

TOWN OF NEEDHAM  
TOWN HALL  
1471 Highland Avenue  
Needham, MA 02492-2669

Office of the  
TOWN MANAGER

TEL: (781) 455-7500  
FAX: (781) 453-2522  
TDD: (781) 455-7558

June 18, 2013

Mr. Tom Gleason, Executive Director  
Massachusetts Housing Finance Agency  
One Beacon Street  
Boston, MA 02108

Re: Needham Mews, MassHousing #SA-12-003

Dear Mr. Gleason:

The Needham Board of Selectmen requests that MassHousing reconsider its issuance of a Project Eligibility determination for the Needham Mews application based on clear evidence that the applicant lacks site control for the project as proposed (760 CMR 56.04(1)(c)).

As you are aware, Mill Creek has asserted Site Control by virtue of agreements for the purchase of the two subject parcels. The Town does not, at this juncture, question the validity or enforceability of these agreements. However, absent from both these agreements and Mill Creek's application material is a demonstration of site control relative to the Town-owned sewer easement that bisects the site. For your reference, the sewer easement is depicted on the attached plan.

Mill Creek's submitted plan provides for multi-story construction in the easement area, and assumes relocation of the easement, a change in title requiring Town Meeting approval. With the easement in place, the project, as proposed, cannot be constructed. This fact was recently reviewed with Mill Creek's representatives who responded by saying that the Town could and should abandon its legal right and title to the sewer easement. Alternatively, Mill Creek's representative said that they would be inclined to redesign the project in a manner that would avoid disturbance of the Town's sewer easement but require an increase in height of the Project's buildings, notwithstanding the limitations to building height (already proposed for five stories compared to the two and one half stories in the surrounding neighborhood) described in its application.

Neither of Mill Creek's suggestions is acceptable. First, the Board of Selectmen is not willing to seek abandonment or conveyance of the Town's realty rights in the sewer easement, or to recommend such an action to Town Meeting. Nor can Ch. 40B operate as a device to compel the disposition of a municipality's property rights. Zoning Bd. of Appeals v. Housing Appeals Committee, 451 Mass. 35 (2008). Second, Mill Creek's assertion that they would increase the height of the buildings is equally unacceptable. At five stories, the project will already loom

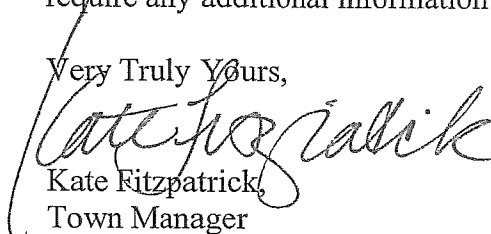
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over the adjacent area and is incompatible with the abutting neighborhood of modest single family homes. At a greater height, the project would fail almost any test of sensible planning.

Based upon the foregoing, there can be no doubt that the applicant lacks site control for purposes of the project as proposed. Accordingly, the Town respectfully requests that MassHousing reconsider its determination of Project Eligibility. As the Needham Zoning Board of Appeals' hearing is ongoing, time is of the essence.

We look forward to hearing from you on this important subject. In the meantime, should you require any additional information on this matter, please do not hesitate to contact me.

Very Truly Yours,



Kate Fitzpatrick,  
Town Manager

cc: Board of Selectmen  
✓ Zoning Board of Appeals  
Jay Talerman, Esq.  
Deborah Horowitz, Esq.  
David Tobin, Esq.  
Lee Newman, Director of Planning & Community Development  
Rick Merson, Director of Public Works

