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Barney S. Heath
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Community Preservation Committee

MEMORANDUM

Date: 24 September 2018
From: Alice Ingerson, Community Preservation Program Manager
To: Community Preservation Committee
About: **lessons from housing completion/fair housing at Kessler Woods/Hancock Estates**

The CPC officers and staff agreed to put discussion of the attached letter, cc'd to the CPC, on the committee's October 9th agenda, as an opportunity to identify **lessons to be learned** for future projects.

project history

The original CPA funding for Kessler Woods was entirely for open space acquisition. However, in May 2003 the CPC also signed a [Memorandum of Understanding with Mayor David Cohen](#) requiring 11 units of affordable housing to be built on some of the land acquired and retained by whatever private developer the City ultimately chose as its bidding partner for the land acquisition.

Mayor Cohen then signed a bidding agreement with the City's private partner that included this affordable housing commitment. The Newton Law Dept. made it clear that amending or implementing the bidding agreement was always at the current mayor's discretion, and that the CPC as a body had no continuing, official role in the design or permitting of this project's housing component.

Over the years, the original MOU and bidding agreement, as amended, were superseded by a [special permit awarded by the City Council in 2015](#), which requires 13 affordable units, 2 more than the CPC's original MOU. Chestnut Hill Realty (CHR), which ultimately acquired the multifamily site from the City's original bidding partner, has now completed the building and is leasing the apartments under this special permit, but has twice asked the Council to amend that permit. Livable Newton believes CHR has not complied with either standard fair housing requirements, or the special permit's specific requirements, for the size, features, and location of the project's affordable units.

possible "lessons to be learned":

For Kessler Woods, the CPC paid for the open space and "exacted" the housing (i.e., required it to be provided without public funding). **In future similar situations, the CPC should consider "exacting" the land and paying for the housing, or any other CPA-eligible benefit that requires additional private investment or action.** By 2014, the affordable housing promised in 2003-04 still had not been built at Kessler Woods, partly due to market conditions. One former CPC member – a developer – described the CPC's pleas to get the housing built during this period as "pushing on a string." If the developer had received CPA funds for the housing, the Newton Law Dept. and CPC could have required return of those funds unless the housing was completed by a specific deadline.

website www.newtonma.gov/cpa

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continued on
next page →

Whenever possible, the CPC should support affordable housing or other CPA-eligible benefits that require additional private investment or action through legally enforceable grant agreements. Both as conditions for the phased release of CPA funds, and even after all CPA funds have been released, most current CPA grant agreements require CPC or City approval in advance of proposed changes in control or use. All CPA grant agreements require the return of CPA funds if there is an unapproved change of use, since that may affect CPA eligibility.

The grant agreement for any future housing project could make some phase in the release of CPA funds contingent on independent verification that the project has met fair housing requirements, such as those that Livable Newton believes have not been met at Hancock Estates. For example, Newton's CPA grant agreements for housing projects have begun requiring such independent verification for accessibility, after several past projects met these standards only after the Inspectional Services Dept. or tenants themselves identified deficiencies in design or construction.

As long as the City remains aware of and committed to the requirements in Newton's CPA grant agreements, the Newton Law Dept. can enforce them –either on the CPC's behalf or independently, if Newton revokes the CPA, and there is no longer a CPC. We post grant agreements on the CPC's project webpages partly to enable and support such future enforcement.

Note: As most CPC members are aware, funds appropriated for projects executed directly by City departments are not governed by grant agreements, which would be unenforceable in practice.

more information online

The CPC's webpage for Kessler Woods (link below) includes both the original MOU and bidding agreement, as well as any amendments to that agreement that have been provided to the CPC:

<http://www.newtonma.gov/gov/planning/cpa/projects/kessler.asp>

2003 CPC Memorandum of Understanding with Mayor Cohen:

<http://www.newtonma.gov/civicax/filebank/documents/67467>

2015 special permit awarded by the City Council:

<http://www.newtonma.gov/civicax/filebank/documents/67499>

Livable Newton

Coalition for inclusive, sustainable development

September 19, 2018

Via E-mail (c/o Nadia Kahn, nkhan@newtonma.gov)

RE: Hancock Estates (formerly Kessler Woods) – Special Permit #102-06(15)
Amendment

Dear Chair Schwartz and Members of the Newton City Council Land Use Committee:

For the reasons set forth below, we urge the Newton City Council and Mayor Fuller to conduct a prompt and thorough review of (1) the compliance of Hancock Estates with Newton's Inclusionary Zoning Ordinance (IZ Ordinance) and Special Permit; and (2) the City's practices and protocols implementing the IZ Ordinance to ensure full compliance in future developments. We also urge the Land Use Committee to reject the proposal to "swap" four 2-bedroom family-sized apartments at Hancock Estates.

Hancock Estates does not comply with Newton's Zoning Ordinance and its Special Permit:

- **The type of units included as inclusionary units at Hancock Estates do not reflect the unit mix at the development** – The inclusionary units at Hancock Estates include 1- and 2-bedroom units, all with either 1, 1 ½, or 2 bathrooms. The market rate units, however, include thirteen (13) 2-bedroom units with "dens" and forty-three (43) 2-bedroom units with 2½ bathrooms. None of the 2-bedroom units with "dens" or the 2-bedroom units with 2½ bathrooms are inclusionary units. The plans approved in conjunction with the Special Permit for the development showed only 2-bedroom units and no "dens." Sized larger than the 2nd bedrooms and with windows, it appears that the "dens" meet all state code requirements for bedrooms and that these units with "dens" (3rd bedrooms?) are not in compliance with the Special Permit. Please note also that, while the sizes of the inclusionary units appear to comply with the minimum square footage requirements in the ordinance, many of the market rate 2-bedroom units are almost twice the size the inclusionary 2-bedroom units (1,900+ square feet v. the largest 2-bedroom inclusionary units at 1,025 square feet) and many of the market rate 1-bedroom units (with 1,187 square feet) are larger than the inclusionary 2-bedroom units.
- **The distribution of the inclusionary units by floor in Hancock Estates does not comply with the dispersion requirements** – Section 5.11.7 of Newton's Zoning Ordinance requires that inclusionary units "be dispersed throughout the development and ... sited in no less desirable locations than the market rate units." At Hancock Estates, 46.2% of the inclusionary units are on the first floor (comprising 21.4% of the 1st floor units), 38.5% of the inclusionary units are on the more desirable second floor (comprising 16.6% of the second floor units), and only 15.3% of the inclusionary units are on the most desirable third floor of the development (comprising just 6.6% of the 3rd floor units). This does not meet the design and construction requirements of Section 5.11.7 of Newton's Zoning Ordinance. Moreover, since one of the inclusionary 2-bedroom units proposed to be "swapped" is on the second floor and one is on the third floor, the concentration of inclusionary units on the first floor and the lack of integration

required by Section 5.11.7 of Newton's Zoning Ordinance would be further exacerbated if the "swap" is approved.

- **The Hancock Estates rent-up did not comply with the proportional rent-up requirements**– Section 5.11.4 of Newton's Zoning Ordinance requires that "Inclusionary units shall comprise at least 15 percent of the units to have been offered for sale or rental *at each point* in the marketing of the development." (emphasis added) To date, and starting in 2017, at least 62 market rate units at Hancock Estates have been marketed and received certificates of occupancy and many have been rented and occupied. At the same time, marketing of only some of the inclusionary units (9 of 13) only recently commenced. To date, no inclusionary units have been rented and the lottery for the 9 units isn't scheduled until October 3, 2018.
- **The advertising of the Hancock Estates apartments does not comply with the requirements for Local Action Units and counting on the state's Subsidized Housing Inventory (SHI)** – An advertisement for the "Brand New Luxury" apartments at Hancock Estates published most recently in the Newton Tab on September 12, 2018 depicts a handsome white couple (copy attached). No other pictures of persons are included. This violates the requirements of the Massachusetts Department of Housing and Community Development (DHCD), applicable to the development and to all units at the development, per the Ordinance, Special Permit and Regulatory Agreement. DHCD's Affirmative Fair Housing Marketing and Resident Selection Plan Guidelines require that "all advertising and marketing materials portraying persons should depict members of classes of persons protected under fair housing laws, including majority and minority groups as well as persons with disabilities." Moreover, the advertisement does not contain the HUD Fair Housing logo or the "Equal Housing Opportunity" slogan. This discriminatory advertising renders the Hancock Estates inclusionary units ineligible for the SHI.

The proposed "swap" of four family-sized 2-bedroom inclusionary units at Hancock Estates should be rejected:

- **The swap will be a financial windfall for the developer** – Based on a preliminary valuation analysis, we believe the developer will realize an almost \$1.8 million profit by transferring Hancock Estate's market rate units to 219 Commonwealth Ave. The analysis utilizes current cap rates, estimated operating expenses and vacancy for each asset type, the developer's published rents for Hancock Estates and the affordable rents provided on the memorandum entitled "Inclusionary Unit Swap Proposal" dated August 1, 2018 and provided to the City of Newton by the developer. We believe the developer's projected 219 Commonwealth Ave market rate rents are significantly overstated from the actual market rents and therefore we adjusted these downward based on recent actual market rate comparables. By inflating these market rate rents, the developer makes it appear that the market rate value of the units at 219 Commonwealth Ave are worth significantly more than they actually are worth. Our projections estimate the market value of the four 2-bedroom units at Hancock Estates is approximately \$4 million, while the total affordable value for the same units is only approximately \$425,000. The difference in these values is \$3.575 million. The

approximate market value of the proposed nine units at 219 Commonwealth Avenue is \$3.22 million, while the affordable value for the same units is approximately \$1.43MM. The difference in these values is \$1.79 million. Subtracting the differences in value generates the developer's realized profit of almost \$1.8 million due to the transfer (\$3.575 million less \$1.79 million).

- **The swap is inconsistent with the clear intent and preference of the Newton Zoning Ordinance** – The clear intent and preference of Newton's Zoning Ordinance is to have units created and made available to low- and moderate-income households at the actual location of each development, thereby increasing diversity in that neighborhood location and at each specific development.
- **The swap does not provide a better public benefit for the City of Newton** –The Inclusionary Housing Plan for Hancock Estates states that: "The affordable units will have the same finishes as the market rate units including granite countertops, stainless steel appliances, in-unit washers and dryers, hardwood floors, and access to on-site amenities such as an exercise facility, Wi-Fi café, business center, theatre, community room, and underground parking."¹ Moreover, all of the units at Hancock Estates are accessible to those with disabilities as the development is serviced by an elevator. While detailed plans for the units to be rehabilitated at 219 Commonwealth Avenue have not been submitted by the petitioner, it is unlikely that they will be of the quality of the inclusionary units at Hancock Estates or will have the amenities or accessibility of the inclusionary units at Hancock Estates.
- **With no information provided by the petitioner regarding the development budget and financing for 219 Commonwealth Avenue, it is not possible to determine if the public funding limitation of Newton's Zoning Ordinance would be complied with** – Section 5.11.10 of Newton's Zoning Ordinance prohibits an applicant from using public development funds to construct inclusionary units. Given the great disparity in the quality of the units at 219 Commonwealth Avenue, the 9 units proposed for the "swap" should not be considered "a greater number of affordable units that are otherwise required" within the meaning of Section 5.11.10. With no information provided by the petitioner regarding the development budget and financing for 219 Commonwealth Ave, it is impossible to determine what the developer's investment in that property will be and whether Section 5.11.10 of Newton's Zoning Ordinance would be complied with if the swap were to be approved.

We are not writing this letter in opposition to affordable housing at 219 Commonwealth Avenue. Rather, our concerns relate to the compliance by the Hancock Estates developer with the requirements of the Newton Zoning Ordinance, Special Permit, Inclusionary Housing Plan and Regulatory Agreement and to urge the City Council and the Mayor to ensure that the objectives of Newton's Inclusionary Zoning Ordinance are accomplished and that the developer is not being enriched by moving some of the required units off-site.

¹ Despite this statement in the Inclusionary Housing Plan, the Revised Plans for the development (10/15/2015) identify the level of finishes for the units as "standard," "deluxe" or "premium." All of the inclusionary units have standard finishes.

Our City government must examine its practices and deploy sound real estate expertise and procedures to create transparency and fairness in this development and in future developments.

Sincerely,

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And the following individuals:

Nanci Ginty Butler
Fran Godine
Judy Jacobson
Lynn Weissberg
Dan Wiener
Nancy Zollers

Cc: Mayor Ruthanne Fuller
Newton City Council
Community Preservation Committee (original funders of Kessler Woods site)

Hancock Estates

Apartments in Chestnut Hill

Downsize Your Space, Upsize Your Lifestyle

**Brand New Luxury
One & Two Bedroom
Apartment Homes
in Newton, MA**

- Gourmet Kitchens
- Spa-Like Bathrooms
- High Quality Finishes
- Spacious Floor Plans up to 1,900 Sq. Ft.
- Upscale Amenities
- Concierge
- Pet Friendly
- Garage Parking
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**Hancock Estates
at Chestnut Hill**

200 Estate Drive
Newton, MA 02467



Call (617) 969-3515 or visit HancockEstatesApartments.com

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