



Massachusetts Housing Finance Agency
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April 30, 2020

31 Hunting Lane LLC
23 Hunting Lane
Sherborn, MA 01770
Attention: Gary Lybarsky

**Re: Apple Hill Estates
Project Eligibility/Site Approval
MassHousing ID No. 1058**

Dear Mr. Lybarsky:

This letter is in response to your application as “Applicant” for a determination of Project Eligibility (“Site Approval”) pursuant to Massachusetts General Laws Chapter 40B (“Chapter 40B”), 760 CMR 56.00 (the “Regulations”) and the Comprehensive Permit Guidelines issued by the Department of Housing and Community Development (“DHCD”) (the “Guidelines” and, collectively with Chapter 40B and the Regulations, the “Comprehensive Permit Rules”), under the New England Fund (“NEF”) Program (“the Program”) of the Federal Home Loan Bank of Boston (“FHLBB”).

31 Hunting Lane LLC has submitted an application with MassHousing pursuant to Chapter 40B. Original application materials we filed with MassHousing on November 18, 2019. The original application proposed to build 28 homeownership units (the “Project”) on approximately 29.81 acres of land located at 31 Hunting Lane in Sherborn (the “Municipality”). On January 23, 2020 the Applicant decreased the Project’s lot size to approximately 21.81 acres (the “Site”¹), removing an approximately 8-acre parcel that was deemed not necessary for the Project.

In accordance with the Comprehensive Permit Rules, this letter is intended to be a written determination of Project Eligibility by MassHousing acting as Subsidizing Agency under the Guidelines, including Part V thereof, “Housing Programs In Which Funding Is Provided By Other Than A State Agency.”

MassHousing has performed an on-site inspection of the Site, which local boards and officials were invited to attend, and has reviewed the pertinent information for the Project submitted by the Applicant, the Municipality and others in accordance with the Comprehensive Permit Rules.

¹ The Site is comprised of two parcels of land, Tax Parcel 11-0-3C and Tax Parcel 11-0-2. A portion of Tax Parcel 11-0-3C is currently encumbered by a lien under M.G.L. c.61B, restricting it for open space and recreational uses. The Applicant has notified the Municipality of its intent to withdraw the land from the tax classification. This Site Approval is conditional upon the compliance with the requirements of the statute.

Municipal Comments

The Municipality was given a thirty (30) day period in which to review the Site Approval application and submit comments to MassHousing. At the request of the Municipality, this period was extended to forty-five (45) days. The Municipality submitted a letter regarding the Application on January 17, 2020, summarizing comments from municipal officials. Additional comments regarding project modifications were submitted to MassHousing on February 14, 2020. In summary, the Municipality opposes the proposed Project, noting concerns relative to water and wastewater safety, inconsistency with existing development patterns, site control, fire safety, and emergency vehicle circulation.

The following specific areas of concern were identified by the Municipality:

- The Municipality is concerned about potential impacts of the proposed Project on water supply and wastewater management. In light of the town's reliance on private wells and private septic, the Municipality noted that undeveloped land, conservation land, and wetlands are critical for the replenishment of the town's aquifers, and that development of the proposed Project may impose drastic point loads on these resources, threatening the supply of safe drinking water for area residents. The Municipality expressed additional concern for the potential for ledge blasting during construction to contaminate private water supply in the area, particularly as it relates to construction of the wastewater management facility.
- The Municipality is concerned that the proposed Project does not integrate with existing development patterns, noting that the Site is in a rural neighborhood, and that the proposed Project will nearly double the number of residences in the area. The Municipality noted further that significant portions of the Site are currently reserved for open space and recreation under M.G.L c.61B. Given potential opportunities for affordable housing on other sites in town, the Municipality expressed an interest in assigning its right of first refusal to an eligible non-profit for preservation of the land for passive recreation, which would align with certain goals outlined in the town's 2019 Master Plan.
- The Municipality noted that the Site is an important wildlife corridor around the town center and expressed concern that development of the proposed Project would prevent the Site from continuing to serve this environmental function.
- The Municipality is concerned that no secondary access on the proposed Project's 1300-foot-long dead-end access road may create safety issues for future residents relative to police and fire vehicle access.
- The Municipality requested that two additional hydrants be located throughout the Site to ensure rapid access to water in the event of a fire and noted that the proposed triplex will be required to have a sprinkler system.
- The Municipality noted that setbacks from abutting residences on Hunting Lane are insufficient and discussed potential opportunities for enhanced buffering and relocation of several proposed homes to other areas of the Site.
- The Municipality requested more information regarding the financial feasibility of the proposed Project.

MassHousing Determination

MassHousing staff has determined that the Project appears generally eligible under the requirements of the Program, subject to Final Approval². As a result of our review, we have made the findings as required pursuant to 760 CMR 56.04(1) and (4). Each such finding, with supporting reasoning, is set forth in further detail on Attachment 1 hereto. It is important to note that Comprehensive Permit Rules limit MassHousing to these specific findings in order to determine Project Eligibility. If, as here, MassHousing issues a determination of Project Eligibility, the Developer may apply to the Zoning Board of Appeals of the Municipality for a comprehensive permit. At that time, local boards, officials and members of the public are provided the opportunity to further review the Project to ensure compliance with applicable state and local standards and regulations.

Based on MassHousing's consideration of comments received from the Municipality, and its site and design review, the following issues should be addressed in your application to the local Zoning Board of Appeals ("ZBA") for a Comprehensive Permit and fully explored in the public hearing process prior to submission of your application for Final Approval under the Program:

- Development of the Site will require compliance with all state and federal environmental laws, regulations and standards applicable to existing conditions and to the proposed use related to wetland protection, stormwater management, wastewater collection and treatment, hazardous waste safety, and public water supply. The Applicant should expect that the Municipality will require evidence of such compliance prior to the issuance of a building permit for the Project.
- The Applicant should be prepared to discuss the proposed blasting of ledge on the Site as it relates to construction of the Project's associated wastewater infrastructure. Public review will be required to address these matters of local concern that may impact public safety.
- The Applicant should be prepared to discuss the impact of the Project on water resources and private wells in the area and respond to reasonable requests for mitigation.
- The Applicant should be prepared to discuss the Site's encumbrance under M.G.L c.61B and all associated requirements for removal of the land from the tax classification.
- The Applicant should continue to engage with the Municipality to ensure adequate access is provided for emergency vehicles and responders.
- The Applicant should continue to engage with the Municipality to discuss alternatives for increasing buffering along the abutting single-family homes on Hunting Lane, including opportunities to potentially relocate some of the proposed duplexes to other areas of the Site.

² MassHousing has relied on the Applicant to provide truthful and complete information with respect to this approval. If at any point prior to the issuance of a comprehensive permit MassHousing determines that the Applicant has failed to disclose any information pertinent to the findings set forth in 760 CMR 56.04 or information requested in the Certification and Acknowledgment of the Application, MassHousing retains the right to rescind this Site Approval letter.

MassHousing has also reviewed the application for compliance with the requirements of 760 CMR 56.04(2) relative to Application requirements and has determined that the material provided by the Applicant is sufficient to show compliance.

This approval is expressly limited to the development of no more than twenty-eight (28) homeownership units under the terms of the Program, with not less than seven (7) of such units restricted as affordable homeownership units for low and moderate income persons or families as required under the terms of the Guidelines. It is not a commitment or guarantee of financing and does not constitute a site plan or building design approval. Should you consider, prior to obtaining a Comprehensive Permit, the use of any other housing subsidy program, the construction of additional units or a reduction in the size of the Site, you may be required to submit a new Site Approval application for review by MassHousing. Should you consider a change in tenure type or a change in building type or height, you may be required to submit a new Site Approval application for review by MassHousing.

For guidance on the Comprehensive Permit review process, you are advised to consult the Guidelines. Further, we urge you to review carefully with legal counsel the M.G.L. c.40B Comprehensive Permit Regulations and 760 CMR 56.00.

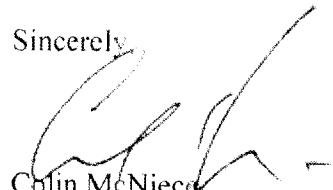
This approval will be effective for a period of two (2) years from the date of this letter. Should the Applicant not apply for a Comprehensive Permit within this period or should MassHousing not extend the effective period of this letter in writing, this letter shall be considered to have expired and no longer be in effect. In addition, the Applicant is required to notify MassHousing at the following times throughout this two-year period: (1) when the Applicant applies to the local ZBA for a Comprehensive Permit, (2) when the ZBA issues a decision and (3) if applicable, when any appeals are filed.

Should a comprehensive permit be issued, please note that prior to (i) commencement of construction of the Project or (ii) issuance of a building permit, the Applicant is required to submit to MassHousing a request for Final Approval of the Project (as it may have been amended) in accordance with the Comprehensive Permit Rules (see especially 760 CMR 56.04(07) and the Guidelines including, without limitation, Part III thereof concerning Affirmative Fair Housing Marketing and Resident Selection). Final Approval will not be issued unless MassHousing is able to make the same findings at the time of issuing Final Approval as required at Site Approval.

Please note that MassHousing may not issue Final Approval if the Comprehensive Permit contains any conditions that are inconsistent with the regulatory requirements of the New England Fund Program of the FHLBank Boston, for which MassHousing serves as Subsidizing Agency, as reflected in the applicable regulatory documents. In the interest of providing for an efficient review process and in order to avoid the potential lapse of certain appeal rights, the Applicant may wish to submit a “final draft” of the Comprehensive Permit to MassHousing for review. Applicants who avail themselves of this opportunity may avoid significant procedural delays that can result from the need to seek modification of the Comprehensive Permit after its initial issuance.

If you have any questions concerning this letter, please contact Katherine Miller at (617) 854-1116.

Sincerely,



Colin McNiecc

General Counsel

cc: Jennifer Maddox, Undersecretary, DHCD
The Honorable Rebecca L. Rausch
The Honorable David Paul Linsky
George Morrill, Chair, Sherborn Board of Selectmen
Richard S. Novak, Chair, Sherborn Zoning Board of Appeals
David Williams, Sherborn Town Administrator

Attachment 1

760 CMR 56.04 Project Eligibility: Other Responsibilities of Subsidizing Agency
Section (4) Findings and Determinations

Apple Hill Estates, Sherborn, MH ID No. 1058

MassHousing hereby makes the following findings, based upon its review of the application, and in consideration of information received during the site visit and from written comments:

(a) that the proposed Project appears generally eligible under the requirements of the housing subsidy program, subject to final approval under 760 CMR 56.04(7);

The Project is eligible under the NEF housing subsidy program and at least 25% of the units will be available to households earning at or below 80% of the Area Median Income, adjusted for household size, as published by the U.S. Department of Housing and Urban Development (“HUD”). The most recent HUD income limits indicate that 80% of the current median income for a four-person household in Sherborn is \$96,250.

The Applicant submitted a letter of financial interest from Rockland Trust, a member bank of the FHLBank Boston under the NEF Program.

(b) that the site of the proposed Project is generally appropriate for residential development, taking into consideration information provided by the Municipality or other parties regarding municipal actions previously taken to meet affordable housing needs, such as inclusionary zoning, multifamily districts adopted under c.40A, and overlay districts adopted under c.40R, (such finding, with supporting reasoning, to be set forth in reasonable detail);

Based on a site inspection by MassHousing staff, internal discussions, and a thorough review of the application, MassHousing finds that the Site is suitable for residential use and development and that such use would be compatible with surrounding uses and would address the local need for housing.

Section IV-A (3) (a) of the Guidelines provide guidance to Subsidizing Agencies for evaluating a municipality’s actions intended to meet local affordable housing needs.

MassHousing carefully reviewed the information provided by the Municipality describing previous municipal actions intended to provide affordable housing. Specific examples cited by the Municipality include:

- Completion of a DHCD approved Housing Production Plan (HPP), effective June 9, 2017, and expiring on June 8, 2022.
- Endorsement of 2019 Master Plan, which addresses various housing goals and needs.
- Creation of an Affordable Housing Trust in 2019.

- Permitting the following 40B projects, which are currently under construction:
 - Meadows Edge at Whitney Farm (fka Whitney Farm) – 48 homeownership units, 12 which are affordable, permitted in 2006.
 - 59 North Main Street – 12 homeownership units, 3 which are affordable, permitted in 2018.
 - Fields at Sherborn – 32 homeownership units, 8 which are affordable, permitted in 2018.
- Special Town Meeting approval of 67-unit senior and 88-unit affordable housing rental projects in 2017. The Municipality notes that development has not yet begun on these projects. Furthermore, the Municipality notes that there may be a Warrant Article on the 2020 Annual Town Meeting to expand the project beyond the previous 2017 approval, which may help the Municipality achieve the 10% Statutory Minima.

MassHousing recognizes Sherborn's efforts as meaningful; however, municipal actions to date have not been of a character and scale that meets the municipality's need for affordable housing as measured by the Statutory Minima. According to DHCD's Chapter 40B Subsidized Housing Inventory (SHI), updated in April 2020, Sherborn has 34 Subsidized Housing Inventory (SHI) units (2.30% of its housing inventory), which is 114 units short of the statutory minima requirement of 10%.

(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 (such finding, with supporting reasoning, to be set forth in reasonable detail);

In summary, based on an evaluation of the site plan using the following criteria, MassHousing finds that the proposed conceptual Project design is generally appropriate for the Site. The following plan review findings are made in response to the conceptual plan, submitted to MassHousing:

- **Relationship to Adjacent Streets/Integration into Existing Development Patterns**
The Site is comprised of two parcels of land located on Hunting Lane. The parcels are rural in nature, one currently being improved by a large single-family home serviced by a long driveway and the other being vacant land dedicated for utility infrastructure. Both parcels are heavily wooded.

While the Site is rural in nature, it is approximately one-half mile east of North Main Street (Route 27), a main thoroughfare for local vehicular traffic which is characterized by a mix of low-density uses. Several retail, commercial and institutional amenities, including a bank, autobody, post office, elementary school, and other small restaurants and retail uses are in close proximity to the Site. The Site is an approximate 10-minute drive to Route 9 and an approximate 15-minute drive to Interstate 90. The Framingham, West Natick and Natick Center MBTA Commuter Rail Stations are each within an approximate 10-min drive of the Site, providing inbound service to Boston and outbound service to Worcester.

- **Relationship to Adjacent Building Typology**

The proposed Project consists of 27 new construction for-sale townhouses in 12 duplexes and one triplex, and one existing single-family home, all located to the rear of several large single-family homes on Hunting Lane. The new-construction duplexes and triplex are reasonably spaced throughout the Site with approximately 40 feet between each building. The closest home to the Site's shared property line with the abutting single-family homes on Hunting Lane is approximately 26.9 feet away, however potential opportunities to relocate some of these closer structures to other areas of the Site have been discussed with the Municipality. The townhouses will be a contemporary craftsman style with vinyl shingles and architectural roofing. The proposed architectural designs and building scale are compatible with the style of homes found in the surrounding neighborhood.

- **Density**

The Developer intends to build 28 homes on approximately 21.81 acres, of which 18.12 acres are buildable. The resulting density is 1.55 units per buildable acre, which is acceptable given the proposed housing type.

- **Conceptual Site Plan**

The 21.81-acre Site is comprised of two parcels of land located on Hunting Lane. One 16.93-acre T-shaped parcel (Tax Parcel 11-0-3C) is largely set back from the road, with a proposed driveway entering the Site at the parcel's approximately 200-foot Hunting Lane frontage and servicing the rest of the Site, which is set back to the rear of several large single-family parcels on Hunting Lane. The proposed 12 duplexes, one triplex, and existing single-family home are located along the proposed driveway, which ends in a loop at the western edge of the Site. The other 4.88-acre parcel (Tax Parcel 11-0-2) is noncontiguous vacant land with subsurface well infrastructure that will provide water to the proposed Project. Wastewater infrastructure will also be located on this parcel. Proposed easements will deliver utility infrastructure to the proposed Project, in addition to a proposed rental development at 41 North Main Street by an affiliate of the Applicant.

- **Environmental Resources**

There are 3.69 acres of unbuildable wetland area on the Site that will be subject to further review by the local Conservation Commission under a Notice of Intent. The site plan is organized in a way that locates the built portion of the development away from these wetland areas. Proposed water and sewer pipe installations are proposed via directional drilling under the wetland resource areas. These issues will be reviewed further by the local conservation commissions in any subsequent application for an Order of Conditions.

- **Topography**

The Site slopes gradually upward in a southwesterly direction from a topographic low of approximately 212 feet at the Hunting Lane entrance to a topographic high of 325 at the Site's western boundary. The slope levels out slightly on the portion of the Site where development is proposed and is gradual enough as to not be an impediment to the proposed development.

(d) that the proposed Project appears financially feasible within the housing market in which it will be situated (based on comparable rentals or sales figures);

The Project appears financially feasible based on a comparison of sales submitted by the Applicant.

(e) that an initial pro forma has been reviewed, including a land valuation determination consistent with the Department's Guidelines, and the Project appears financially feasible and consistent with the Department's Guidelines for Cost Examination and Limitations on Profits and Distributions (if applicable) on the basis of estimated development costs;

The initial pro-forma has been reviewed for the proposed residential use and the Project appears financially feasible with a projected profit margin of 11.98%. In addition, a third-party appraisal commissioned by MassHousing has determined that the “As-Is” land value for the Site of the Proposed Project is \$3,245,000.

(f) that the Applicant is a public agency, a non-profit organization, or a Limited Dividend Organization, and it meets the general eligibility standards of the housing program; and

The Applicant must be organized as a Limited Dividend Organization prior to applying for Final Approval. MassHousing sees no reason this requirement could not be met given information reviewed to date. The Applicant meets the general eligibility standards of the NEF housing subsidy program and has executed an Acknowledgment of Obligations to restrict their profits in accordance with the applicable limited dividend provisions.

(g) that the Applicant controls the site, based on evidence that the Applicant or a related entity owns the site, or holds an option or contract to acquire such interest in the site, or has such other interest in the site as is deemed by the Subsidizing Agency to be sufficient to control the site.

A related entity to the Applicant controls the entire 21.81-acre Site by virtue of the following deeds:

- Deed from Carey Mann and Theresa O. Mann to Igor Lybarsky, Trustee of Barsky estate Realty Trust, dated March 18, 2016 and recorded in the Middlesex South Registry of Deeds in Book 67090, Page 363.³
- Deed from Kent A. Fitzpatrick, Trustee of Orchard Hill Trust to Igor Lybarsky, Trustee of Barsky estate Realty Trust, dated March 11, 2016 and recorded in the Middlesex South Registry of Deeds in Book 66954, Page 354.

³ This parcel is currently encumbered by a lien under M.G.L. c. 61B. The Applicant has notified the Municipality of its intent to withdraw the land from the tax classification and understands its obligation to comply with the requirements of M.G.L. C. 61B.