

# TOWN OF STONEHAM

35 CENTRAL STREET  
STONEHAM, MASSACHUSETTS 02180  
TEL: (781) 297-2680 • FAX: (781) 279-2681

## BOARD OF SELECTMEN

September 14, 2016

Ms. Katherine Lacy, AICP  
Permitting and Monitoring Specialist  
MassHousing  
One Beacon Street  
Boston, MA 02108

RE: Project# MH #851, Winchester, MA "Forest Ridge"

Dear Ms. Lacy:

Please accept this letter on behalf of the Board of Selectmen of the Town of Stoneham in reference to the application for project eligibility approval submitted to MassHousing by Krebs Investor Group, LLC (the "Applicant") for a 296 dwelling unit development ("proposed development") in Stoneham and Winchester, Massachusetts.

For the reasons set forth below, the Board of Selectmen urge MassHousing, in the strongest possible terms, to deny the Applicant's request for project eligibility approval.

Almost three years ago, despite undisputed facts that an application for project eligibility scored a zero (0) on MassHousing's "Smart Growth Scorecard," and conclusive evidence that the proposed project was inconsistent with Town plans and would cause irreparable flooding of abutting properties, MassHousing granted project eligibility approval for the "Commons at Weiss Farm" in Stoneham.

Now, faced with yet another massive residential development project that will dramatically and unreasonably impair the Town of Stoneham, the Board of Selectmen have made your task as "gatekeeper" pursuant to 760 CMR 56.00 et seq. straightforward: MassHousing has no lawful choice but to deny the project eligibility application for "Forest Ridge".

1. MassHousing Lacks Authority to Grant Project Eligibility Approval for a Project that Is Not Filed Pursuant to G.L. c.40B, ss.20-23 and Contains No (Zero) Below Market Dwelling Units.

It is unlikely that we need to inform MassHousing of one of the few rules governing the comprehensive permit process, but will to highlight the infirmities of this application. Whatever authority MassHousing has been granted pursuant to 760 CMR 56.00 et seq. this authority does not include approving project eligibility for a development project that is not filed pursuant to G.L. c.40B, ss.20-23. Put otherwise, “project eligibility” approval from MassHousing is relevant only to an application filed pursuant to G.L. c.40B, ss.20-23 and to nothing else.

And, as MassHousing knows, in order to comply with the filing requirements of G.L. c.40B, ss.20-23 and the relevant guidelines governing “New England Fund” projects, the proposed project, as filed, must contain 25% of the dwelling units as “affordable”. The above noted project contains zero (0) “affordable” dwelling units in Stoneham.

The proposed project is totally reliant upon land in Stoneham for ingress and egress; yet the application includes no below market rate dwelling units in Stoneham.

It cannot be seriously debated—and it certainly is not lawful to conclude—that an application that lacks any below market rate units qualifies for project eligibility approval.

As is readily apparent in the proposal submitted to MassHousing, access to and from the locus relies on land in Stoneham. This land, along the Winchester/Stoneham town line, extends westerly beyond a portion of Fallon Road in Stoneham. Almost all of the Stoneham land contains jurisdictional wetlands pursuant to the Wetland Protection Act and the Stoneham Wetlands Bylaw, the latter prohibiting the fill and wetlands disturbance required to construct the access way to the locus.

In addition, the Stoneham Zoning Bylaw prohibits all multi-family structures and uses—precisely what is being proposed here—within the relevant zoning district (C-2). The law governing this situation is well settled: the land in Stoneham cannot be used for access to a use in Winchester that is prohibited within the Stoneham land. See, among others, Town of Brookline v. Co-Ray Realty Co. Inc., 326 Mass. 206 (1950), (Brookline Zoning Bylaw prohibiting multi-family uses enforceable against project in Boston seeking to use portion of land in Brookline).

Such a zoning “barrier” could possibly be overcome if the applicant filed for a comprehensive permit in Stoneham. But as discussed above, a comprehensive permit filing in Stoneham would require the set aside of below market rate dwelling units. None are provided and the project eligibility application must be denied.

2. The Applicant has Provided No Evidence or Support That It Has Site Control Over the Land In Stoneham

In a transparent and shameful attempt to disguise the importance and applicability of the land in Stoneham to the proposed project, the applicant wrongly states on page 5 of the application that the site is located “entirely within one municipality”. As discussed above and is obvious from the project application, one principal access to the project is entirely in the Town of Stoneham.

In addition, the applicant wrongly states on page 12 of the application that “easements or rights of way over other properties” are not required to develop the locus.<sup>1</sup>

Putting aside these wrong and misleading statements, the applicant has an affirmative obligation to demonstrate to MassHousing that it has site control. See page 1 of MassHousing’s site approval application form.

The applicant has provided nothing to MassHousing, because no support exists, demonstrating that it has control over the land in Stoneham—land over which it plans to develop as a primary ingress and egress route to the proposed project.

Decades ago, the Supreme Judicial Court anticipated the potential for mischief entailed in G.L. c. 40B's "streamlined" permitting process, and sensibly held that disclosure of, and conditioning of a comprehensive permit upon a demonstrated property interest was necessary to provide “protection against the unlikely possibility of frivolous applicants who have no present or potential property interest in the site”. See Board of Appeals of Hanover v. Housing Appeals Committee, 363 Mass. 339, 378 and n. 25.

As MassHousing is well aware, site control is now a regulatory requirement. See 760 CMR 56.04(1)(c).

MassHousing has an affirmative obligation to ensure that this applicant has “sufficient legal control of the site”. See page 1 of MassHousing’s site approval application form. The applicant, with every opportunity to submit a evidence demonstrating rights in the land in Stoneham, failed to satisfy this regulatory requirement and, accordingly, the project eligibility letter must be denied.

3. Stoneham Concur with the Comments Submitted by Senator Lewis and on Behalf of the Winchester Board of Selectmen

The Stoneham Board of Selectmen concur with the comments submitted to MassHousing from Senator Jason Lewis (July 21, 2016) and the Town of Winchester (September 1, 2016); they

---

<sup>1</sup> Project eligibility approval should be denied for these wrong and misleading statements alone.

Ms. Katherine Lacy, AICP  
September 14, 2016  
Page 4 of 4

need not be repeated here simply because, as it relates to the project in the Town of Stoneham, MassHousing has no lawful choice but to deny the project eligibility application.

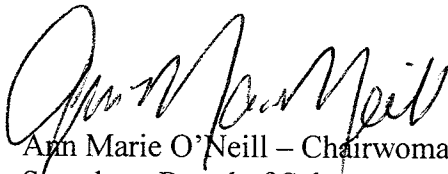
Conclusion

MassHousing has invited the Town of Stoneham to comment on the above noted application because a portion of the land used for the project's ingress and egress lies in Stoneham. MassHousing lacks any authority to issue project eligibility for the proposed project where: (1) the Stoneham Zoning Bylaw prohibits multi-family use and development on the land proposed for roadway development in Stoneham; (2) the proposed project contains no below market rate dwelling units in Stoneham and (3) the applicant has provided no evidence or support that it has any access rights over the land in Stoneham.

Please contact us if you have any questions.

Thank you.

Very truly yours,



Ann Marie O'Neill – Chairwoman  
Stoneham Board of Selectmen

cc: Jason Lewis, Senator  
Michael Day, Representative  
Jonathan Witten, Esq., Special Town Counsel