

April 17, 2007

Mr. Michael Busby
40B Project Coordinator
Massachusetts Housing Finance Agency
One Beacon St.
Boston, MA 02108

Re: Town Comment - Bayberry Estates, Pepperell (Revised)

Dear Mr. Busby:

Please accept the Town's appreciation for the opportunity to comment on the new/revised Bayberry Estates proposal, prior to issuance of a Project Eligibility Letter from MassHousing.

On Monday evening, August 13th, the Board of Selectmen conducted a public hearing on the new/revised Bayberry proposal. Other than delivery of preliminary plans, a *pro forma*, and a "Smart Growth" statement to the Selectmen's Office a couple of weeks earlier, the presentation made on behalf of the proponent at this hearing was the **only** communication that has been made to any Town board (or the public, for that matter) regarding the substance of the new/revised plan.

As MassHousing is aware, the original (2005) submission for this project involved only a fraction of the total contiguous land area belonging to the proponent, and there was a vague premise that the original submission would be followed by an undefined "Phase 2." In its letter of comment to MassHousing (10/12/2005), the Town formally raised concern about this matter, in that an incomplete proposal left the Town "hamstrung in trying to effectively assess issues... in a vacuum of information or scheduling as to the intentions for the development of the remaining portions of the property." The good news is that the most recent proposal has addressed the entirety of the property, and the concern about a "Phase 2" of unknown detail has been resolved. The bad news is that no other issues raised in that letter of October 12th have been resolved, and more have been added.

The Town presents the following concerns regarding the most recent proposal:

ENVIRONMENTAL

- The project site lies within the Priority Habitat and Estimated Habit Zones most recently mapped by the State in October, 2006. The proponent has had a professional assessment performed, and the current plan has been drafted, in part, in a manner that accommodates two identified nesting sites of two species of rare salamanders they actually found on the property. A geographically wider survey performed by an independent qualified professional consultant, however, has also found rare Blanding's Turtles in the area.

At a minimum, prior to final approval and/or any initiation of disturbance, an objective, comprehensive, and detailed study should be performed by an impartial entity acceptable to (and, ideally, working with) NEHSP, for a definitive ascertainment of the ecologically sensitive areas within the proposed work areas on the subject parcel, and how to best protect them.

- The wetlands delineation previously accepted by the Pepperell Conservation Commission has expired, and a request for an extension was withdrawn by the proponents when questions about the original delineation were raised. The wetlands shown on the submitted plan, therefore, may or may not be accurate. Percolation tests and "deep holes" cannot be performed on the proposed septic system sites unless and until it can be shown that the test sites would not be in a wetlands area.

It is already empirically known to the Town that the proposed western septic site is over an extremely high water table (49 inches), and is already notoriously prone to flooding. Presumably, it would be necessary to bring in massive amounts of appropriate fill to create a viable leaching field. The impact of this fill on surrounding land must be determined prior to commencement of any work on the proposed septic system.

PUBLIC SAFETY

- The proposed "emergency access road" shown for the Ashley Street side of the development (which would apparently also service the septic system location on that side) runs in exactly the wrong direction, if it is intended to service the dwellings located on the dead-end street to the south. As shown, the road would realistically serve no function **except** access to the septic site.

The proponent has stated that the emergency road would be a gated, gravel road. The Town is concerned that any "emergency only" access will inevitably become a traveled way, unless there is some viable method of enforcing its closure. Since there is no intent for the roads within the project to become Town ways, what/who would be responsible for keeping the gate locked, what/who would be the enforcing authority, and what would be its legal authorization?

The subject road, moreover, would presumably require plowing in the winter, to provide maintenance access to the septic area. The proposed 1200 feet of roadway is more than twice the existing Town standard limit for dead ends, and the road, being gravel, would require substantial maintenance every spring. The “emergency only” notion is definitely not practical, and is probably, ultimately, unworkable.

- Since the roads within the project will be under private ownership, the School District will not provide bus transport that traverses them. Children will have to somehow get out to Ashley or Bayberry, and wait for the bus on the public way. The proposed layout of streets within the project is inimical to safe (or even convenient) pedestrian traffic, and the prospect of all the parents driving children from the house to the bus stop and back conjures up visions of routine, daily vehicular nightmares at the exit points onto Bayberry and Ashley – as well as materially increased danger to children who may be so bold as to actually try to walk the distance. Adequate and safe sidewalks will be critical throughout the project area – but there are **no sidewalks proposed**.
- Bayberry Street, Ashley Street, Heald Street, Chestnut Street, and other roadways in the area surrounding the proposed site are well-known as difficult and sometimes treacherous roads, particularly in winter. The drainage and other utilities associated with the proposed development could have a major negative impact on those existing streets – but we cannot gauge the impact, because no utilities plan has been provided. The Town requests that MassHousing consider requiring that a utilities plan (**and** a utilities maintenance plan) be provided, so the potential impact of the proposed infrastructure can be reasonably assessed before any permissions are granted.

Prior submissions from the proponent relating to the original proposal included references to an intent by the proponent to provide mitigation by widening Bayberry Street. No statement of such intent has been found in the current submission. The Town requests that MassHousing require a formal statement of proposed mitigation efforts.

- Heald Street, due to its large, steep hill (with a pond and an associated dam at the bottom) is a major hazard for domestic traffic, but the prospect of its extended use by large construction vehicles (see the comment above regarding the immense quantities of fill necessary for the septic installation) is particularly disturbing. The Town requests that an area traffic/safety study (not a study involving just the immediately abutting roads) be required. While the proponent has previously submitted a traffic study for the Bayberry side (although the study was deemed inadequate), no traffic study has ever been done on the Ashley side.

FINANCIAL

- Questions have been raised regarding the credibility of the financial information presented in the *pro forma*, as submitted. The indicated site acquisition costs, for example, are alleged to be meaningless, because the cost of two distant and unrelated parcels (included in the same purchase, but irrelevant to the proposed 40B location) was included; there is also a failure to show credits for profits made from post-acquisition sales of portions (4 house lots) of the 40B property. Available documents indicate that (ignoring the issue of the remote parcels) the claimed \$350,000 purchase actually earned a **73% profit** by sale of the four house lots for a total of \$604,000.

The Town requests that MassHousing do a detailed analysis of the *pro forma*, including acquiring copies of all deeds and related documents, and verification that the information provided is accurate and credible.

“SMART GROWTH” AND AFFORDABLE HOUSING CONSIDERATIONS

- The memo submitted to MassHousing by the proponent, entitled “...Project Consistency with the Commonwealth’s Sustainable Development Principles,” is a self-serving, disingenuous document. See particularly the comments of the Conservation Administrator (attached).
- The proposal is in conflict with the project-siting guidelines included in the Town’s Affordable Housing Plan - as approved by DHCD - which posits (page 29) “proximity to downtown” and location “within the boundaries of the sewer district” as primary “criteria for acceptable 40B projects.” The proposed site is in an extremely remote location, far from either the downtown or the sewer district.
- Mass Housing has stated:

Examples of areas that are not likely to be appropriate development locations are: ... wetlands; steep slopes; and areas with rare or endangered species.

This proposal seems, in those particulars, to be a textbook example of a project which does not conform to MassHousing’s own guidelines.

By the Board of Selectmen:

Darrell W. Gilmore, Chairman

Lyndon B. Johnson, Clerk

Attachments:

Comments from:

Conservation Administrator
Board of Health
DPW Director/Town Engineer
Chief of Police