

December 9, 2025

Edward Augustus, Secretary
Catherine Racer, Undersecretary
Derya Samadi, Esq., General Counsel
Rieko Hayashi, Local Initiative Program (LIP) Director
Commonwealth of Massachusetts
Executive Office of Housing and Livable Communities
100 Cambridge Street, Suite 300
Boston, MA 02114

**Re: Local Initiative Program (LIP) Development Project
444 East Central Street, Franklin, MA**

Dear Secretary Augustus, Undersecretary Racer, Attorney Samadi, and Director Hayashi:

The undersigned are legal counsel to TAG Central, LLC (“Applicant”), the applicant with respect to the above-referenced proposed affordable housing development known as the Residences at 444 Central (“Project”), located at 444 East Central Street, Franklin, MA (“Project Site”). We write in response to correspondence dated November 24, 2025 from the Town of Franklin regarding a vote taken by the Franklin Town Council (“Town Council”) on November 19, 2025 by which the Town Council purported to withdraw its support for this Project under the Local Initiative Program (“LIP”).

The Applicant’s position is that the Town Council’s vote to withdraw its support for the Project was unreasonable and improper and should have no impact upon the Project’s ability to proceed. To the extent it is necessary for the Executive Office of Housing and Livable Communities (“EOHLC”) to take into consideration the vote of the Town Council as new information pertaining to project eligibility requirements, that information need not be assessed at this juncture. Rather, it may – and should – be addressed as part of EOHLC’s Final Approval review process *after* the Franklin Zoning Board of Appeals completes its review of the Project, as contemplated by 760 CMR 56.04(5).

Project Background and History

By way of background, the Project was designed in consultation with the Town of Franklin as a LIP project (a/k/a “Friendly 40B”). The LIP program is intended to be a public-private



collaboration between private developers and municipal leaders to facilitate the creation of affordable housing while also advancing local planning initiatives.

To that end, our client participated in a rigorous, nearly yearlong review under the procedures of the Town of Franklin LIP Review Process. This consisted of numerous public meetings before the Town of Franklin's Planning Board, Conservation Commission, and Town Council, following which each of these departments voted to support the Project, including unanimous votes from the Planning Board and Conservation Commission. The Applicant and Town Council thereafter jointly filed an application for a finding of project eligibility with EOHLC, which included the Town Council's October 16, 2024 letter expressing municipal support for up to 264 residential units. On February 12, 2025, EOHLC issued a Project Eligibility Letter ("PEL") under the LIP program for the Project. On February 27, 2025, our client filed with the Franklin Zoning Board of Appeals ("ZBA") a Comprehensive Permit application. The hearing was closed on November 20, 2025 and is currently still under review by the ZBA.

Consistent with the cooperative approach that the LIP program requires, our client has worked in good faith with the ZBA, including agreeing to a review period that has already significantly exceeded the time periods allotted to the ZBA by law. During that extended review process, the Project plans were revised multiple times as a good faith effort by the Applicant to respond to various comments from many parties, including the ZBA, Town Council, Conservation Commission, other Town of Franklin departments, peer review consultants retained by the ZBA and Conservation Commission, and abutters and other local residents. This is typical of the iterative review process for any Chapter 40B developments, but especially for projects developed under the LIP program.

The Town Council's purported withdrawal of its support for the Project based on the false pretext of "many material Changes to the Project" was improper

In recent months, there has been significant pressure from some members of the Franklin community for the Town Council to reconsider its support for this Project.¹ In fact, at the Town's recent November 4 local elections, four incumbent members of the Town Council were ousted; all but one of these members had cast votes in favor of supporting the Project under the LIP program on June 4, 2024. Following this shakeup in its membership, the Town Council voted to take up Resolution 25-73 on November 19, 2025; this resolution proposed to withdraw support for the Project "as a result of a local election that

¹ To that end, a direct abutter to the Project Site even went so far as to run for membership on the Town Council, and while his campaign for office was underway, contacted a member of EOHLC's legal department under false pretenses and later leaked that correspondence to a local news blog mere days before local elections in an apparent attempt to generate support for his campaign.



took place on November 4, 2025, [following which] the Franklin Town Council has undergone a broad turnover of membership.”

As you are no doubt aware, on November 18, 2025, Attorney Samadi issued a letter to the Franklin Town Administrator stating, among other things, as follows:

Please be advised that EOHLC does not consider turnover or change in a municipality’s council or board membership to be a material change that would require an amendment to a previously issued PEL. It is also not considered a change substantial enough that the project could no longer be considered consistent with what the Franklin CEO and Franklin Town Council approved on June 5, 2024.

Accordingly, regardless of the outcome of any potential Town Council vote to rescind support based on council membership changes, EOHLC will not amend, withdraw, or rescind the PEL issued for this project on that basis. Therefore, the project sponsor is entitled to continue the public hearing process before the Franklin Zoning Board of Appeals.

After Attorney Samadi’s letter had been read into the record, despite testimony at the Council’s meeting that the Project had not materially changed since it was approved by the Town Council in 2024, the Town Council took a vote to amend Resolution 25-73 to omit the reference to the recent change in Council membership and to replace that reference instead with a statement that the vote would be based on “many material changes to the Project after local approval was granted”.² Following this amendment, the Town Council voted to pass Resolution 25-73 and “withdraw[] its support for the Project”. The margin of this vote was 5-1; notably, four of the five votes to rescind support were newly elected Council members. The Town thereafter issued its November 24 letter to EOHLC, which purports to serve as “confirmation of the Town of Franklin’s rescinding of an [*sic*] LIP application”.

As evidence of the supposed “material changes” to the Project, the Town Council’s Resolution cites only its own August 28 letter to the ZBA, which had objected to a *prior* alternative conceptual site layout proposal made by the Developer several months earlier in an effort to accommodate an increased parking ratio that the ZBA had required. If this conceptual plan had been implemented, it would have resulted in an increase in height (from three stories to four) to one of the Project buildings in order to reduce building

² The final Resolution did not explain what supposed changes to which this referred; rather, it merely referenced an August 28, 2025 letter to the ZBA, which is discussed further below.



footprints and provide room for more parking. Apparently unhappy with this proposal, the Council requested that the ZBA “adjust the project accordingly back to the original plan.”

Viewed without the benefit of context, the Town Council’s August 28 letter might give the impression that the Developer had implemented a change in the Project layout and then ignored the Town Council’s feedback about that change. However, what the Council’s Resolution and the Town’s November 24 letter to EOHLC both conspicuously fail to acknowledge is the fact that **the Developer responded to the Council’s August 28 feedback by withdrawing its proposal for this increased building height and returning to the previously proposed three-story component near the neighbors**, as well as adding additional mitigation measures. It is therefore deeply misleading for the Council to cite its August 28 letter without also mentioning the fact that the Developer responded to that letter and addressed the feedback it contained.

The fact is that **the current Project plans are consistent with the plan originally supported by the Town during the LIP Review Process and in fact** have been improved upon through a series of additional mitigation measures and refinements made over the course of the ZBA review process. These improvements included eliminating the Project building closest to residential abutters, a reduction in the Project’s unit count, a reduction in building roof heights, increased buffer areas, increased setbacks to neighbors, and enhanced screening through the preservation of existing trees and the planting of new trees. In other words, the only changes to the Project since it was supported by the Town Council were minor in nature, and all such changes represented improvements over prior designs and were intended for the purpose of impact mitigation.³

In sum, notwithstanding the Town Council’s last-minute attempt to manufacture a transparently self-serving pretext for an action that some Councilors had apparently already decided to take by amending Resolution 25-73, it is clear that local politics – not supposed “material changes” – is what actually motivated the Town Council to withdraw its support for the Project.

The Town Council’s purported withdrawal of its support for the Project was unreasonable and contrary to the spirit of the LIP program

The procedural particulars of the LIP program are outlined in Section VI of EOHLC’s *Guidelines: G.L. c. 40B Comprehensive Permit Projects*, promulgated in December 2014

³ To the extent that the Town Council might claim that a slight reduction in unit count constitutes a “material change”, it bears noting that the Council’s October 26, 2024 letter of support for the Project expressed support for “up to” 264 rental units. The *reduction* in unit count is entirely consistent with this expression of support.



under the authority set forth in Chapter 40B regulations, 760 CMR 56. *Guideline VI.3.1.a* requires municipalities participating in the LIP program to “act in good faith” and prohibits “local support for housing proposed under the LIP [from being] unreasonably withheld.” This is because “[t]he purpose of LIP is premised on the fact that a municipality and a developer are working in concert on a project that meets the community’s needs.” As such, **municipal support for a LIP project may be withdrawn only “[i]f a project changes substantially during the course of the permitting process, such that it is no longer consistent with that which was approved by the chief executive officer and [HLC].”** *Guideline VI.3.1.a*. It simply is not the case that the minor changes to the Project described above – all improvements – rise to this level.

In circumstances in which there is a change to a project that is so substantial that the project is no longer consistent with its PEL, *Guideline VI.8.d* requires the applicant to obtain an amended PEL – as well as the “concurrence of the [municipality’s] chief executive officer for the proposed change.” However, even in this situation where there is a project change so substantial that the project is out of compliance with its PEL, this *Guideline* prohibits the chief executive officer from unreasonably withholding municipal support and authorizes EOHLC to “issue an amended Determination without such local approval, [if] it is unreasonably withheld”.

Although there have been various minor changes to the Project, there have been no substantial changes to the Project since the Council’s June 5, 2024 vote of support of the Project – and certainly none that render the Project inconsistent with the PEL issued by EOHLC.⁴ As noted, the minor changes that have occurred routinely occur in the context of the iterative Chapter 40B review process – and indeed are indicative of the Applicant’s good faith dealings inasmuch as the changes reflect the Applicant’s responsiveness to public feedback. It therefore follows that it was unreasonable for the Council to purport to withdraw its support for the Project. *See Guideline VI.3.1*.

The Town Council’s vote to withdraw support for the Project does not affect the Project’s ability to proceed under Chapter 40B

Even though the Council has purported to withdraw its support for the Project, that fact is not something that the ZBA is legally permitted to take into consideration in its review and

⁴ Whether a project change is “substantial” is determined in accordance with 760 CMR 56.07(4). Examples of substantial changes include increases of more than 10% in unit count or building height, or a change in housing tenure (i.e., rental vs. ownership). None of the changes to this Project even approach this level of substantiality.



assessment of the Project.⁵ Moreover, that fact is also not something that EOHLC need take into account at this stage in the Project's development. Rather, as noted above, the fact that the Town Council may have withdrawn its support for the Project should be addressed *after* the Franklin Zoning Board of Appeals completes its review of the Project as part of EOHLC's Final Approval review process. This is the process contemplated by 760 CMR 56.04(5), which provides that "such decision [regarding project eligibility requirements] may be incorporated into the Subsidizing Agency's final approval issued pursuant to 760 CMR 56.04(7)."

As such, the Applicant respectfully submits that EOHLC should take no action in regard to the Town's notice of its action to withdraw support for the Project. Instead, EOHLC should defer further review until such time as the Applicant applies for Final Approval of the Project.

Conclusion

It bears noting in conclusion that the Applicant has worked in good faith for over two years in designing the Project in concert with Town officials – and has expended significant time and effort and incurred great expense in doing so. The Applicant respectfully requests that EOHLC respond clearly and decisively to reject the purported action of the Town Council. If municipalities were allowed to revoke their support for LIP projects due to no reason other than that the political winds have changed directions, this would all but spell the effective end of the LIP program. In that scenario, developers could not reasonably be expected to participate in the LIP program because the ability of a Project to proceed would be entirely dependent on political whims and local election results.

Respectfully Submitted,

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Dain, Torpy, Le Ray, Wiest & Garner, P.C.

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⁵ Specifically, 760 CMR 56.04(4)(a) states that "[t]he Board shall not address matters in the hearing that are beyond its jurisdiction under M.G.L. c. 40B, §§ 20 through 23 and 760 CMR 56.00 and that lie solely within the authority of the Subsidizing Agency." Per 760 CMR 56.04(1), the Project's eligibility under the LIP program is one of the matters that is exclusively within the jurisdiction of the Subsidizing Agency (i.e., EOHLC). Thus, since EOHLC has issued a PEL for the Project, that PEL constitutes "conclusive evidence that the Project and the Applicant have satisfied the project eligibility requirements of 760 CMR 56.04(1)." 760 CMR 56.04(6).



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- cc. Jamie Hellen, Franklin Town Administrator
Mark Cerel, Esq., Franklin Town Counsel
Julie McCann, Franklin Town Council Operations Manager
Clients