



Massachusetts Housing Finance Agency  
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August 11, 2023

Lobisser Building Corp.  
1 Charlesview Road  
Hopedale, MA  
Attention: Kevin Lobisser

**Re:      Upton Apartments  
Project Eligibility/Site Approval  
MassHousing ID No. 1184**

Dear Mr. Lobisser:

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 Executive Office of Housing and Livable Communities (“EOHLC”) (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”).

Lobisser Building Corp. (the “Applicant”) has submitted an application with MassHousing pursuant to Chapter 40B. You have proposed to build sixty-eight (68) units of rental housing (the “Project”) on approximately 6.75 acres of land identified as Map 202, Parcel 108 by the Assessors’ maps, with frontage located between 45 and 51 Main Street (the “Site”) in Upton (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. The Upton Board of Selectmen submitted a letter dated June 8, 2023, identifying comments and concerns about the proposed Project. In summary, while the Municipality expressed an interest in continuing to work with the Applicant on similar projects in Town, they expressed concerns about the suitability of the site for the proposed Project. The following comments and concerns were identified by the Municipality:

- The Municipality is concerned about the height of the proposed Project and requests that the Applicant examine ways to mitigate the building's visibility from abutting properties, including a reduction in height or length of the building, which could allow for the establishment of a no-cut buffer around the perimeter of the Site adjacent to Whitney Lane.
- The Municipality is concerned about the impact of stormwater from the proposed Project on on-site and nearby wetland systems, and in the surrounding neighborhoods, noting existing conditions of flooding in these areas, particularly toward the easterly side of the Site near Whitney Lane and School Street. The Municipality requested appropriate mitigation, including retaining and augmenting existing vegetation, and meeting local wetland buffers to the extent possible.
- The Municipality would like to better understand the visual impact of any potential solar arrays that may be incorporated into the proposed Project.
- The Municipality requests that the Applicant work with the Upton Department of Public works to verify local capacity for water and wastewater in connection with the demands of the proposed Project.
- The Municipality noted that the Mendon Upton Regional School District has a policy that buses do not enter onto private driveways and would like the Applicant to ensure that a safe and connected network of pedestrian facilities is provided for students and other users to access Main Street.
- The Municipality identified concerns regarding site access and traffic, including site visibility due to the curve in the road at the Site's Main Street access, and disruptions due to its location abutting the Pickering Funeral Home.
- The Municipality notes that the Upton Fire Department will require access along the circumference of the building and requests additional information on the design of drive-aisle widths to accommodate their largest fire apparatus.
- The Municipality requests additional information regarding trash storage and management, noting particular concern for local rat infestation, and requests that this issue be taken into consideration relative to the siting of dumpster pads as well as for mitigation during construction.
- The Municipality requests additional information regarding snow storage and management.
- The Municipality is concerned about the impacts of light from the proposed Project, and requests that all lighting, including security, sidewalk, and parking lot lighting comply with dark sky standards.

### **Community Comments**

In addition to comments submitted by the Municipality, MassHousing received approximately forty-six (46) letters from area residents expressing additional comments and concerns regarding the proposed Project, several of which were responses acknowledging a neighborhood flyer distributed to

outline common concerns. In general, letters from the community opposed the proposed Project, reflecting many of the concerns identified by the Municipality, and stating that the Site was not suitable for the Project as proposed. One letter expressed support for the proposed Project, noting a desire to work cooperatively with the developer to address project concerns. The following concerns were detailed by area residents:

- Environmental concerns. In particular, area wetlands, groundwater, and potential flooding as a result of construction.
- Traffic impacts on area roadways, including line of site issues for cars entering and exiting the Site.
- Pedestrian safety. In particular, for schoolchildren due to the nearby memorial school.
- The scale and height of the proposed building.
- Tree removal. In particular, loss of existing vegetative buffer and impact on wildlife habitat.
- Light and noise impacts from the development.
- Concerns about rats and other pests in the area, including how construction and trash will be managed to contain potential issues and mitigate impacts on neighboring properties.
- Water supply capacity, and whether the proposed Project will impact future costs for residents.
- The ability of the Fire Department to service a 4-story building.
- Questions about whether blasting will be required for construction.

### **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 were submitted to MassHousing by community members, identifying issues that are not within the scope of our review:

- Possible impacts to nearby property values
- Possible impacts on the capacity of local schools

### **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.<sup>1</sup> 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.

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<sup>1</sup> 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.

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.
- The Applicant should be prepared to work closely with its design team to address concerns regarding the architectural design of the proposed Project, particularly as it relates to mitigating concerns about building height.
- The Applicant should provide a detailed landscaping plan. Consideration should be given to incorporating pervious materials, depicting vegetative buffers, and identifying areas for trash management and snow storage.
- The Applicant should be prepared to provide detailed information regarding soil, groundwater, and stormwater conditions at the Site, and ensure appropriate mitigation is incorporated into the design and construction management plan.
- The Applicant should be prepared to provide sufficient data to assess the proposed Project's potential traffic impacts on area intersections and respond to reasonable request for mitigation. Safe access and egress to the Site with respect to site distances should be confirmed.
- The Applicant is encouraged to work with its design team to incorporate pedestrian improvements into the site plan.
- The Applicant should be prepared to provide detailed information to address concerns related to water supply in connection with the proposed use.
- The Applicant should engage with the Upton Fire Department to review the plans and address public safety concerns, particularly those pertaining to access of fire apparatus to the building.
- The Applicant should be prepared to provide detailed information relative to light, noise, and construction impacts, including rodent control, and respond to reasonable requests for mitigation.
- The Applicant should be prepared to respond to questions regarding potential solar infrastructure planned for the proposed Project and visual impacts, if any.

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 sixty-eight (68) rental units under the terms of the Program, of which not less than seventeen (17) 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.

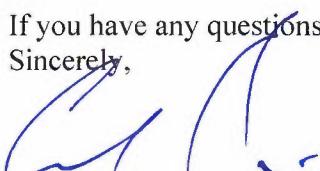
For guidance on the comprehensive permit review process, you are advised to consult the Guidelines. Further, we urge you to review carefully with legal counsel the M.G.L. c.40B Comprehensive Permit Regulations at 760 CMR 56.00.

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: Ed Augustus, Secretary, EOHLIC  
The Honorable Ryan C. Fattman  
The Honorable David K. Muradian, Jr.  
Maureen Dwinnell, Chair, Upton Board of Selectmen  
Stedman Briggs, Chair, Upton Zoning Board of Appeals  
Joseph Laydon, Upton Town Manager  
Michael Antonellis, Director of Land Use and Inspectional Services

## Attachment 1

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

#### **Upton Apartments, Upton, MA #1184**

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 Upton is \$94,650.

Proposed rent levels of \$1,676 for a one-bedroom affordable unit, \$2,012 for a two-bedroom affordable unit and \$2,325 for a three-bedroom affordable unit, less utility allowances of \$204 for the one-bedroom affordable units, \$294 for the two-bedroom affordable units and \$372 for the three-bedroom affordable units, are within current affordable rent levels for the Eastern Worcester County HMFA under the NEF Program

The Applicant submitted a letter of financial interest from Rockland Trust, 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);***

Section IV-A (3) (a) of the Guidelines provide guidance to Subsidizing Agencies for evaluating a municipality’s actions intended to meet affordable housing needs.

The Town of Upton does not have a DHCD-approved Housing Production Plan, though municipal comments indicate that as of the summer of 2022, the Upton Board of Selectmen had created a steering committee to coordinate the development of an updated Housing Production Plan, anticipated to be adopted this year. Additional comments identifying municipal actions taken to meet affordable housing needs included the following examples:

- Consistent approval of Accessory Dwelling Unit (ADU) applications
- Recent approvals of local 40B Comprehensive Permits with conditions, including for 48 rental units (2022) and 4 single-family units (2023)
- An increase in its housing stock by 5% over the last five (5) years and recent designation as a Housing Choice Community

- No moratorium or cap on housing production

MassHousing recognizes Upton's recent efforts as meaningful; however, municipal actions to date have not been of a character and scale that meets the municipality's need for affordable housing as measured by the Statutory Minima. According to DHCD's Chapter 40B Subsidized Housing Inventory, updated through June 29, 2023, Upton has 189 (SHI) units (6.37% of its housing inventory), which is 108 units below the statutory minima requirement of 10%.

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.

*(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**

The Site is located on Main Street, in the center of Upton. Main Street, or Route 140, is a two-way thoroughfare that runs east/west through the center of Upton between Milford and Grafton. There are sidewalks on both sides of Main Street, allowing for pedestrian connections to nearby local facilities and shops. Surrounding residential uses are primarily single-family homes, with a few small multi-family dwellings. Further west on Main Street are several larger multifamily structures, including the recently constructed and occupied 149 Main Street. The Memorial Elementary School is steps west of the subject property at the intersection of Main Street and Fiske Avenue. Overall, the site is well-positioned to support the proposed multifamily residential use.

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

The developer intends to build a 4-story, 68-unit apartment building on the Site. The proposed building design shows a conventional linear double-loaded corridor building. The building is set back in the northeast portion of the Site, away from Main Street, and is oriented such that the short end of the structure is facing abutting single-family homes on Whitney Lane to minimize potential visual impact. The building's materiality is designed to break down the scale of the structure, utilizing a combination of street level masonry veneer, horizontal lap siding, vinyl shakes, vertical window bays, and individual unit-accessed balconies. In addition to the topographical siting of the structure discussed below, the building has been designed with a flat roof, to reduce the height of the building.

#### **Density**

The Developer intends to build sixty-eight (68) rental apartments in one (1) multifamily building on 6.75 acres of land, of which 5.74 acres are buildable. The resulting density is 11.85 units per buildable acre. The proposed density is acceptable given the proposed housing type.

#### **Conceptual Site Plan**

The proposed site layout consists of one conventional linear double-loaded corridor building situated in the northeast portion of the Site. Access and egress is proposed at the Site's frontage, located

between 45 and 51 Main Street, via a new curb cut which extends north into the Site to access the proposed building. Surface parking is situated around the perimeter of the building in addition to a small lot off the driveway. Three garage structures containing a total of 32 provide a buffer between the building, parking, and the Site's edges. The Project proposes a total of 111 parking spaces resulting in a parking ratio of 1.63 parking spaces per rental unit. An earth berm and evergreen plantings are shown along the Whitney Lane property edge for additional screening. The site plan accommodates outdoor amenity space, including a playground and dog park. The balance of the Site remains wooded. Several at-grade infiltration/detention basins for stormwater Management are located throughout the Site to improve existing conditions. All utilities will be extended to the Site from Main Street.

### **Environmental Resources**

The Site contains 1.01 acres of wetland scattered throughout the Site. A temporary wetlands disturbance of approximately 815 sq ft. is shown on the plans in connection with the installation of the proposed Project's sewer connection to Main Street. While limited portions of the building, roadway, and parking areas are within wetland buffer zones, the site plan is organized in a way that locates the built portion of the development away from the wetland areas. The proposed Project will need to file a Notice of Intent with the Upton Conservation Commission.

### **Topography**

The topography slopes downward in an easterly direction, having an overall grade change of approximately 30 feet. The design makes effective use of this grade change by situating the building in the low area of the Site, as to reduce the perceived height of the building. The proposed grading for the Project will cut and level the existing grade by approximately 6 feet so that the first-floor elevation sits even lower, further reducing the visual impact on adjacent properties. 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, Upton's real estate submarkets are maintaining strength. The only negative in all of the markets is the lack of supply. Demand from buyers and renters is keeping home and condominium prices and rental rates firm. The Multifamily market has an overall vacancy rate of 6.5%, down 0.6% in the past 12 months, while rents are up 4.3%.

*(e) that an initial pro forma has been reviewed, including a land valuation determination consistent with the Secretariat's Guidelines, and the Project appears financially feasible and consistent with the Secretariat'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 \$760,000. Based on a proposed investment of \$19,824,749 in equity and permanent financing the development pro forma 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 Site by virtue of a Purchase and Sale Agreement dated January 6, 2022 between Kenneth M. Pedersen, Jr. and Diana B. Pedersen, Trustees of the Pedersen Family Living Trust (Seller), and Lobisser building Corporation or Assignee (Buyer), as amended on April 29, 2022, with an expiration date of April 21, 2027.