints highlighted to the Applicant and MassHousing at the outset of this project because of its limited access and proximity to wetland resources. Addressing one area of concern by exacerbating others does not render such proposed changes insubstantial or benign.

I. Appropriateness of Design & Removal of Townhouse Transitional Zone

In both the Applicant's submissions for Project Eligibility and MassHousing's approval thereof, the appropriateness of the project was tied heavily to the construction of six (6) duplex style townhouse buildings containing twelve (12) homeownership units² to serve as a buffer between the two and single family homes in the surrounding residential neighborhood and a four-story, large-scale apartment building proposed for the back of the site.

As proposed initially, the townhouses were to occupy the street frontage on Dorothy Road, providing a necessary buffer to the proposed apartment building to be located approximately 80 feet behind the townhouses and more than 150 feet from the road. These townhouses have been entirely eliminated from the revised project and replaced along the street frontage with a 172-unit apartment building³ that is only 23 feet off of Dorothy Road and which stretches along the road for approximately 450 feet. The foregoing proposed revisions are entirely inconsistent with a foundational premise of MassHousing's Approval.

As the Applicant stated to MassHousing to obtain its approval:

The townhouse units were designed as a transitional zone between the duplex and single family homes of the existing residential neighborhood to the north and east of the project and the larger proposed apartment building to the south. *The proposed two-story town homes are of a similar height, scale and spacing as the other homes along Dorothy Road. To reflect the character of the street, the townhouse units feature lap siding, pitched roofs and a welcoming front porches.*

See Application for Site Approval at 3.3. "Narrative Description to Design Approach."⁴ (emphasis added).

² An added benefit of the townhouses was that they would be developed as homeownership units. Their removal in the revised submission is a change in tenure type as well as building type which, per the initial eligibility letter, provides an independent basis for requiring the submission of a new site eligibility application. (See Project Eligibility Letter, at p. 5).

³ As further evidence of the scope of the proposed structure and its incompatibility with the surrounding neighborhood is, if built, the proposed apartment building would be the single largest apartment structure in the Town of Arlington.

⁴ The Applicant also highlighted the Townhouses as evidence of sustainable development through both the lenses of concentration of development and mixed use, and expansion of housing opportunities.

MassHousing was highly responsive to such claims, noting several times in its Site Approval Letter of December 4, 2015, the importance of the townhouses as a buffer to the proposed apartment building. Such references included the following:

“As stated the Project will include 6 duplex style townhouses and 1, four-story apartment building. Buildings have been sited with the goal of minimizing impacts on the surrounding streetscape, *with the townhouses located along Dorothy Road, closest to the Site entrance, and the larger building set back to minimize its observable bulk.*

Adjacent typology is residential development mainly comprised of one and two-family colonial style homes. *The proposed townhouses are sited along Dorothy Road and will complement the existing residential development of this street, as the townhouses are of a similar height, scale, and spacing as the other homes along Dorothy Road...[and] were designed as a transitional zone between the duplex and single-family homes...[and] reflect the character of the street.”*

See, Project Eligibility/Site Approval Letter, at Attachment “1” p. 8-9.

MassHousing further cited the value of the townhouses as essential for a transitional zone in assessing the Project’s relationship to adjacent streets and integration into existing development patterns. *Id.* at p. 9. As stated, the revised proposal both eliminates this “transitional zone” in its entirety and moves the similarly-scaled four-story apartment building *closer* to Dorothy Road; eliminating both the townhouses themselves and the eighty feet of distance between them and the original planned apartment building..

The Applicant contends that these revisions are the product of feedback meant to address concerns of the Zoning Board of Appeals and others. However, to this Board’s understanding, the extent of such feedback was primarily in the form of universally shared concerns that the original proposal was within wetlands resource areas. To maintain adherence to the project eligibility findings, the foregoing building limitations should have resulted in the Applicant re-scaling the proposed apartment building behind the townhouse transition zone. Instead, the Applicant abandoned adherence to the design requirements contained in Section 56.04(4)(c) and proposed the complete removal of the townhouses with an apartment building having no compatibility with its surrounding neighborhood.⁵ Although it is the Applicant’s prerogative to address one problem by creating or exacerbating another, such alterations taking place in the context of feedback about wetlands impacts or even the overall scope of the project does not

⁵ The Applicant’s asserted justification in its notice letter for the elimination of the townhouses – the removal of driveways – reveals a complete disregard for the legitimate concerns of those living in the neighborhood in which it wishes to build. Moreover, comparison of the prominent language contained in the Applicant’s project application concerning the importance of the townhouses as a transitional buffer with the bare mention in the notice letter within a footnote of the supposed compatibility of the relocated apartment building with the surrounding neighborhood further highlights the shortcomings of the revised proposal and its conflict with the project eligibility findings.

render it immune from being rightly considered a substantial change or contrary to a foundational element of MassHousing's Site Approval.

Indeed, the facts presented here following the removal of the townhouses are similar to those which led to MassHousing's denial of site approval/project eligibility in the 2017 Project Eligibility Application for "Medfield Meadows" (MH# 873). *See* January 31, 2017 Project Eligibility Letter of MassHousing re "Medfield Meadows," (MH#873) annexed hereto as Exhibit "B." In your denial of project eligibility relative to said application you noted that proposed three and four-story apartment buildings were not consistent with nearby existing building typology – single and two story homes in a residential neighborhood which would be overwhelmed by the "height, mass, and scale" of apartment buildings. Germane to the specific changes submitted to you in this matter, you noted that the Medfield Meadows Project did not "make a reasonable transition to this well established residential neighborhood." *Id.*

In your Site Approval Letter for this project you explicitly noted how important the Townhouses were to the relationship with the neighborhood in the same terms discussed in "Medfield Meadows," finding, "[t]he proposed townhouse units on Dorothy Road were designed as a transitional zone between the duplex and single family homes of the existing residential neighborhood to the North and East of the project and the larger proposed apartment building to the South." *See*, Project Eligibility/Site Approval Letter, at Attachment "1" p. 9. While this Board questioned whether the Townhouses were sufficient buffers between a long-standing single and two-family residential neighborhood, it cannot disagree with the palpable difference between a project with townhouses and one without.

As submitted by the applicant, the townhouse transitional zone presented the following in terms of presentation to the street, massing, height, and scale:



However, the revised proposal, which the Applicant urges you to consider an insubstantial change presents in stark contrast as follows⁶:



On its face, this revised proposal presents the very concerns that formed the basis for your denial of eligibility in a near-identical context. Where once were townhomes featuring spacing, height and mass similar to the existing homes in the neighborhood, there is now a large apartment building directly on the street with nothing to transition or buffer direct-abutters living in single family or two-family homes next to or across the street from the building. Accordingly, we respectfully ask you to deem the removal of these townhouses a substantial change; and further,

⁶ The Applicant's streetscape rendering, which it included as an attachment to its notice letter, is inaccurate as it fails to show, among other shortcomings, the main entry and the "semi-circular" access drive in the newly proposed apartment building. Moreover, the 3D streetscapes also included in the notice letter package at Exhibit "B" significantly overstate the width of Dorothy Road. Such inaccuracies have added significance here given that a primary issue before MassHousing is compatibility with the surrounding neighborhood.

one material enough that eligibility will require restoration of such townhouses with a re-scaling and re-siting of the apartment building behind the townhouses in a manner that complies with applicable environmental statutes, regulations and bylaws.

II. Site Appropriateness: Traffic & Transportation

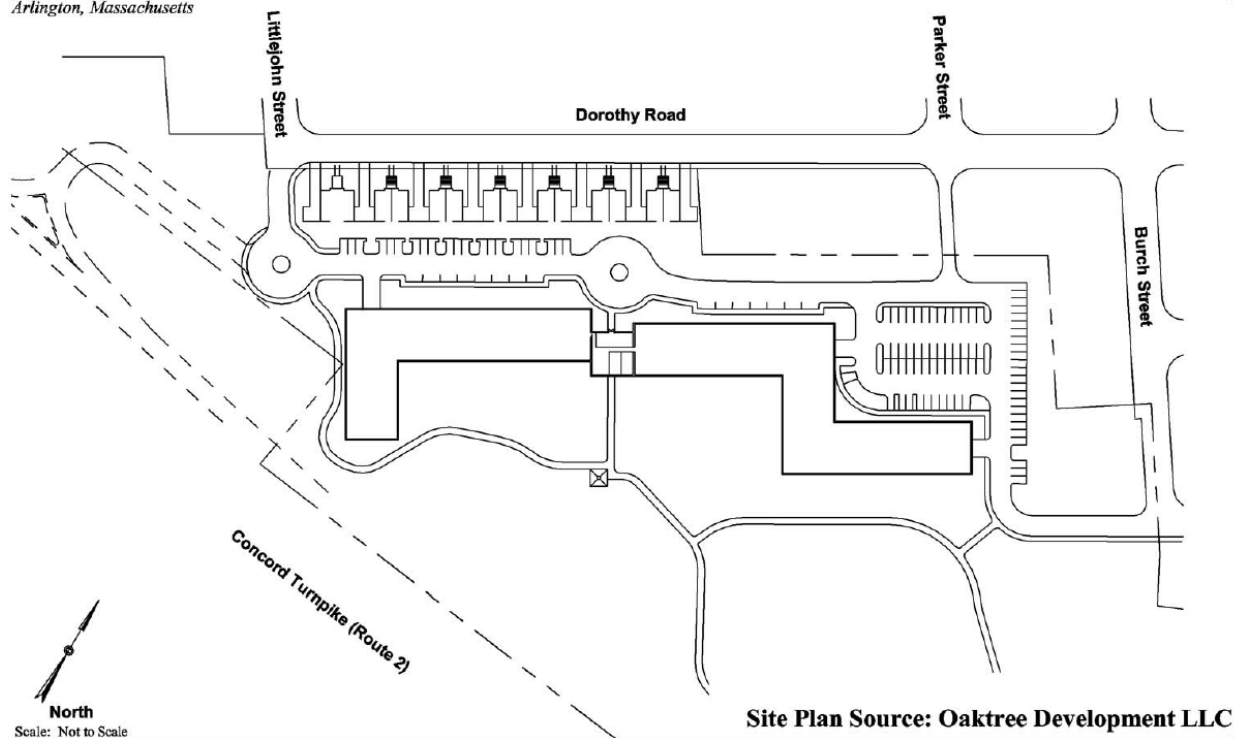
In addition to the foregoing, the project granted preliminary site approval by the revised proposal before you makes no mention of two critical elements to your traffic and transportation assessment and overall evaluation of site appropriateness. First, the site has no access whatsoever to or from Route 2 and no longer features direct access to Parker Street or Burch Street. In its revised form all vehicular access is provided by Little John Street and Dorothy Road, which are essentially the same street for the purposes of this project. Second, the revised project has no walking path improvements to connect the site to a more direct access points to the Alewife T Station or the Minuteman Bikepath. These elements were featured pieces in establishing the appropriateness of a site that still proposes to add parking for more than 200 cars to frequent narrow residential streets. Their abandonment constitutes further substantial and detrimental changes. Four vehicular access points and at least one supplementary pedestrian access point have been reduced to place all vehicular and pedestrian access to a single roadway.

A. Reduced Traffic Access Points & No Access from Route 2

One of MassHousing's principal findings with respect to the general appropriateness of the site for redevelopment was that "[t]he Site is accessible to Route 2, which borders the site." See Eligibility Letter at Attachment "1," Findings "(b), p. 8. Indeed, both the site plans submitted by the Applicant to MassHousing, and the April 2014 Traffic Impact and Access Study by MDM Transportation Consultants highlighted access to Route 2 a feature for MassHousing given the constraints of the modest neighborhood streets otherwise necessary for ingress and egress. As MDM's report stated:

"The proposed Site programming consists of developing the Site as a 207-unit residential development consisting of 193± rental apartment units and 14± townhouse/ condominium units. On-Site parking is planned for 171 garage spaces and 138 surface spaces for a total of approximately 309 parking spaces. The townhouse apartment units are proposed to have individual driveways directly onto Dorothy Road. Planned Site access/egress for the apartment units includes three unsignalized driveways including a full-access driveway connection to Dorothy Road, a full-access driveway along Burch Street, and a gated emergency-only driveway connection to Parker Street. An additional access/egress driveway that would be restricted to right-in/right-out movements along the Route 2/Lake Street westbound off-ramp is also evaluated as a potential alternative. The preliminary Site layout plan prepared by Oaktree Development LLC is presented in Figure 2"

See MDM Traffic Impact and Access Study at E.1 p. 2; and Figure 2. (emphasis added).



(As can be seen in MDM's "Figure 2," both the Rt. 2 Ramp and Burch Street and Parker Street access were prominent features of the Site Plans submitted for Site Approval to MassHousing)

This proposal was further referenced in Section E.4 "Access Improvements" of the MDM Study, stating:

The alternative driveway connection to the Route 2 westbound off-ramp to Lake Street is being considered as a more direct access to/from Route 2, thereby reducing dependence on local roadways. The Proponent is in consultation with MassDOT to identify land acquisition requirements that involve re-designation of access lines along the Route 2 property frontage and transfer of property to MassDOT that would mutually benefit both parties.

See MDM Traffic Impact and Access Study at E.1 p. 4

Neither the current revised project plan nor any plan submitted to the Arlington Zoning Board of Appeals within the Applicant's Comprehensive Permit have maintained or even proposed an off-ramp or any other direct access to Route 2. Indeed no alternatives whatsoever have been provided to achieve "reduc[ed] dependence of local roadways" by the Applicant in the Revised Project before you, with or without any of the other changes referenced by the Applicant in their recent Notice.

Additionally, as recited above, MDM's Traffic Impact and Access Study and the Applicant's proposal to you included site access and egress via three driveways – one on Dorothy Road, a second on Burch Street (at the intersection of Edith Road), and a third

emergency-only access point on Parker Street, all but one of which have been eliminated in the revised project.

Local traffic congestion concerns were one of the principal concerns raised by this Board in its August 18, 2015 and October 6, 2015 comments to MassHousing given the limitations of the narrow residential streets abutting the proposed site. This Board trusts that such representations to MassHousing were meaningful factors within your decision to grant project eligibility. As such, we strongly urge you to deem the abandonment of *any* alternative means for traffic to access the proposed site and the elimination of two vehicular access points to constitute a substantial change under 760 CMR 56.04(5) that is inconsistent with the bases of your eligibility determination.

B. Removal of Plans for Walking Path Access to Public Transit

In a similar vein, MassHousing's preliminary site approval was also predicated in part on the ease of access to public transit from the site via "an integrated system of sidewalks and a *path connection* to the nearby Minuteman Bike Path to facilitate bicycle use and accessibility and use of public transportation at the nearby Alewife MBTA station." See MDM Traffic Impact and Access Study at E.3, p. 3; E.5, p. 4; and 3.4, p. 19; and Figure 2. To that end, both the Site Approval Application and the MDM Study included site plans specifically providing a walking bath on the lowland wetland parcels both as an attractive amenity for passive recreation and as a more direct means of connecting the site to the Minuteman Bikepath.⁷ See, e.g., Site Approval Application at 3.1, "Preliminary Site Plan," 3.2 "Preliminary Architectural Plans," and Attachment 2.3 "Site /Context Photographs."

As highlighted in the Preliminary Site Plan submitted to you, the Applicant proposed a connected network of walking paths through the wetlands areas to provide further and more direct connections from the site to the Minuteman Bikepath and Alewife.



⁷ Given the size and scale of Site Plans, full copies previously submitted to MassHousing have not been attached. Full copies can be provided to MassHousing for your convenience at your request.



The foregoing picture was included (Attachment 2.3 to their Application) as an example of what could be achieved to connect the project site more directly to both the existing bikepath and Alewife. However, in the revised proposal, there is only a walking path circling the re-sited apartment building.

It may well be that the Applicant has removed this element of its proposal because it was predicated on eager acceptance of the portions of land in question by the Town and subsequent Town improvements to it using mitigation funds provided by the Applicant. However, at this juncture it cannot be denied that a substantial feature of the project for the purpose of accommodating and encouraging use of public transit from the site has been removed. Especially in concert with the previously noted changes to the vehicular access, the Select Board believes the cumulative revisions to access and ingress/egress to and from the site are both substantial and in conflict with the bases for your grant of preliminary site approval/project eligibility. The end sum is a revised project in which all automotive, bicycle, and foot traffic must utilize a single residential street for access to 172 units rather than the highway, multi-street, and walking path connections originally proposed for eligibility purposes.

Conclusion

As set forth in 76 CMR 56.04, this body has the responsibility and authority to comment upon a Notice of Revision where in its judgment changes to the project preliminary afforded site approval by you are substantial. The dramatic alteration of several of the core elements of this project – elements that assured your approval was appropriate – are both substantial and incongruous with your findings for eligibility purposes. As such, the Arlington Select Board urges MassHousing to first find that the revision proposal includes substantial changes, and second that absent remediation, those changes disqualify the project from the eligibility you previously granted.

Please contact us should you have any questions or if you would like any additional support for our comments above.

Respectfully submitted,
On behalf of the Arlington Select
Board as its Chair,

John V. Hurd

cc: Stephanie Kiefer, Esq., *Counsel for the Applicant*

Arlington Zoning Board of Appeals

Sen. Cindy Friedman

Rep. Sean Garballey

Rep. David M. Rogers