

June 9, 2006

Jane Wallis Gumble, Director  
Department of Housing and Community Development  
1 Congress St. 10<sup>th</sup> Floor  
Boston MA 02114

Re: Bayberry Estates  
Pepperell MA  
PE-362

Dear Ms. Gumble:

It has come to my attention that there may have been several procedural discrepancies associated with the issuance of a 40B Site Approval Letter from MassHousing in regards to the planned Bayberry Estates project in Pepperell MA. Review of the data received from MassHousing, the Town of Pepperell and State Law 760 CMR 31.00. leads to my following comments and concerns regarding the timeline of the process as it transpired and in particular the On-Site inspection report itself.

My first concern is the timeline that I have established by a review of the documentation. According to 760 CMR 31.01 (2) 6 (D) states that MassHousing should have allowed a 30 day review period for comments, and shall consider any such comments prior to issuing a site approval. According to Bob Ruzzo Esq, Deputy Directory of MassHousing "local officials include comment letters from local boards and concerned citizens". It is also inferred that the town will actually have an official and complete project "Plan for Review" in hand in order to make those comments. The documentation timeline shows that this was not the case by virtue of the following events and corresponding dates:

- May 2004 builder submits preliminary *high level* project plan for initial review
- On-Site inspection was performed by MassHousing Sept. 29, 2005  
(prior to the existence of a detailed "Plan for Review" or any comments from the parties concerned)
- Comments from Town Administrator were sent to MassHousing Oct. 12, 2005  
(absent of a complete and official "Plan for Review" as noted in the comments)
- MassHousing approves the site Feb. 6, 2006
- "Plan for Review" submitted by Builder to Town April 3, 2006,
- Town Boards and citizen reviews were ready shortly thereafter.

Citizens and Town Boards were never given a 30 day window to review the actual plan before MassHousing made its decision back in February. The builder never submitted the detailed plan to the town until after the decision was made by MassHousing. It seems to

me that the 30 day review period cannot start until the official and complete "Plan for Review" is submitted to the town by the builder and that it is the builders' responsibility to do so. None of the documentation I received from MassHousing even indicates when the 30 day review period started? How can people review something that they do not have? I also would like to know how MassHousing can do an On-Site Inspection which is supposed to take into account Town Board and citizen comments without an official site plan, building plan or any comments in hand? How would the inspector even know if he was looking at the correct land areas? I believe that a major part of the law was not followed here as it should have been. The prescribed order of events appears to have occurred in reverse in this case. The "Plan for Review" should be given to the town first not last and a proper On-Site inspection should not occur until after comments and detailed site plans are received.

A second major concern is the inspection criteria, or lack thereof used by Roderick Hawkes of MassHousing on Sept. 29, 2005 when he conducted his On-Site inspection. I have asked MassHousing for a copy in writing of the On-Site inspection criteria used since none appear on any web sites or in the documentation that they sent to me. MassHousing replied on June 1<sup>st</sup> 2006 that there is no written criteria to be followed. 760 CMR 31.01 (2) 3 states that "housing design may be generally appropriate for the site on which it is located". The inspector did not have the official "Plan for Review" in hand at the time of the inspection since it was not ready until April 3, 2006. How did he determine if the housing was generally appropriate for the site if he did not have the housing plan yet? MassHousing has confirmed that there is no written pass/fail criteria used for On-Site inspections. In this case the inspector also did not have any comments from the town or citizens because of the timeline issues. I wonder what he actually did on-site? How can an inspection be considered legitimate if there are no guidelines to follow? How was Mr. Hawkes trained before he became an On-Site inspector? I see that on January 1<sup>st</sup> 2006 a new 10 Step Criteria Scorecard was put into place for Site Approvals for this very reason. I think that this is a good move since it makes it clear what the pass/fail criteria is. After reviewing the new guidelines I see that this site would not have qualified to meet the 5 item minimum set forth under the new rules. If MassHousing cannot produce the pass/fail criteria in writing used during this inspection in 2005, then I would suggest the inspection be done again using the new rules.

A third major concern with the On-Site inspection is the incorrect data in the written inspection results. Since the inspector did not have any town or citizen comments in hand, he could not have known about the Heald St. safety concerns. The documentation indicates that no town representative was present or invited to be present for this inspection. The directions used by the inspector to get to the project site referenced Oak Street, which is not the main access road for the project. In fact, Heald Street is the main access road to/from this project site. It is well known that Heald Street is a narrow, steep, winding country road with many blind spots, a dam crossing and no sidewalks or street lights. After reviewing the pictures that were taken by the inspector I found that none were of Heald Street. Heald Street was not even referenced in the report. The inspection report also states that only 2 acres of this project site are wetlands, but a review of the submitted plans shows that approximately 9 acres or 45% of the project site falls under

state wetland protection (4 acres flagged, 9 acres when including the 100foot buffer). 100% of the area falls under local Watershed protection. This indicates to me that the inspection was incomplete and did not take into account the feedback from the town as we already know because of the timeline issues. This area of town also does not have any sewer, gas and limited water services, yet the inspection report says “site is relatively close to Town services”? I find that a site inspection that involves no official “Plan for Review” from the builder, no inspection of the main access road, no town representative, no formal feedback from town boards or citizens and no formal guidelines from MassHousing to not be in line with the law (760 CMR 31.01 3) as it is written.

A fourth and final note concerning rejection guidelines in use during the On-Site inspection. A direct quote from the CHAPA(Citizens Housing and Planning Association) website states that certain Core Requirements are required in order to issue a site approval letter. It also goes on to say that an example of a *rejected* site would be a site that “exhibited visible wetlands and flooding challenges, was demonstrably inconsistent with the surrounding area, and was inconsistent with the goals of the towns housing master plan”. The Bayberry Estates location meets all three of these rejection guidelines, approximately 45% of the site falls under state wetlands protection and 100% under watershed protection that is why it was never built upon, high density condominiums are demonstrably inconsistent and certainly do not fit in the middle of a heavily forested area with limited utilities zoned as “rural” and finally a master plan for the town would never call for a project such as this to be built in this rural area because of the flagged wetlands, road access problems, distance from stores and infrastructure and existing watershed protection.

In summary I find that this process was not conducted in a fair and equitable manner as the spirit of the law intended. In fact to quote Bob Ruzzo’s document on the CHAPA website once again “ a wildwest atmosphere “ still exists in handing out 40B approvals and the law needs to be tightened. I would ask that serious consideration be made to invalidate the On-Site inspection and reconduct it using the new 10 Step Guidelines and reading the town comments and citizens issues first rather than not at all. 760 CMR 31.01 (5) states that failure to fulfill any of the requirements of 31.01 is cause for dismissal of the application. I believe that in the case of BayBerry Estates there is cause for dismissal. At a very minimum I would ask that the official On-Site inspection report be corrected and amended to include the following:

- Pictures of the Heald Street access and notes to the safety concerns
- Corrected Wetlands acreage stated
- Corrected statement that site is zoned as “rural” not residential
- Note that there are no developments of any kind in this rural area of Pepperell
- Corrected statement “No town services nearby”
- Meets all three core requirement examples for site rejection as stated on the CHAPA website in Bob Ruzzo’s document on 40B guidelines.

My neighbors and I await your timely resolution to these issues.

Michael Andreason  
20 Bayberry St.  
Pepperell MA. 01463  
(H) 978 433 0521  
(W) 978 967 2153  
MikeandDonna\_1@charter.net

**CC:**

Thomas Gleason, Executive Director MassHousing  
Robert Ruzzo, Deputy Director MassHousing  
Sarah Hall, Development Specialist MassHousing  
Andrew Gottlieb, Chief Office of Commonwealth Development  
Clark L. Zeigler, Executive Director Mass. Housing Partnership  
Town of Pepperell Zoning Board of Appeals  
State Representative Robert Hargraves  
Robert L. Culver, President and CEO MassDevelopment  
Steven Panagiotakas, State Senator

This letter has been endorsed by the following 204 Pepperell residents:

Donna Andreason  
Richard and Lynne Potts  
Michelle and Joseph Kealy  
Alice Wilson and Tony Reno  
Thomas and Lauren Carney  
Peter and Noeleen March  
Loren and Deborah Wass  
Lori Purcell  
Linda D. Jordan  
Joe and Linda Polcari  
Anthony M. Sampas  
Maurice and Marilyn Tremblay  
Mr.LaRoy C. Proctor  
Mrs. Lisamarie Proctor  
Miss Amanda Leigh Proctor  
Miss Megan Taylor Proctor  
Charles and Christine Jodry

Joel E. Rodriguez and Gwen E. LaMuro  
Kevin D. Arsenault  
Amanda M. Hird  
Gerald A. and Angela W. Callbeck  
Eugene R. Donnelly, Jr.  
Helen-Thomas Donnelly  
Kevin and Karen St.George  
Cheryl Robertson  
Gayle Picard  
Mark N. and Diane S. Snow  
Louise and Andrew Knight  
Michael and Sharon King  
James and Rebecca VanGilder  
Marianne and Scott Wharram  
Thomas and Katrina Bell  
Donn and Lynn Shida  
David Pease  
William and Kelly Upton  
Carrie and Phil Croft  
Susan Tracy  
Keith and Wendy Marciniak  
Jo Thackeray and Pramada Poudel  
Susan Edwards  
Diane Lloyd and Charles Fanning  
Peter Mangini  
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Joanne Ellison-Taylor and Kenneth Taylor  
Linn and Bill Clark  
Ann Seton  
Betsy Davis and Ned Ellsworth  
Rod and Jan Parker  
Ray Manomaitis  
Fritz and Tera O'Hora  
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John and Linda O'Neil  
Andrew M. Fernando  
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William and Deborah Jena III  
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Sherry Mobley and Jack Mobley  
Janice M. Horne  
Brian J. Horne  
Lisa M. Horne  
Lynne Panico and Mary Buxton  
Annemarie Mordkoff  
Barbara H. Fawcett

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Douglas C. and Diane L. Sawyer  
Sandy and Sadhvi Sokoloff  
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Alan and Francine Clements  
Jennifer Clements  
Stephen Clements  
Matthew and Colleen White  
Gretchen and Tom Needham  
Vito and Elja Piscitello  
Leo and Ann Hunter  
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Harold Chase  
David S. Gilbride  
Stephanie Finnegan Gilbride  
Matthew and Michelle Panaccione  
Chris Johnson  
Gwen Johnson  
Bill and Lisa Hanlon  
Christopher and Fiona Cockin  
Sue C. Fitzgerald  
Kevin and Susan Gagnon  
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James and Cynthia Yennaco  
Michael and Suzanne Boswell  
Dawn M. Bisinger  
Patricia and Kevin Lauziere  
Richard and Theresa Ruf  
Robert and Cynthia McDermott

Marc Basti and Mary Flaherty  
Adrienne C. Adams and Akira Yamamoto  
Ray and Julie Sullivan  
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Mark and Linda Zaloudek  
Catherine M. Madigan  
Michael J. Madigan  
Brad and Joyce Comjean  
Colette and Shawn Murrin  
Scott and Pam Walker  
John J. Molinari  
Eloise McDonagh  
Harold J. and Pamela Durocher  
Alexandra and Philip Reagan  
James and Patricia Franklin