



Massachusetts Housing Finance Agency
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February 1, 2023

Toll Bros., Inc
1140 Virginia Drive
Fort Washington, PA
Attention: Lou Tamposi

**Re: 528 Boylston, Newton
Project Eligibility/Site Approval
MassHousing ID No. 1161**

Dear Mr. Tamposi:

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 (“FHLBank Boston”).

Toll Bros., Inc has submitted an application with MassHousing pursuant to Chapter 40B. You have proposed to build two hundred forty-four (244) units of rental housing (the “Project”) on approximately 5.82 acres of land located at 528 Boylston Street (the “Site”) in Newton (the “Municipality”).

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.

Municipal Comments

Pursuant to the Regulations, the Municipality was given a thirty (30) day period in which to review the Site Approval application and submit comments to MassHousing. An additional comment period of fifteen (15) days was provided to review project revisions that were submitted by the Applicant. The Municipality submitted comments generally supporting the proposed use of the Site in an October 12, 2022 letter. Supplemental comments were provided in response to project revisions on November 28, 2022. While generally supportive of housing on the Site, the Municipality outlined the following comments and concerns regarding the proposal:

- The Municipality recommends that the Applicant continue to explore ways to break up the mass of the building, including breaking the building into multiple buildings. While the revised plans

mitigate the bulk of the building along the rear property line closest to the abutters on Hagen Road and provide relief in the front facade along Boylston Street, they do not fully address the building and site design concerns outlined in the Municipality's October 12th comment letter. In particular, the Municipality requests more information on the relationship between the front courtyard and the Boylston Street frontage to understand how the pedestrian experience can be improved.

- The Municipality noted that the presence of wetlands, riverfront, and flood zone areas make this a complex site and that the project will be required to undergo thorough review with the Conservation Commission.
- The Municipality expressed concern that the areas of the Site not occupied by the building are generally not useable due to flood zone and topography, and requests that Applicant incorporate active and passive outdoor areas for residents, including areas for children to play and for residents to take dogs.
- The Municipality requests that the Applicant provide a detailed site lighting plan to ensure that lighting does not negatively impact neighboring properties. HVAC and other equipment and their locations should be selected carefully in order to minimize sounds heard by residential abutters. A construction management plan should be prepared to give assurance to the neighborhood that the contractor will mitigate the impacts of construction, including noise and vibration.
- The Municipality expressed concern about safe site access to and from Boylston Street and requests additional information to more fully assess traffic impacts, parking needs, infrastructure improvements, loading, and circulation within the site. In general, the Municipality supports minimizing parking to the extent feasible and incentivizing alternative modes of transportation.

Community Comments

In addition to comments from Municipal staff and officials, MassHousing received 19 letters from area residents expressing various concerns about the proposed Project. While some letters from the community welcomed the departure of the current use and supported housing on the Site, there were concerns with the project as proposed. Comments from the community are summarized below:

- Area residents noted existing stormwater, drainage, and flooding issues in the area, particularly on Hagen Road, and are concerned about the ability of the proposed Project to improve existing conditions.
- Area residents are concerned about protecting the wetlands area on the Site and noted that prior development efforts have run into challenges around wetlands protection issues.
- Area residents are concerned about the amount of blasting required for construction of the Project due to ledge on the Site, and the potential damaging effects on surrounding homes.
- Area residents are concerned that the size, height, and proximity of the building to abutting properties will have negative impacts on the neighborhood, including shadows impacts, light and noise pollution, and reduced privacy; they request that the applicant increase buffering and step-down and back the height of the building.
- Area residents are concerned about the increased vehicular traffic and noise both on Route 9 and on surrounding neighborhood streets, noting various dangerous intersections and safety concerns,

particularly as it relates to nearby school traffic. Furthermore, area residents are concerned about parking spillover on neighborhood streets given the challenges that Route 9 presents as an access/egress.

- Area residents are concerned about pedestrian safety, noting that Route 9 and the surrounding neighborhood streets are not currently safe walking routes; they request roadway and sidewalk improvements for both vehicular and pedestrian safety. Increased pedestrian foot traffic from the development through the existing footpath between the Site and Hagen Road was also a noted concern.

Comments Outside of the Findings

While Comprehensive Permit Rules require MassHousing, acting as Subsidizing Agency under the Guidelines, to “accept written comments from Local Boards and other interested parties” and to “consider any such comments prior to issuing a determination of Project Eligibility,” they also limit MassHousing to specific findings outlined in 760 CMR 56.04(1) and (4). The following comments submitted to MassHousing identified issues that are beyond the scope of our review:

- The Municipality encourages the Applicant to consider incorporating deeper levels of affordability than minimum standards set forth in the Guidelines. In particular, the Municipality suggested a need for units set at or below 50% AMI and 65% AMI, in addition to the 80% AMI units.
- Possible impacts on the capacity of Newton Public Schools.
- Possible impacts on the value of nearby homes.

MassHousing Determination and Recommendation

MassHousing staff has determined that the Project appears generally eligible under the requirements of the Program, subject to final review of eligibility and to Final Approval.¹ 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 Applicant may apply to the Zoning Board of Appeals (“ZBA”) 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 site and design review, and considering feedback received from the Municipality, the following issues should be addressed in the application to the ZBA, and the Applicant should be prepared to explore them more fully during the public hearing process:

- Development of this 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 building construction, stormwater management, wastewater collection and treatment, and hazardous waste safety. The Applicant should expect that the Municipality will require evidence of such compliance prior to the issuance of a building permit for the Project.

¹ 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.

- The Applicant should be prepared to work closely with its design team and the Municipality's Urban Design Commission to address concerns regarding building size, massing, and height.
- The Applicant is encouraged to work with its design team to accommodate active and passive outdoor spaces for residents and considerations for pedestrian improvements in the area.
- The Applicant should be prepared to provide detailed information relative to light, noise, and construction impacts, and respond to reasonable requests for mitigation.
- The Applicant should be prepared to submit a traffic study, parking analysis, and transportation demand management plan as part of their Comprehensive Permit application. Consideration should be given for reducing the parking ratio to the extent feasible and incentivizing alternative modes of transportation.
- The Applicant is encouraged to discuss the potential for offering units at deeper affordability levels.

MassHousing has also reviewed the application for compliance within 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 Site Approval is expressly limited to the development of no more than two hundred forty-four (244) rental units under the terms of the Program, of which not less than sixty-one (61) of such units shall be restricted as affordable for low- or 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 at 760 CMR 56.00.

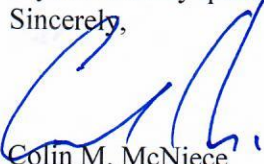
This approval will be effective for a period of two (2) years from the date of this letter. Should the Applicant not apply for a comprehensive permit within this period this letter shall be considered to be expired and no longer in effect unless MassHousing extends the effective period of this letter in writing. 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 Kat Miller at (617) 854-1217.

Sincerely,



Colin M. McNiece
General Counsel

cc: Jennifer Maddox, Undersecretary, DHCD
The Honorable Ruthanne Fuller, Mayor, City of Newton
The Honorable Cynthia Stone Creem
The Honorable Ruth B. Balsler
Barney Heath, Director, City of Newton Planning and Development
Jennifer Caira, Deputy Director, City of Newton Planning and Development

Attachment 1

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

528 Boylston, Newton, MA #1161

MassHousing hereby makes the following findings, based upon its review of the application, and taking into account 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 Newton is \$111,850.

Proposed rent levels of \$1,963 for a one-bedroom affordable unit, \$2,384 for a two-bedroom affordable unit and \$2,751 for a three-bedroom affordable unit, less utility allowances of \$151 for the one-bedroom affordable units, \$304 for the two-bedroom affordable units and \$489 for the three-bedroom affordable units, are within current affordable rent levels for the Boston-Cambridge-Quincy HMFA under the NEF Program.

The Applicant submitted a letter of financial interest from Citizens Bank, 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.

The City of Newton does not have a DHCD-approved Housing Production Plan. According to DHCD’s Chapter 40B Subsidized Housing Inventory, updated through September 14, 2022, Newton has 2,878 (SHI) units (8.9% of its housing inventory), which is 357 units below 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);

Relationship to adjacent streets/Integration into existing development patterns

Overall, the neighborhood is well positioned to support residential use. The Site is located at 528 Boylston Street (Route 9). Direct abutters to the Site are predominately single-family residential homes along Route 9 and in the surrounding neighborhoods. Directly to the rear of the Site is a well-established single-family neighborhood comprised of a mix of cape, ranch, and colonial-style homes. Route 9 is a major east-west State Highway with a high volume of traffic. The Site is located on the eastbound side of the highway. The westbound side of the highway is accessible via U-turn at Hammond Pond Parkway, approximately 1 mile east of the Site. The Site has an advantageous location in terms of access to services, including proximity to Newton South High School, a wide variety of retail stores in and around the Shops at Chestnut Hill, restaurants, medical services, recreational facilities, local area highways and public transportation.

Relationship to Adjacent Building Typology (Including building massing, site arrangement, and architectural details):

The proposed building is a 4-7 story midrise structure with a double-loaded corridor layout that houses 244 residential units and structured parking for 397 cars in a fully enclosed partially below grade garage. The intent of the building form is to respond to the various edges of the Site, with Boylston Street (Route 9) to the North, wetlands to the west, natural sloped features to the east and single-family homes along Hagen Road to the south through the utilization of views and building orientation. The bulk of the building massing is oriented along the Route 9. Courtyards face outward towards route 9 and the Hagen Road neighborhood to the rear, mitigating the bulk of the building at those edges. The massing of the building is further reduced along the rear of the Site, by stepping back the upper floors from 4 to 7 stories, away from the Hagen Road neighbors.

The project's guiding architectural aesthetics are contemporary, similar to nearby commercial and mixed-use development along Route 9, featuring clean lines, a varied but primarily flat roof line, minimal ornamentation, and single-hung windows with minimal trim. The building is proposed to be clad in Hardie-Panel siding and trim that will be utilized to break up the façade of the building with pattern, color changes, and window grouping. There will be building features that are highlighted utilizing material changes, storefront windows, and paneling. The façade color scheme is still in development, but it will likely be comprised of a dark neutral color with strategic highlights reflecting colors found in the surrounding environment.

Density

The Developer intends to build 244 homes on approximately 5.82 acres, 4.39 of which are buildable. The resulting density is 56 units per buildable acre. The proposed density is acceptable given the proposed housing type and similar patterns of development found within the surrounding regional context.

Conceptual Site Plan

The proposed site plan consists of one 4-7 story building fronted along the eastbound side of Boylston Street (Route 9). Site access is by curb cut into a right turn only vehicular access point, which leads to a two-way drive that services the building's front entry and garage access. A secondary pedestrian entrance is provided along Route 9. Landscaped medians are incorporated into the drive to aid circulation, highlight the front entry, and break up the asphalt. The drive continues around the rear of the building serving as a fire lane. This portion of the drive is proposed to be constructed with grass pavers to minimize pervious surface area and soften the edge with the single-family residential abutters on Hagen Road. Additional plantings appear to be proposed in this area to provide vegetative buffer. The natural resource areas described below and located along the western portion of the Site provide a natural buffer with abutting homes on Old Field Road. Open space amenities on the Site otherwise consist of a swimming pool, landscaped entry plaza and courtyards, and existing walking trails. A storm water

infiltration/ detention system is identified at the southeast limit of site. Existing underground utilities (water/sewer, gas, electric, telephone and cable) are available at Boylston Street.

Environmental Resources

Documented on-site resource areas include approximately 1.43 acres of area located in FEMA Floodplain Zone AE in the western portion of the Site. Included in this area are also wetland and riverfront resource areas associated with the Paul Brook. While the site plan is organized in a way that mitigates the impact on these natural resource areas, some parking and building footprint areas are located in the buffer zones. Accordingly, the Project will be subject to further review by the local Conservation Commission under a Notice of Intent.

Topography

The Site slopes significantly upward from west to east, with the lowest point at the southwest corner and highest point located at northeast corner, limiting the buildable area of the Site. Areas of exposed ledge are located in the northeastern corner of the Site. The building is situated to mostly avoid these areas, mitigating the extent of blasting required. The topographic features of the Site have been considered in relationship to the proposed development plans and do not constitute an impediment to development of the Site.

(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);

According to the appraisal report for the Site, Newton, and the subject property's more immediate neighborhood, is in a stable phase of its lifecycle that will adequately support residential development at the Site.

The Applicant proposes 244 rental apartments to be financed under the NEF Program. There will be 183 market-rate units with proposed average rent levels of \$3,375 for the one-bedroom units; \$4,945 for the two-bedroom units; and \$5,925 for the three-bedroom units. MassHousing's Appraisal and Marketing team (A&M) performed a market analysis and found that proposed market rents for each unit type are at or above the upper end of comparable market rents. A more in-depth market study would be required prior to marketing/lease up of the proposed project.

(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;

MassHousing has commissioned an as "As-Is" appraisal which indicates a land valuation of \$4,450,000. The Project pro forma includes a proposed investment of \$64,794,207 in private equity. A preliminary review of the pro forma indicates that the per-unit construction costs are within the normal range for similar multi-family developments. Based on estimated development costs, the Project appears to be financially feasible and within the limitations on profits and distributions.

(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

MassHousing finds that the Applicant must be organized as a Limited Dividend Organization. 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.

The Applicant controls the entire 5.28-acre Site by virtue of an Agreement to Assign and Assume Purchase and Sale Agreement between OVP Management, LLC and Toll Bros., Inc. dated June 14, 2022, as amended on June 22, 2022 and July 13, 2022, with an expiration date of June 30, 2023.