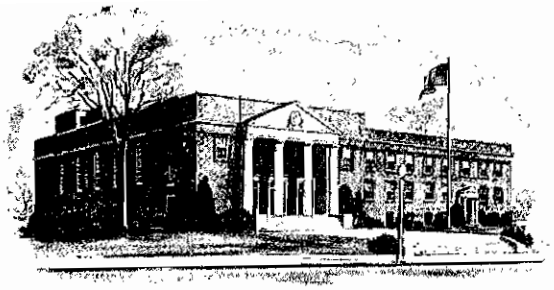

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December 18, 2013

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

RE: Project# SA-13-007 "The Commons at Weiss Farm"

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 John M. Corcoran and Company (the "Applicant") for a 264 dwelling unit development ("proposed development") off of Franklin Street in Stoneham, Massachusetts.

For the reasons set forth in detail below, the Board of Selectmen urges MassHousing, in the strongest possible terms, to deny the Applicant's request for project eligibility approval. We reach this conclusion and recommendations on our review of the project eligibility application, our personal knowledge of the locus and the immediate neighborhood, and the severe environmental and infrastructural constraints of both.[1] As we discuss in detail below, there is no rational support for issuing project eligibility approval for this project at this location and we respectfully suggest that MassHousing must deny the above noted application.

I. The Applicant Failed to Meet with the Board of Selectmen or Town Administrator prior to filing its application for Project Eligibility approval in direct contradiction to MassHousing's unequivocal requirements.

[1] Further support for the incompatibility with the proposed project at this location is contained within the over three hundred and sixty (360) letters received to date from local residents and business owners opposing the proposed project.

Page 2 of the "Additional Required Information" form governing MassHousing's "Chapter 40B Site Approval and Final Approval", subsection (3) "Contact with Local Officials" states in relevant part, "At a minimum, prior to any submittal of a Site Approval Application to MassHousing, meetings must be held with the Chief Elected Official and/or the Town/City Manager..." (emphasis added).

Prior to the Applicant's filing for Project Eligibility (site) approval, no meeting to discuss the Applicant's intentions or plans were held with either the Board of Selectmen or David Ragucci, Stoneham Town Administrator. The Applicant's statement that a meeting with Mr. Ragucci and Town Counsel to "keep the town informed on the status of the Project" on May 9, 2013 is wrong and disingenuous. No plans of any "Project" were presented or discussed and neither the Town Administrator nor Town Counsel were provided with any information as to the details of any project that the Applicant was considering.

MassHousing's requirements that mandate a "pre filing" meeting with the recipient municipality is for good reason. Input from the Town Administrator and the Board of Selectmen is constructive, helps an applicant identify issues of concern and opportunity within the city or town and otherwise helps foster a positive relationship between the developer and the host municipality. Such results have always been our experience in developing affordable housing as well as countless economic development and public works projects throughout the Town. Meeting with a municipality prior to filing for development permits is a time honored practice for any developer, big or small, without exception in Massachusetts and nationally.

Yet in this case and for reasons that are not clear, the Applicant failed to meet with the Town, failed to present its project until after it filed with MassHousing (and only after we requested the same[2]) and wrongly states that it met with the Town Administrator and Town Counsel on May 9, 2013 to "keep town [sic] informed on the status of the Project". Had the Applicant met with us prior to submitting its application with MassHousing, we would have informed the Applicant of the facts enumerated in detail, below.

The Applicant should not be rewarded with project eligibility approval for so boldly ignoring MassHousing's long established and unambiguous requirements regarding a substantive meeting with the municipality to explain the proposed project. MassHousing should deny the application for this reason alone.

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[2] We hesitate to label the Applicant's presentation before the Board of Selectmen on November 12, 2013—weeks after the application was made to MassHousing—as a "meeting" or "presentation". The Applicant showed a grainy five minute video of apparently satisfied tenants at one of Applicant's other projects, failed to present any substantive plans or provide any substantive discussion of site planning, civil engineering, traffic or environmental issues and underwhelmed and insulted the Board and the general public with repeated responses from Mr. Engler regarding serious questions that were posed, that these issues "would be worked out with the Board of Appeals".

II. The application to MassHousing is devoid of essential information regarding the project, its impacts and whether or not it meets even MassHousing's low threshold for approval pursuant to 760 CMR 56.04.

A. The application fails to comport with basic common sense and land planning principles. The proposal of a large rental housing project in the middle of an historically agricultural and more recently single family detached dwelling neighborhood, violates almost 300 years of land planning and development patterns in the Town of Stoneham. There is simply no rational basis for proposing, let alone approving, such a grossly inconsistent density and use within this established neighborhood. Even the Housing Appeals Committee, no shrinking violet when it comes to overruling local zoning, has repeatedly supported legitimate land use planning efforts to preserve and protect existing neighborhoods. (See for example, 28 Clay Street v. Middleborough Board of Appeals, No. 08-06, Mass. Housing Appeals Committee, September 28, 2009).

The proposed project's label—"The Commons at Weiss Farm"— suggests both the design of a "commons" and the preservation of a "farm". In fact, as it patently clear, the proposal does neither. For centuries, planners have referred to a "commons" as the land area shared "in common" by a generalized community of residents or visitors. More recently, "smart growth" advocates, including MassHousing (see MassHousing's "Sustainable Development Principles", principle number 1: Concentrate Development and Mix Uses) have advocated the inclusion of functional open space, among other activities, within residential developments.

The proposed project provides no functional open space. The "open space" identified consists of remnants—left over pieces of land, much like scraps of carpet—following the placement of three (3), three hundred foot (300') four-story buildings[3] surrounded by acres of parking lots, drainage structures and roadways. Accessing even these remnant parcels, including the "club house" requires traversing active parking lots and roadways: none of the "open space" is accessible otherwise.

In addition, even a first-year architecture or planning student knows to avoid the "heat island effect" of surrounding residential dwellings with acres of impervious parking lots and roadway. Yet the proposal before MassHousing does just that. In doing so — designing a project completely surrounded by pavement on all four sides of each building—the proposal violates MassHousing's "Sustainable Development Principles" 4 (Protect Land and Ecosystems), 5 (Use Natural Resources Wisely) and 9 (Promote Clean Energy). In addition, the absence of any attempt to integrate the proposed development into the Town of Stoneham generally or the immediate neighborhood specifically violates

[3] Each of the proposed residential buildings is equivalent in length to a football field and will result in structures of greater height than any habitable structure in the Town of Stoneham.

MassHousing's "Sustainable Development Principles" 3 (Make Efficient Decisions) and 10 (Plan Regionally[4]). For this reason, MassHousing should deny project eligibility approval as the proposed project cannot comport with the requirements of 760 CMR 56.04(4)(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…").

Consistent with the above noted *internal* site planning comments is the fact that the project is proposed for the *wrong location.* Within a quarter-mile of this proposed project are three existing apartment complexes, the Stoneham High School, an assisted living care center currently under construction, an extremely active Dunkin Donuts, and a child-care facility, all located on Franklin Street (and the Colonial Park Elementary School on a road directly entering upon Franklin Street) a narrow two lane, heavily travelled and congested road with few options for widening, signalization or safety improvements.

It was precisely because of the intensity of these uses and the limitations imposed by this portion of Franklin Street that the Town recently determined—upon the advice of highly credible traffic engineers—that construction of a new middle school on the High School campus would be unsafe and irresponsible. We respectfully suggest that MassHousing should apply this same logic to the current application. It would be unsafe and irresponsible to invite a 268-unit apartment complex in this location.

B. The application fails to provide evidence that the applicant is a "public agency, a non-profit organization or a Limited Dividend Organization" as required by 760 CMR 56.04(1)(a) and 760 CMR 56.04(4)(f). Both regulations require as a condition precedent to the issuance of project eligibility letter that the applicant be—at the time of application to MassHousing—a "public agency, a non-profit organization or a Limited Dividend Organization". The Applicant is clearly not a public agency or a non-profit organization. Equally clear is that the Applicant is also not a Limited Dividend Organization. In its filing with the Massachusetts Secretary of State's office (see filing dated April 19, 2013), the applicant, Weiss Farm Apartments, LLC (as an assignee of the purchase and sales agreement from John M. Corcoran and Company, LLC) is identified as a limited liability

[4] See letter in this matter from Representative Jason M. Lewis (whose region includes Stoneham) to MassHousing (December 2, 2013) wherein Representative Lewis states that he has "serious reservations about moving forward with this project as currently proposed" and the letter from Melrose Mayor Robert Dolan to the Stoneham Board of Selectmen, November 12, 2013 wherein Mayor Dolan states, "I have serious concerns about the size and scale of this 40B proposal in light of the limited information presented in the filing to MassHousing. This project should undergo a rigorous review by the Town of Stoneham with consideration of concerns raised by abutting communities who will experience negative impacts from this project if it is not appropriately scaled and the infrastructure and traffic impacts properly mitigated."

company with no identification of the same as a Limited Dividend Organization as required by G.L. c.40B, s.20-23 or 760 CMR 56.00 et seq. We repeat the clear reading of the very regulations that MassHousing is required to adhere to: an applicant for project eligibility approval must be—is, at the time of application to MassHousing—a "public agency, a non-profit organization or a Limited Dividend Organization". The Applicant is none of the above noted entities. MassHousing must deny the application for project eligibility approval accordingly.

C. The application fails to provide sufficient evidence that the "applicant controls the site". See, 760 CMR 56.04(1)(c) and 760 CMR 56.04(4)(g). While the applicant has provided MassHousing with a Purchase and Sales Agreement dated April 10, 2013[5], this Agreement imposes no legal obligation on the applicant to acquire the locus and is precisely why the Supreme Judicial Court ruled over 40 years ago that "site control" is a fundamental element of the comprehensive permit process.[6] As you will note, the Purchase and Sales Agreement is contingent upon the Applicant obtaining approval to construct at least 200 dwelling units. See paragraph 3(d)(ix). Put more simply, the Applicant is under no obligation to purchase the property unless it receives approval for at least 200 dwelling units. A basic principle of contract law requires that there must be some agreement that binds the parties. Here, there is nothing binding the Applicant where it has no contractual obligation should the Applicant obtain approval for fewer than 200 dwelling units. MassHousing must deny the application for project eligibility approval as the purported Purchase and Sales Agreement is not binding on the Applicant and therefore does not comply with the requirements of 760 CMR 56.04(1)(c) and 760 CMR 56.04(4)(g).

D. In addition to the contractual flaws found in the April 10, 2013 Purchase and Sales Agreement discussed above, we call MassHousing's attention to the unsubstantiated and outrageous claim of a site acquisition value of $7,686,200 for the locus. See Page 1 of the Applicant's Initial Budget included in its application to MassHousing. The 2013 assessed value of the locus, as certified to the Commonwealth by the Stoneham Board of Assessors, inclusive of a single-family dwelling and over 25 acres of land, is $1,672,000. The Applicant's inclusion of a totally fictitious site acquisition value of $7,686,200

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[5]The Board of Selectmen acknowledge that a purchase and sales agreement *may be* sufficient evidence to constitute "site control" pursuant to statute and regulation but, as discussed above, if the purported agreement is illusory—imposing no serious obligation on the buyer to perform—the fundamental requirement of site control is lacking.

[6] See Board of Appeals of Hanover v. Housing Appeals Committee, 363 Mass. 339, n.24 (1973) (evidence of site control serves to "provide ample protection against the unlikely possibility of frivolous applicants who have no present or potential property interest in the site").

violates MassHousing's Acquisition Value Policy[7]. It is remarkable that a sophisticated and experienced real estate developer—one that proudly touts its experience with and benefit from, the comprehensive permit statute—would submit a development pro forma so clearly in violation of MassHousing's long established Acquisition Value Policy. The Applicant's $6,000,000 inflated claim of value is no different than the claims made by the Pine Woods Development Corporation for a comprehensive permit project in Sharon in 2007. In the Sharon matter, MassHousing took the remarkable step of rescinding project eligibility approval where MassHousing concluded that the applicant's purported claim of a $10,000,000 acquisition value-where the land's appraised value was $2,500,000—was false. In rescinding project eligibility approval MassHousing stated, "This is such a substantial difference that it calls into question the underlying elements of the proposed development that we relied upon in connection with making the required finding of financial feasibility".[8] Unlike the Sharon matter, MassHousing is now aware of the gross overstatement of the locus' value before issuing project eligibility approval. In this case, MassHousing should simply deny project eligibility approval where the application before it claims a land value based upon the applicant's development density and not, as required by MassHousing's Acquisition Value and Policy, the land's appraised value.

E. The "Initial Capital Budget" contained in the application contains several statements that cannot be supported and, much like the unsubstantiated claims made regarding the land acquisition value, should not be rewarded with approval by MassHousing. First, as noted above, the claimed acquisition cost of the land is $6M greater than the Town's current assessment for the property. After 40 years of fraudulent representations by certain developers seeking comprehensive permits, MassHousing must ensure that purported acquisition values comply with MassHousing's own policy: the acquisition value cannot exceed the land's underlying value without a comprehensive permit in place. Second, the development budget contains over $2,500,000 of claimed contingency costs. Contingency costs within a pro forma for a comprehensive permit project are simply disguised profit; the result of which is a project containing far more dwelling units than would otherwise be necessary to make the project feasible. MassHousing should reject the budget submitted and reject the project eligibility application where the submitted pro forma intentionally disguises the true costs of construction for this project.

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[7] "The allowable acquisition value will be the fair market value of the site under current zoning, excluding any value relating to the possible issuance of a Comprehensive Permit (the "As-Is Market Value") at the time of the submission of the request for a project eligibility ("Site Approval") letter plus reasonable and verifiable carrying costs from that date forward". Source: MassHousing Rental Development Acquisition Value Policy and Special Restrictions for Comprehensive Permit Developments, revised, March 6, 2013.

[8] See letter from Executive Director Thomas Gleason to Michael Intoccia, April 17, 2007 regarding PE-363.

F. Development of the proposed project requires the grant of extensive waivers from Stoneham rules, regulations and bylaws yet the application to MassHousing contains an incomplete, misleading and wrong "zoning analysis". MassHousing should be aware that construction of the proposed project would require a wholesale eradication of the Town's Zoning Bylaw and Wetlands Bylaw, among others. Such waivers might be justified in cities or towns with exclusionary zoning practices or who have otherwise imposed "barriers" to affordable housing. Nothing could be further from the truth in Stoneham. As the Town's historic and current development practices make clear, the Town's land use regulations are inclusive, reasonable and the result of deliberative decisions of the Town's legislative body for hundreds of years. As discussed within this letter, the proposal before MassHousing is anything but well designed, thoughtful or rationally connected to the locus, the neighborhood or the region. Rather than even attempting to comply with the Town's wholly reasonable regulations, the applicant callously claims the need for a waiver from some of the Town's land use regulations and fails to inform MassHousing of the need for many more. Given the extensive wetland resources on and adjoining the locus and the jurisdictional protections afforded these resources (and the protections afforded abutting properties) it is illogical to suggest that a comprehensive permit project should somehow be exempt from the public purposes served by Stoneham's Wetlands and Zoning Bylaws, among many others. For example, please see the letter to Richard High, president of John M. Corcoran and Company from the US Environmental Protection Agency, November 5, 2013, wherein EPA notes, "It appears that this project may involve activities that require a permit from the Corps of Engineers due to the large extent of wetlands on the property". We respectfully suggest that MassHousing take particular notice of EPA's November 5th letter given the characteristics of the subsurface of the locus—containing extensive peat deposits and completely unsuitable for the project as proposed—as well as the fact that the proposed project necessitates thousands of yards of fill to achieve necessary separation from ground water. These facts alone should allow MassHousing to conclude that the proposed project is totally inconsistent with rational site development and site planning standards. For these reasons as well as those noted below, MassHousing should deny project eligibility approval as the proposed project cannot comport with the requirements of 760 CMR 56.04(4)(c)("that the conceptual project design is generally appropriate for the site on which it is located...").

G. Consistent with the comments above, it is clear that a majority of the proposed project is subject to the jurisdiction of the Stoneham Conservation Commission pursuant to the Wetlands Protection Act. It is difficult to imagine a development project with such extensive intrusion of virtually the entire developed portion of the locus into regulated wetland buffer zones. For this reason, MassHousing should deny project eligibility approval as the proposed project cannot comport with the requirements of 760 CMR 56.04(4)(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...").

H. As with many comprehensive permit applications, the applicant has maximized the locus with the full knowledge that should MassHousing grant project eligibility approval, the Board of Appeals will likely suggest a smaller, less intrusive development. This trick—propose the maximum number of units that can be crammed onto a piece of paper and "settle" for less—is as old as the statute itself. Sometimes, but not here, the ploy works. The Town and the neighbors, fearing a grossly hostile project, accept one that is slightly less hostile. In this case however, the proposed project and virtually any recasting of this project are unacceptable. Once again, MassHousing should deny project eligibility approval as the proposed project cannot comport with the requirements of 760 CMR 56.04(4)(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…").

III. Should MassHousing issue project eligibility approval for this project, we request that MassHousing impose the following minimal conditions[9]

We present the following recommended minimal conditions only in the alternative if, for whatever reason, MassHousing does not follow our recommendation that the project eligibility letter be denied.

1. The applicant should be required to provide evidence that it complies with the requirements of 760 CMR 56.04(1)(a);

2. The applicant should be required to provide evidence that the land's value equals or exceeds $7,686,200 as stated in its development budget and as submitted to MassHousing and otherwise complies with MassHousing's Acquisition Value Policy;

3. The applicant should be required to submit a revised site plan that is consistent with the Town's historic development patterns in the immediate area and consistent with the Town's plans and policies for this portion of Stoneham;

[9] We note that, of late, MassHousing has increasing substituted "suggestions" for the developer's consideration in place of conditions binding on the Applicant and project. Respectfully, we believe that making suggestions to developers, rather than imposing conditions, is an abdication of MassHousing's regulatory role as the subsidizing agency. As required by statute and regulation, MassHousing must assure compliance with the specific terms of 760 CMR 56.00 et seq. and relevant state and federal laws.

4. The applicant should be required to submit a revised site plan with a proposed density consistent with the traffic safety limitations of this portion of Franklin Street;

5. The applicant should be informed that the Board of Appeals has the authority to invoke the Town's status as "consistent with local needs" pursuant to G.L. c.40B, s.20-23 and 760 CMR 56.00 et seq.;

6. The applicant should be required to submit supporting documentation for its development budget, most notably how the project can be constructed for the dollar amounts proposed and submit a revised pro forma without inclusion of contingency costs;

7. The applicant should be informed that the Town of Stoneham will not grant wholesale waivers from local regulations designed to protect public health and safety; and

8. That Executive Order 193 applies to this project given the proposal's intent of converting designated agricultural land into non-agricultural uses and the proposed reliance on subsidies from both the federal government and the Commonwealth. We bring to your attention the Massachusetts Supreme Judicial Court's (SJC) explicit holding in Town of Middleborough v. Housing Appeals Committee, 449 Mass. 514 (2007), that the New England Fund is a federal subsidy for purposes of the Comprehensive Permit Act. Further, it is evident from the Project Eligibility application to MassHousing, that a state subsidy is involved as well. Where both a federal and state subsidy is being used to convert agricultural land to non-agricultural uses, Executive Order 193 applies to this project.

On behalf of the Board of Selectmen of the Town of Stoneham, please let me know if you have any questions or would like additional support for any of the comments made above. Thank you in advance for your consideration.

Very truly yours,

On behalf of the Stoneham Board of Selectmen as its Chairman,

Robert W. Sweeney es

Robert Sweeney

cc: Steven Cicatelli, Esq., counsel for the Applicant.