



Massachusetts Housing Finance Agency  
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RECEIVED  
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January 20, 2011

VIA CERTIFIED MAIL

Mr. Robert E. Moss, President  
Moss Development, Inc.  
15 Brickyard Lane  
Westborough, MA 01581

RE: **The Residences at Johnson Farm (#SA-10-001)**  
Sudbury, MA 01776  
**Project Eligibility (Site Approval) Application**

Dear Mr. Moss:

This letter is in response to your application as “Applicant” or “Developer” for a determination of Project Eligibility (“Site Approval”) pursuant to Massachusetts General Laws Chapter 40B, 760 CMR 56.00 and the Comprehensive Permit Guidelines issued by the Department of Housing and Community Development (DHCD) (the “Guidelines”) (collectively, the “Comprehensive Permit Rules”), under the following program (the “Program”):

- New England Fund (“NEF”) Program of the Federal Home Loan Bank of Boston.

The proposal consists of the construction of 120 units of rental housing (the “Project”) on a 35.6+/- acre site located in Sudbury (the “Municipality”) at 189 Landham Road (the “Site”).

This letter is intended to be a written determination of Project Eligibility (“Site Approval”) in accordance with the Comprehensive Permit Rules, establishing fundability by a subsidizing agency under a low- and moderate-income housing subsidy program. To the extent that Project funding is provided by a non-governmental entity (NEF), this letter is also intended to be a determination of Project Eligibility (“Site Approval”) by MassHousing acting as Subsidizing Agency (formerly, “Project Administrator”) under the Guidelines, including Part V, thereof, “Guidelines for Housing Programs In Which Funding Is Provided By Other Than A State Agency.”

MassHousing staff has performed an on-site inspection of the Site, which local boards were invited to attend, and reviewed the pertinent information for the Project submitted by the Applicant, the Municipality and others in accordance with the Comprehensive Permit Rules. As a result of our review, we have made the following findings as required pursuant to 760 CMR

56.04(1) & (4): (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) ("Final Approval"); (b) that the site of the proposed Project is generally appropriate for residential development; (c) that the conceptual Project design is generally appropriate for the site on which it is located; (d) that the proposed Project appears financially feasible within the housing market in which it will be situated based on comparable rental developments; (e) that an initial pro forma has been reviewed, including a land value determination, and the Project appears financially feasible on the basis of estimated development costs; fundable under the Program and consistent with the Guidelines; (f) that the Applicant is a public agency, a non profit organization, or would be eligible to apply as a Limited Dividend Organization in connection with an application for financing under the Program; is financially responsible and meets the general eligibility standards of the Program; and (g) that the Applicant controls the site. Each such finding, with supporting reasoning, is set forth in further detail on Attachment 1 hereto.

As noted, MassHousing staff has determined that the Project appears generally eligible under the requirements of the NEF Program. In order to maintain eligibility under the NEF Program the following requirements must be addressed as part of your Final Approval application submission:

1. Financing for the Project must originate from a subsidizing lender that is a member of the Federal Home Loan Bank of Boston (FHLBB); a minimum of 25 percent of the financing must be obtained from the NEF Program; the construction and permanent financing must be for a minimum term acceptable to the Subsidizing Agency; and other financing terms and conditions must be substantially similar to terms used by the Subsidizing Agency in its own lending programs or otherwise be commercially reasonable. Evidence of a firm commitment for financing for the Project must be provided during your request to MassHousing for Final Approval. The Regulatory Agreement shall provide that any transfer of all or a portion of the NEF lender's interest (including participations or sale of servicing rights) during the approved term of the loan or, if applicable, the first 5 years of the permanent financing shall be subject to the approval of the Subsidizing Agency.
2. The Applicant must offer a minimum of 25% of the units for rental to households earning not more than 80% of the area median income, adjusted for household size, as published by the U.S. Department of Housing and Urban Development (HUD). Note, however, for developments funded through the NEF Program, in order to attract a sufficient number of qualified tenants for the affordable units, the initial maximum housing cost (rent plus applicable utility allowances) for the affordable units must be set at levels affordable to households earning not more than 70% of area median income as determined by MassHousing based on the income limits published annually by HUD as adjusted for household size (based on 1.5 persons per bedroom).

Mr. Robert E. Moss, President  
RE: **The Residences at Johnson Farm**  
MassHousing # SA-10-001  
Project Eligibility (Site Approval) Application  
Page - 3

3. The Applicant must enter into a regulatory agreement acceptable to MassHousing in the form for the applicable Program. If the Project is funded through the NEF Program, MassHousing will serve as the Subsidizing Agency under the Regulatory Agreement.
4. The Applicant must comply with the Land Value Policy described in Section IV (B)(1) of the Guidelines.
5. The Applicant must be a limited dividend organization and agree to limit the profit on the Project in accordance with the Comprehensive Permit Rules.
6. The Applicant shall be prepared to demonstrate to the community the ways in which the proposed Project complies with the Commonwealth's Sustainable Development Principles embraced by the Department of Housing and Community Development.
7. The Applicant must demonstrate that the Project complies with or will comply with EPA's Energy Star guidelines or with similar standards acceptable to MassHousing.
8. The Applicant must provide evidence acceptable to MassHousing supporting the market rents as shown in the Project proforma.

The Municipality was given a thirty (30)-day notice to review the proposed site approval application and submit comments to MassHousing. Based on MassHousing's site approval and design review and the comments received from the Municipality and other interested parties, the following issues should be addressed in your application to the local Zoning Board of Appeal ("ZBA") for a comprehensive permit and fully explored in the public hearing process prior to submission of your application for Final Approval:

1. The Applicant shall provide a traffic/engineering study, and a site entry/egress design that addresses traffic mitigation and is in compliance with all applicable local and state requirements governing safe design. The traffic study should include a reasonable assessment of the effects of the Project in conjunction with other proposed development in the vicinity.
2. Any construction plan on this site will require adherence with all applicable environmental protection requirements assuring protection of the public water supply area and compliance with storm water runoff restrictions and hazardous waste safety.
3. Plans for the Project must comply with all conditions contained in any Order of Conditions issued by the Conservation Commission or the Department of Environmental Protection in connection with the Project in order to address protection of the watershed, drainage, wetlands, vernal pools, wildlife habitats and conservation areas.

4. The Applicant shall provide an acceptable plan to provide water, sanitary sewer, and storm water drainage to the site, and shall furnish evidence of any required permits to provide or establish such services to the site.
5. The Applicant shall provide a current Phase One Environmental Site Assessment and evidence of compliance with the Massachusetts Environmental Policy Act (MEPA) requirements, both of which are to be accurate and specific to the proposed total Project.
6. A determination of the applicability of Executive Order #193 of the General Laws of the Commonwealth governing the use of agricultural land shall be obtained from the Massachusetts Department of Food and Agriculture.
7. Final plans for the Development must show the number and location of handicapped accessible rental units in compliance with all applicable state and federal regulations.
8. To better position the Project to compete in the market, we recommend that the Applicant consider the addition of appropriate amenities. For example, we would recommend that consideration be given to the addition of a clubhouse or community center and active or passive recreation facilities such as walking trails or gardening areas.
9. The proposed purchase price of \$2,020,000 exceeds the "As Is Market Value" of the property determined by the MassHousing commissioned independent appraisal. The maximum permissible acquisition value that can be included in the Development Budget approved at the time of Cost Examination/Cost Certification, as required by the Regulatory Agreement, for limited dividend purposes is the "As Is" value of \$700,000 plus reasonable and verifiable carrying costs from the date of your Site Approval application, May 19, 2010.

This Site Approval is expressly limited to the development of no more than 120 rental units under the NEF Program, subject to the respective minimum affordability requirements (including percentage of units for low- or moderate-income households, income eligibility standards and duration of restrictions requiring low- or moderate-income housing) and the Applicant's limited dividend status requirement, as set forth in the Guidelines for financing under the NEF Program. It is not a commitment or a guarantee of MassHousing or NEF financing or state subsidies and does not constitute a site plan or building design approval. Should you consider the construction of additional units, a reduction in the size of the site, a change in tenure type (rental/homeownership), or a change in building type or height, you will be required to submit a new site approval application for review by MassHousing.

For guidance on the review process for NEF applications, you are advised to consult the Guidelines, which may be found at [www.mass.gov/dhcd](http://www.mass.gov/dhcd) (See "DHCD Legal Resources"). Further, we urge you to carefully review with legal counsel the M.G.L. c.40B Comprehensive Permit Regulations, 760 CMR 56.00, which revise and supersede 760 CMR 30.00: Procedural

Mr. Robert E. Moss, President  
RE: **The Residences at Johnson Farm**  
MassHousing # SA-10-001  
Project Eligibility (Site Approval) Application  
Page - 5

Regulations of the Housing Appeals Committee and 760 CMR 31.00: Housing Appeals Committee: Criteria for Decisions Under M.G.L. c. 40B, §§ 20 through 23.

This approval will be effective for a period of two 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, the 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 if applicable, (3) when any appeals are filed.

Please note that, should a comprehensive permit be issued, prior to construction or 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 [760 CMR 56.04(07) and the Guidelines including, but not limited to, Part III thereof concerning Affirmative Fair Housing Marketing and Resident Selection], and 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.

**Further Opportunities for Assistance from MassHousing: Please also note that MassHousing will not issue Final Approval if the comprehensive permit contains any conditions that are inconsistent with the regulatory requirements of the applicable housing subsidy program (The New England Fund of the FHLBB, for which MassHousing serves as Subsidizing Agency), as reflected in the applicable regulatory documents. A modification of the comprehensive permit may be required. 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 John W. McCormack, Development Officer, Rental Lending, at 617-854-1363.

Sincerely,



Thomas R. Gleason  
Executive Director

TRG/jwm

Mr. Robert E. Moss, President  
**RE: The Residences at Johnson Farm**  
MassHousing # SA-10-001  
Project Eligibility (Site Approval) Application  
Page - 6

cc: Ms. Tina Brooks, Undersecretary, Department of Housing and Community Development  
John C. Drobinski, Chairman, Town of Sudbury Board of Selectmen  
Jody Kablack, Director of Planning and Community Development, Town of Sudbury  
Maureen Valente, Town Manager, Town of Sudbury  
Steven Schwartz, Developer Atty.

## Attachment 1

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

### **The Residences at Johnson Farm (#SA-10-001)**

After the close of a 30-day review period and extension, if any, 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) MassHousing finds 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.

*(b) MassHousing finds 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);*

MassHousing finds that the site of the Project is generally appropriate for the proposed Development. According to correspondence submitted by the Town of Sudbury dated August 17, 2010, the Town has been making steady progress in recent years in furthering affordable housing in the community through the development of a Housing Plan, local 40B Guidelines and a Housing Production Plan (HPP) that is currently in development. The Town, however, did not submit evidence that DHCD has either approved the HPP or certified that the Town of Sudbury is in compliance with the goals of its approved HPP in accordance with 760 CMR 56.03(4). Nor has the Town alternatively demonstrated to MassHousing that Sudbury has made recent progress toward the Statutory Minima, in accordance with 760 CMR 56.03(5).

*(c) MassHousing finds 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;*

1. **Relationship To Adjacent Building Typology:** (Including building massing, site arrangement, and architectural details)

The proposed building massing consists of modestly scaled 3 story 12 unit buildings. The buildings are set back in the site behind an existing wooded buffer. The arrangement of the buildings is along a loop road in clustered groups of buildings. The current proposed architectural detailing is somewhat busy but residential in nature. The extent and nature of the wooded buffer needs to be confirmed.

2. **Relationship To Adjacent Streets:** (Including integration into existing development patterns)

The Development is proposed so as to be nearly invisible from the street behind a wooded buffer. The proposal maintains existing farm buildings and open land by the road to preserve the existing streetscape.

3. **Density:** (Does density meet guidelines)

The Development proposes 120 units on 22+/- acres of buildable site (35.6+/- acres total) for a density of 5.45 units per acre. This is lower density than the Town of Sudbury guideline of 6 units per acre.

4. **Site Plan:** (Quality of site design)

The site plan cleverly uses existing wooded areas and wooded unbuildable wetlands to buffer the buildings from abutters and the roadway. It also uses similar features to buffer individual buildings from each other. The loop road system makes best use of the buildable upland area.

5. **Environmental Resources:** (Are environmental issues appropriately addressed)

The Development appears to avoid construction in wetland areas. The Development must comply with all site-specific conditions contained in any Order of Conditions issued by the Conservation Commission or DEP.

6. **Topography:** (Does design make effective use of topography)

The topography is relatively flat and the proposal makes use of existing wooded buffers.

7. **Proposed Use:** (Is proposal appropriate for proposed use)

Although a rural area of a residential suburb the site seems appropriate for the proposed use. Automobiles are necessary to access most facilities, but this is typical for the area.



***(d) MassHousing finds 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 rents and operating expenses in the initial proforma appear financially feasible. Based upon the preliminary market assessment, the Applicant's proposed market rents fall within the range of unadjusted area market rents.

***(e) MassHousing finds 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;***

A third party appraisal prepared for MassHousing by Marotta Valuation Advisors provides an estimated "As Is Market Value" value for the site as of July 1, 2010 of \$700,000. This amount is less than the proposed purchase price of \$2,020,000. The maximum permissible acquisition value that can be included in the Development Budget approved at the time of Cost Examination/Cost Certification, as required by the Regulatory Agreement, for limited dividend purposes is the "As Is" value of \$700,000 plus reasonable and verifiable carrying costs from the date of your Site Approval application, May 19, 2010.

***(f) MassHousing finds 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 and meet the general eligibility standards of the NEF housing program. MassHousing sees no reason this requirement could not be met, given information reviewed to date.

***(g) MassHousing finds 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 Purchase and Sale Agreement (Date: 1/30/10) evidencing a proposed property transfer from Peter Johnson, Trustee of the Johnson Living Trust of 189 Landham Road ("Seller") to Moss Development, Inc. ("Buyer"). The Time for Performance; Deliver of Deed is indicated as, "... (30) days after the BUYER obtains all permits and approvals, but not later than (16) months from the date of this agreement..." The agreement also includes 24 monthly extensions.