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October 5, 2015

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

Re: “Thorndike Place,” Arlington, MA

Dear Mr. Gleason,

The Board of Selectmen (“Board”) of the Town of Arlington has reviewed SEB's recent, undated letter with supplemental filings to you regarding the application of Arlington Land Realty, LLC (“Applicant”) for a project eligibility letter for the proposed “Thorndike Place” development.

As you know, in a letter dated August 18, 2015, the Board commented on the defect-riddled original application, noting the Applicant’s omissions, lack of clarity, and failure to comply with your agency's requirements and criteria for site approval. As you will also recall, the Board identified the numerous grounds on which the application should substantively be denied, not least of which are: 1) the total unsuitability of this project for the site; 2) the project's inconsistency with Arlington's Comprehensive, Housing and Open Space plans; 3) the project's inconsistency with neighborhood character; 4) the project’s failure to meet any of MassHousing's “Smart Growth” criteria; 5) the destruction of protected wetlands entailed; and 6) the unsustainable traffic to be generated.

SEB has made perfunctory efforts to cure a few of the defects identified by the Board, which in some ways are appreciated. However, in others, the volume of new and additional information further underscores the problems inherent in the proposed project and the development team’s departure from MassHousing’s standards and processes. To such an end, SEB provided additional documents and information, although without explanation as to why an

experienced 40B development firm omitted them from the original application.¹ Nevertheless, as you will undoubtedly conclude, neither the submission of a few additional documents, nor SEB's flippant and patronizing response to this Board and the community's concerns, can alleviate the fundamental problem with this application: under no measurement or criteria MassHousing applies in the site eligibility process can the agency approve this project. We draw your attention to several of the most obvious reasons.

1. The Applicant has yet to provide a qualifying "NEF Letter of Interest" (or evidence of another eligible state or federal subsidy)

As we pointed out in our previous letter, the Applicant failed to include in its original application an NEF lender letter of interest (despite claiming to do so), submitting instead a letter from TD Bank stating explicitly that it is not an NEF member bank. The Applicant has since submitted a letter from a representative of Citizens Commercial Banking, but this letter *also* fails to meet the requirements of MassHousing's Application for Site Approval for NEF projects. While expressing confidence in Mr. Mugar's qualification to undertake the project and an interest in the project's future financing, this letter contains neither "confirmation that the Bank is a current FHLBB member bank" nor confirmation that the Bank "will specifically use NEF funds for the proposed development" - both of which are required under Section 5.1 of the Application.² As the Citizens letter does not satisfy the requirements for an NEF Lender Letter of Interest, we respectfully submit MassHousing *still* cannot find that the proposed project is "fundable under the applicable program." See Application and 760 CMR 56.04(4).

2. The Applicant has yet to provide evidence of Site Control

¹ For example, it should not have required the Board's attention to identify the absence of a NEF bank letter of interest in the original application. Likewise, it should not require the Board's prompting for the Applicant to file a Flood Insurance Rate Map; an Existing Conditions Plan stamped by a registered engineer; documents demonstrating site control; or an identification of 40B projects in which SEB has had an interest - all of which are application requirements, and some of which the Applicant has yet to provide. Particularly problematic to this Board is SEB's presumption that it need not identify 40B projects in which it has an interest because "SEB's extensive experience has been accepted by MassHousing in numerous prior applications." We have a right to expect that an Applicant and its consultants will provide a complete application without requiring the Town to bear the burden of pointing out structural and obvious flaws and omissions so that MassHousing may appropriately review the application. Failing and declining to have done so, and then implying that the Board is antagonizing the applicant for pointing out the obvious inadequacies of the application is unwarranted.

² Further, the letter's description of the project is inaccurate, stating that it consists of 219 apartment units contained in a four-story building. As SEB has clarified, the rental project consists of 207 units. The Citizens letter does not reference the 12 townhouse units that SEB asserts compose the other "component" of the project, the intended financing of which has not been clarified to this Board to date.

We again note that both the original application and the supplemental filings to date submitted no evidence (e.g., deed, option agreement, purchase and sale agreement) demonstrating that the Applicant, Arlington Land Realty, LLC controls the project site. SEB states that the evidence originally submitted was “admittedly confusing” and that it “will be clarified under a separate submission.” No clarification is needed. Rather, what is needed is an instrument demonstrating the Applicant's site control in a timely manner. The Applicant's presumption that site control - a fundamental component of project eligibility - need not be proven until some deferred and unspecified time of the Applicant's choosing does not meet MassHousing's standards or its process.

It is our understanding that site control evidence was submitted or is forthcoming to MassHousing, though it may or may not yet be adequate. While we are confident MassHousing will appropriately scrutinize such submitted evidence when received, the Applicant's failure to do so to date will likely deprive this Board and the community at-large the opportunity for meaningful review of a major component of the application before an eligibility determination is ripe. As a licensing authority ourselves, we are particularly appreciative that MassHousing has done its best to engender a spirit of cooperation throughout its process, as well as the courtesies that both it and the Applicants have extended in allowing for an extension of time for our review of the original application and public meeting. However, to the extent this process has now taken on a “back and forth” manner, such a problem is squarely rooted in the Applicant's failure to have all of the documentation and information it *must* provide you, and *should* provide the community to examine the project's merits. Neither this Board, nor MassHousing are required to take this Applicant on faith that they will do what is required at some point in the future. The continued request that MassHousing and Arlington do so does not bode well for the future of this project if site approval were to be granted.

3. The Applicant has yet to clarify the status of the “Twelve Townhomes for Sale”

We further note that SEB has failed to clarify the status of the “Twelve Townhomes for Sale” scribbled in as an addendum to the project application. As we discussed in our August 18, 2015 letter, the original application did not explain how the separate budget for the twelve ownership units related to the budget for the rental project; in fact, it was not clear that the twelve townhouses are part of the 40B project.

SEB's recent letter states that “[t]he 12 unit townhouse plan is definitely part of the 40B application as the land area for these units has been shown as inside the 40B site.” See SEB letter at unnumbered page 6. Presumably, this means that because these units are depicted on the plans, they comprise some portion of the 40B project proposed. Yet while SEB has provided revised calculations for the 207-unit rental project application, it has provided no revised or additional information regarding the twelve-unit ownership project application, nor has SEB provided adequate support for a separate and potentially duplicative budget, other than to state that “the economic calculations are very different.” The Board expects MassHousing to delve further into the Applicant's proposal for the twelve ownership townhouses, including clarification of the subsidy sought and an examination of the additional costs alleged.

4. The Project remains ill suited for the site proposed: Wetlands and Flood Zone

We again note that the proposed project site is comprised largely of unbuildable wetlands and is located in a Flood Hazard Zone, precluding a finding that “the conceptual project design is generally appropriate for the site on which it is located.” 760 CMR 56.04(4)(c). Eleven and a half acres of the 17.7 acres are state jurisdictional wetlands, and additional acreage is protected under Arlington’s Wetlands Bylaw and Zoning Bylaw. The question is not, as SEB suggests, whether these local regulations *can* be waived so that the project may be constructed as proposed. See SEB letter at (unnumbered) page 3. The Board is well aware that “the mission inherent in the 40B legislation” can and has been used across the Commonwealth to bypass local regulations oriented towards conservation of natural resources protected under zoning and other local regulations. Rather, the question is whether MassHousing can find that this project design - which will cover virtually all-available upland with impervious surface; fill jurisdictional wetlands; and construct portions of buildings in resource areas and buffer zones - is “generally appropriate for the site.”

A further question is how MassHousing could possibly be in a position to evaluate site eligibility, where the Applicant provides no information on the site’s Inland Wetland District resource - in which new habitable structures and earthwork are prohibited - or the negative impacts of this project on this wetland resource. The Board again notes the Applicant’s presumption that Arlington’s Zoning and Wetlands Bylaws, as well as the resources protected under them, are irrelevant under G.L. c. 40B. We know that your agency does not share this presumption, and that you will require the Applicant to provide information on project impacts on all wetland resources on the site prior to rendering a decision on site eligibility. Following review of such information, we are confident you will conclude that a site that is predominantly wetlands and located in a Flood Zone is not appropriate for the intensive development proposed. We refer you to pages 6-8 of our August 18, 2015 letter for further discussion of these issues.³

³ It bears emphasizing that SEBs discussion of negotiations between the Town and the Mugar family regarding development of the parcel (see unnumbered page 4 of SEB letter) is both mistaken in part, and when viewed appropriately, further supportive of this Board’s position on project and development in Arlington in general. Foremost, there were at different points in time, differing negotiations to purchase portions of the property at issue, one of which is represented by the MOU provided by SEB, obviously neither finalized nor executed. In the most relevant negotiations to that MOU, the Town hoped to protect 13 acres of land, some of which the current project would develop. Meanwhile, the Mugar family contemplated (though the MOU did not allow) a 34-unit townhouse project, which it was not then zoned for, and which would have remained subject to local regulations and permitting. Hence, it is simply wrong to say that such proposal would have covered “roughly” the same area of the site as the present 40B Application. It would have protected nearly half of the area at issue, and potentially yielded a development producing less than *one-fifth the number of units, parking spaces, and impervious surface area proposed here*. Thus, if anything, the MOU demonstrates exactly what the history presented to you by this Board originally suggested – that the Town and Mugar family

5. The Project remains ill suited to the site proposed: Inconsistency with Arlington's Comprehensive Plan, Housing Plan, and Open Space Plan

SEB is openly dismissive of the Town's Comprehensive Plan, Housing Plan, and Open Space Plan - not surprisingly, where the proposed project is contrary to all three planning documents. We refer MassHousing to pages 8-10 of our letter dated August 18, 2015 for discussion of these points

For its part, SEB does not "consider [the Comprehensive Plan] a document which should override the need in Arlington, or the region. . . for affordable housing" because it is not a Housing Plan; believes the Town's Housing Plan can be ignored because it does not contain a DHCD-approved Housing Production Plan; and further, believes that the Town's Open Space Plan should be disregarded because the Applicant's proposal - which will fill state jurisdictional wetlands and destroy locally-protected wetlands - "is a better solution than exists currently." See SEB's recent letter at (unnumbered) page 4.

If SEB's critique of Arlington's planning documents were nuanced or informed, then there might some benefit to debating points raised. But as the above indicates, it is neither, and there is no benefit to such debate. Instead, the Board reiterates the following significant points establishing the inconsistency of this project with Town planning:

- 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 Town's Comprehensive Plan as appropriate for future concentrated development;
- the site's location at a significant distance from commercial activity is contrary to numerous goals in the Comprehensive Plan, including the promotion of concentrated development; the reuse and revitalization of existing buildings; the creation of transit-oriented development; and the promotion of walkable development;⁴
- the proposed project does not meet any goals or strategies in the Town's Housing Plan for the development of affordable housing for particular populations whose needs have been documented in a housing study; and
- The project site has been identified for decades by the Town and the Commonwealth as a priority parcel for acquisition due to its unusually high value as an environmental resource. Arlington is substantially built out and has limited opportunities to preserve open spaces - a value recognized expressly in G.L. c. 40B, s. 20.

historically tried to work together to strike an appropriate balance at this site, but that it has long recognized the dangers of overdevelopment of this fragile locus and abutting resources.

⁴ Contrary to SEB's suggestion at (unnumbered) page 5, this project is not "smart growth and a walkable site." The Project scores 0 (zero) on MassHousing's Smart Growth Criteria Scorecard. See the Board's August 18, 2015 letter at pp. 11-12.

Based on the above, as well as the fuller discussion in our August 18, 2015 letter, we respectfully submit that MassHousing cannot find that “the conceptual project design is generally appropriate for the site on which it is located.” See 760 CMR 56.04(4)(c).

6. The Project remains out of character with the neighborhood

As discussed in our August 18, 2015 letter, the proposed project introduces into the existing single and two-family house neighborhood massive, wall-like buildings, stretching across the width of the property to a height of fifty-three (53) feet, and walling off the wetlands area behind the project. The massing, scale and height of these buildings are wholly out character with the adjacent homes and streetscape, as is the density of project at 43.8 units per acre. SEB’s suggestion that a row of twelve townhouses in front of the five-story buildings will create a “visual and physical buffer” for existing houses uses” is not reassuring. Its suggestion that the project impacts can be mitigated is entirely unsupported by evidence.

Hence, given that the character and fabric of existing neighborhoods must be respected by these projects, (see 760 CMR 56.04(4)(c)(citing factors of “conceptual site plan and building massing, topography, environmental resources, and integration into existing development patterns”), we respectfully contend that the supplemental filings and response have not, and cannot cure this application of such defects.

7. Traffic concerns are not put to rest by selective quotation from the Applicant's consultant

As we noted in our August 18, 2015 letter, 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 that currently serves the surrounding single-family neighborhood. This road 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 “[p]lanned intersection improvements” at Route 2/Route 16 and Massachusetts Avenue/Lake Street optimistically referenced by the Applicant's traffic consultant cannot and will not improve the capacity of the *neighborhood* road network into which all project trips will be discharged. As MassHousing should have observed in its site investigation, this *neighborhood* road network is constrained by lack of space for expansion or improvement.

We further note the assertions by SEB and the Applicant's traffic consultant that the project will generate only “modest” traffic increases due to resident use of the Minuteman Bike Path and the Alewife MBTA Station for commuting. This is fantasy. The proposed development is car-oriented on its face providing 1.4 parking spaces per unit in an area that cannot absorb any exacerbation of traffic conditions.

Based on the above, as well as the more extensive comments in our August 18, 2015 letter, we respectfully expect MassHousing to deny the application for a project eligibility letter. SEB’s recent attempt to shore up the application has cured some, though not all of its obvious defects; for example, a valid NEF letter and evidence of site control are still lacking. But the

submission of required documents and accurate information cannot cure the fundamental problem with this application: the proposals fails every measurement or criteria referenced in MassHousing's site eligibility process, and no project eligibility letter should issue.

Should a project eligibility letter be issued, we ask that MassHousing impose the following conditions, at a minimum:

1. The Applicant must provide evidence that it has site control;
2. The Applicant must provide a NEF member bank letter providing the required confirmations;
3. The Applicant must provide supporting documentation for its development budget for both the 12-unit townhouse project and the 207-unit rental project;
4. The Applicant must provide evidence that the land values asserted in both the 12-unit townhouse pro forma and the 207-unit rental pro forma comply with MassHousing's Land Acquisition Value Policy,
5. The Applicant must provide clarification regarding the status of the 12-unit townhouse project and explanation of duplicative costs claimed;
6. The Applicant must submit a revised project application consistent with Arlington's Comprehensive Plan and Housing Plan;
7. The Applicant must submit a revised project application with a proposed density, scale, massing and height consistent with the context of the project site;
8. The Applicant must submit a revised project application that both indicates the boundaries of the Inland Wetland Resource and demonstrates that the project can be constructed consistent with the Arlington Wetlands Bylaw and Zoning Bylaw;
9. The Applicant must submit a revised project application that is consistent with MassHousing's "Smart Growth Criteria";
10. The Applicant must submit a revised project application demonstrating a project whose trip generation and traffic impacts will not negatively impact the surrounding neighborhood road network;

Further, 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.

Conclusion

The Board has taken seriously its responsibility in the G.L. c. 40B process and knows MassHousing takes its responsibility equally seriously. The Board is not reassured by SEB's evident presumption that the agency will be infinitely indulgent with respect to the timing and contents of required submissions. We await your deflation of that presumption, as well as your rejection of this project application.

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

Very truly yours,

Kevin F. Greeley, Chair
BOARD OF SELECTMEN

cc: Sen. Kenneth J. Donnelly
Rep. Sean Garballey
Rep. David M. Rogers