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October 27, 2023

Michael Busby
Relationship Manager
Massachusetts Housing Finance Agency
One Beacon Street
Boston, MA 02108-3110

**Re: Application for Project Eligibility Determination and Site Approval for 81-85
Tisdale Drive, Dover**

Dear Mr. Busby:

The Dover Board of Selectmen submits this comment letter pursuant to 760 CMR 56.04 (3) in response to Tisdale Land, LLC's application for Project Eligibility Determination and Site Approval (the "Application") for a proposed development, pursuant to G.L. c. 40B, §§ 20-23 ("40B"), of forty-two (42) residential rental apartments at 81-85 Tisdale Drive in Dover (the "Project" or "81-85 Tisdale").

For the reasons stated herein, the Board of Selectmen firmly recommends that MassHousing reject the Application and deny project eligibility. The Board, and more broadly the Town of Dover, have significant concerns about the experience and integrity of the developer and the manner in which the Project was proposed, and believe that the Project is grossly inconsistent with local needs.

I. Introduction

The Application proposes one building with 42 residential rental apartments (11 of which are affordable), including 9 one-bedroom, 26 two-bedroom, and 18 three-bedroom units.¹ The proposed site of the Project (the "Site"), 81-85 Tisdale Drive, is located on a dead-end street just off County Street (Rte. 109), and close to the town line with neighboring towns of Walpole, Medfield and Westwood. The Site is currently improved with two occupied single-family homes and is adjacent to woodlands, wetlands, and a vernal pool.

¹ The Town notes that the number of bedrooms listed is, in total, 43, but the applicant described the project as having 42 units. It is unclear which is the correct number and this miscalculation causes confusion about the number of each unit size.

Perhaps most importantly, the Site is also directly behind Red Robin Pastures (“Red Robin”), another large 40B project that is currently under construction. Patrick Corrigan, one of the Project’s developers, is also the developer of Red Robin. Both the location of 81-85 Tisdale directly behind Red Robin, and the fact that the developer applied for approval of the two projects separately and consecutively rather than simultaneously, pose concerns for the Town outlined below, that it respectfully requests MassHousing to consider.

II. Developer's Qualifications

A. Integrity and Candor

Under 760 CMR 56.04 (4), in determining whether a project is eligible for zoning relief under 40B, MassHousing must determine that “(e) the Project appears financially feasible” and “(f) that the Applicant... meets the general eligibility standards of the housing program.” The history and integrity of the developers of the proposed 81-85 Tisdale call into question whether the Project meets such standards.

The 81-85 Tisdale PEL application lists one applicant entity, Tisdale Land, LLC, and two main developers: Patrick Corrigan and Paul McGovern.² As described below, Mr. Corrigan has a history of developing properties in Dover, the experience of which call into question for the Town his ability to complete this project as promised.

Corrigan has misrepresented his ownership interests for a proposed project to the Town. In fact, Mr. Corrigan is currently involved in litigation against the Town, pursuing a complaint under G.L. c. 40A § 17 involving the Dover Zoning Board of Appeals (*Corrigan v. Town of Dover Board of Appeals*, Norfolk County Superior Court Case # 2282CV01138, filed 12/8/2022). This case is an appeal of a recent ZBA decision in which the ZBA denied requested zoning relief because it found that Mr. Corrigan fraudulently represented himself as the owner of a parcel on which he was seeking the relief. The Planning Board also rescinded its endorsement on an ANR plan for the same property after the parcels owners reached out to the Planning Board to complain. It is the Town’s understanding that Mr. Corrigan (either personally or through an ownership entity) is also now in litigation with those same parcel owners. Given that site control is an explicit area of consideration in determining project eligibility, this history of misrepresenting such control is particularly concerning.

In addition, due to what the Commission determined to be Mr. Corrigan’s misrepresentation of ownership interests in this same property, the Dover Conservation Commission voted unanimously on 1/11/2023 to revoke an Order of Conditions it had granted to Corrigan for the property. *See* DEP #144-0874.

Corrigan’s issues with the ZBA, Planning Board and the Conservation Commission are just the latest concerning interactions Mr. Corrigan has had in the Town of Dover. There is a history of other interactions by Town boards, commission and staff that give rise to its concerns about the

² Further, there appear to be individuals missing from the developer’s list of individuals involved in the 81-85 Tisdale Project. Jacob Grossman is a signatory of Tisdale Land, LLC, the entity applicant, but he is not listed in the application. This lack of completeness is as unsurprising as it is concerning.

veracity of Mr. Corrigan's representations. For example, in October 2022, an ANR plan was submitted by Michael and Nicole Murphy that combined two lots and involved the separation of a portion of one of them for the construction of the 40B project known as Red Robin. During a meeting held on November 7, 2022, the Planning Board raised questions concerning the impact of the proposed ANR plan on access to 81 Tisdale Drive. The Planning Board determined that adequate screening existed between the lots, and subsequently endorsed the ANR plan for the Red Robin 40B project on November 30, 2022. However, based on the application materials it appears that Corrigan now intends to utilize the open space and amenities of Red Robin to meet the needs of the new 40B at 81-85 Tisdale Drive. Had the Planning Board been apprised of this intention earlier, the ANR for Red Robin might have been designed differently considering the interplay between the developments and the paramount importance of public safety.

Mr. Corrigan's legal issues are not limited to Dover. He and the entities he owns are or were involved in the various other legal disputes listed below. (This is particularly concerning where the entity applicant, Tisdale Land, LLC, of which Mr. Corrigan is a signatory, noted in its application that it is not involved in any litigation.)

- *Corrigan Development Company, LLC vs Michael Nathenson, Gabriela Steier* Norfolk County Superior Court Case # 2082CV007 filed August 14, 2020. In that case, Defendants counterclaimed against Corrigan Development for breach of contract, breach of implied covenant, violations of c. 93A, and intentional and negligent infliction of emotional distress. The case is ongoing.
- *Haven Realty Trust vs Patrick Corrigan, Karina Corrigan, Corrigan Development Company LLC, and Haven Manor LLC*, Norfolk County Superior Court Case #2282CV01060, filed November 14, 2022. In that case, Corrigan allegedly falsely represented this ownership interests in a property. [This is the same property dispute described above].
- *Michael Thomas Durkan et al. v. Patrick Corrigan*, Norfolk County Superior Court Case #1582cv00590, dismissed June 10, 2019.
- *Debtor, Patrick Joseph Corrigan d/b/a Corrigan Construction* (ceased in 2013), U.S.B.C. District of Massachusetts (Boston) Bankruptcy Petition # 15-15059, ordering sale of property in Dover, MA owned by Haven Terrace LLC, for which Patrick Corrigan is the registered agent and principal.
- Norfolk County Registry of Deeds Book 34253 Page 165, 07-11-2016 also contains a Massachusetts Foreclosure Deed from Haven Terrace, LLC.

Additionally, Mr. Corrigan was involved with developing Medfield Meadows and Medfield Green, other 40B projects with questionable history and qualifications. Those projects had several owners including Geoff Engler, who received a notice of suspension from DHCD while the Red Robin project was in the Comprehensive Permit process. SEB LLC, of which Engler is president, is proposed to assist on the 81-85 Tisdale Project.

Finally, as noted in the Medfield Board of Selectmen's November 17, 2016 letter to MassHousing (partly the basis of which that project was initially denied a PEL), a copy of which is attached hereto as Exhibit A, the developers of the proposed 81-85 Tisdale *may have been* involved in failed projects, which they applied for under separate but similarly named LLCs controlled by family members, that were taken over by Irish government agencies. The developers may also have previously attempted to develop a project in Florida that never materialized and resulted in legal proceedings.³

B. Experience

The proposed developers for this project also lack the 40B experience to execute a project of this size. The only *completed* 40B project they list on their application is the Medfield Meadows project in Medfield, MA. That project was initially proposed as a 200-unit development but was rejected by the Town of Medfield and DHCD and was eventually reduced to a 24-unit rental and an affiliated project with 12 for sale units (an 82% reduction in housing units from the original proposal).

The developers also list Red Robin Pastures and another yet-to-be-permitted 40B project currently in front of the Millis ZBA in their experience section.⁴ Given that these projects are yet to be executed, they lend nothing to the evaluation of the developers' experience.

For the reasons described above, though the Town has not endeavored to, nor is it equipped to, confirm some of these assertions, the Town has serious concerns about the financial viability of proposed 81-85 Tisdale project. As MassHousing must be satisfied that the developer has submitted accurate financial information and is eligible to receive a subsidy for the development of affordable housing, we strongly recommend that EOHLC makes further inquiries into the developer's financial capability, trustworthiness and experience.

III. **Segmentation of the Projects**

The Project is proposed to be located directly behind Red Robin Pastures, a 34-unit, 75-bedroom affordable housing project currently under construction in Dover. In many ways, the two projects—81-85 Tisdale and Red Robin Pastures—will essentially function as one project.

It appears that the developer had control of the site for 81-85 Tisdale while it was going through the Comprehensive Permit process for Red Robin. The applicant applied for the Red Robin Comprehensive Permit in February 2021, and was granted said permit in February 2022. Red Robin Pastures, LLC purchased 81 Tisdale on 10/12/2021, during the Comprehensive Permit process for Red Robin, and conveyed that land to Tisdale Land, LLC (which is managed by Red Robin Pastures, LLC and which has an address of 1218 Great Plains Ave, Needham, MA—Paul

³ The Town of Dover has not been able to independently verify this information, so raise it only as an issue that DHCD may want to investigate further.

⁴ This second project is also listed as "Red Robin Pastures," but presumably this second listing is a typo, and was meant to refer to another project.

McGovern's home) on 2/8/2023. Red Robin Pastures, LLC also purchased 85 Tisdale on 1/27/2022, and conveyed that land to Tisdale Land, LLC on 2/8/2023.

The piggybacking of one project onto another is a problem for planning of infrastructure needs as outlined below. But it is also an issue of integrity. The Tisdale application is more properly reviewed as the second phase of Red Robin. Yet, by separating his applications for the developments, and failing to be forthcoming about their accumulating ownership interests in land adjacent to Red Robin, the developers have not allowed Dover to address both developments as a whole. Had a 76-unit development been originally proposed, issues around traffic design, parking and service access, emergency services, open space availability, safety considerations at the Rt. 109 school bus stop, and how to mitigate the impact on the quiet cul-de-sac 40B community of County Court could have been considered. Such consideration would, no doubt, have resulted in a plan that better addresses these issues for all residents. Instead, the developers chose to apply for the developments separately.

In applying for the project in two separate phases, the developer avoided, or at least delayed, triggering 310 CMR 15.000, also known as Title 5's requirement to build an expensive and highly regulated wastewater treatment plant.⁵ Under Title 5, on-site sewage disposal systems can only be used for developments that process no more than 10,000 gallons of wastewater per day (gpd). Projects exceeding that threshold must construct a private on-site wastewater treatment facility. These systems require constant oversight, sampling, monitoring and reporting to MassDEP and must meet strict treatment requirements of the Massachusetts Groundwater Discharge Regulations (314 CMR 5.0).

The required formula for determining the number of gallons per day at any given residential development is 110 X the number of bedrooms. 310 CMR 15.203. This means that by first building a 34-unit, 75-bedroom building, the developer stayed under the 10,000 gpd threshold and avoided having to build a water treatment facility. Had the developer applied for both Red Robin and 81-85 Tisdale simultaneously, the project would have exceeded the 10,000 gpd threshold and required development of a water treatment facility for the Red Robin project.

IV. Comments from Town Staff, Officials, and Residents

Based on the information and plans that were submitted with the Application, the Town offers the following concerns, consideration of which may be useful in evaluating project eligibility:

A. Infrastructure

i. *Roads*

Tisdale Drive was originally built as a private road and is only 22 feet wide - more narrow than most roads in Dover, according to the Town Planner. It does not allow for two-way traffic. The proposal to add 43 additional housing units on the road may multiply traffic in a way that the road is simply not equipped to handle. Further, more cars parked on the road will make it

⁵ By applying for the projects together, the Developer also would have had to comply with Dover's subdivision bylaw that prohibits any development over 5 acres from removing more than 20% of trees.

difficult not only for daily traffic to utilize the road, but also for snowplows and emergency vehicles to access the road and homes thereon- and this is all without even taking into consideration the as-yet-unseen impacts of increased traffic from Red Robin.

Additionally, the Town is unclear and still researching the ownership of Tisdale Drive. It appears that it may still be privately owned by the residents of County Court. If the road is indeed privately owned, and needs any improvements to handle additional traffic, it is currently unclear who is responsible for the cost and approvals.

ii. *Water*

Water is already a significant issue in Dover in general and for the Tisdale Drive neighborhood in particular. Due to concerns about the supply of water in Dover going forward, the Board of Selectmen retained a consultant to investigate connecting the Town to the MWRA. Those preliminary estimates indicate that such a connection could necessitate that the Town make an investment of over \$100,000,000. In the Tisdale neighborhood in particular, the neighborhood uses common water wells administered by a private water company, Aquarion. According to Town Planner Jasmin Farinacci, the past few years have seen a decline in the quality and availability of water from these wells. *See Exhibit B.* In fact, as of October 2023, residents have noted that their water sometimes runs brown.

During the Comprehensive Permit Application process for Red Robin, these concerns were raised to the ZBA. Aquarion⁶ submitted a letter during those hearings restricting the extent of water service it would provide to the project to the following: it would not allow its water to be used for fire suppression, would require an adherence to 65 gpd water use, would not allow exterior irrigation, and would possibly require a water main. *See Exhibit C* (Dover Zoning Board of Appeals Decision 2020-04 at 2.) Without yet realizing the impact of the restricted water service to Red Robin, it is difficult to see how the Town could ensure that future residents of 81-85 Tisdale have access to water.

iii. *Trash*

The developer's submitted plans indicate that a small dumpster pad will be located on the locked side of the emergency access road. This location is not a viable place for dumpsters where it appears to be within the driveway/parking area further limiting parking spots and traffic flow.

iv. *Parking*

The developer has proposed 42 apartments and only provided 65 parking spaces. The Town of Dover bylaws require 2 parking spaces per bedroom, and there is no parking available on Tisdale Drive. The parking proposed is inadequate to meet the needs of its residents and guests. This project is located miles from public transportation, and it will therefore be difficult for tenants to access necessities and jobs without adequate parking.

⁶ Then known as the Colonial Water Company

B. Fire Protection and Life Safety:

i. *School-Age Children Safety*

There are currently 14 elementary school-aged children and 12 high school-aged children attending Dover Sherborn High School living on Tisdale Drive. Because school buses cannot turn around in the cul-de-sac on Tisdale Drive, these children walk the length of Tisdale Drive in the morning and afternoon. There is no sidewalk on Tisdale Drive, so all walkers and bike riders use the road itself. This results in a substantial number of children on the road and waiting at a busy intersection during peak traffic hours. Introducing more children and over 60 cars to Tisdale Drive from the proposed development could endanger the safety of all children residing on this road.

ii. *Roadway Width and Emergency Access*

Tisdale Drive is a 22-foot-wide road that culminates in a cul-de-sac. The roadway width and cul-de-sac dimensions are insufficient to accommodate the turning radius of a ladder truck, raising concerns about emergency access. This will create difficulty with the turning radii of ladder trucks attempting to access the proposed 40B from Tisdale Drive and create potential bottleneck of emergency vehicles. This is also a concern for bottlenecking if the area ever needed to be evacuated as there is only one point of egress.

C. Open Space and Recreation:

The applicant has proposed the construction of a pathway between the Project and Red Robin, presumably for residents of the Project to use Red Robin's amenities. However, the open space and amenities within Red Robin were designed based on the number of units specified in that project's application—they were not designed to accommodate over 40 additional families. The allocation of just five acres for the Project Site leaves little room for additional open space, and the Developer has not proposed any recreational space except for "paths through the woods." Where the Housing Appeals Committee, on appeal, is explicitly charged with reviewing the availability of Open Space, this is an important consideration in any 40B project. 760 CMR 56.07(3)(f).

D. Compatibility with Purpose of 40B:

Massachusetts passed 40B in 1969 to provide safe, affordable housing for families, and to ensure that this housing is present across all communities in the Commonwealth. One factor motivating the creation of 40B was to ensure that affordable housing is not segregated nor marked as separate, but instead is integrated into each municipality. See *Report of the Legislative Research Counsel Relative to Restricting the Zoning Power to City and County Governments*, published pursuant to Senate Order No. 933 of 1967.

The 81-85 Tisdale project is not in furtherance of those goals. The neighborhood in which the Project is proposed already consists of the County Court condominiums, which is Dover's largest 40B project, as well as the in-construction Red Robin 40B project. Adding a 43-unit affordable housing project to this area would result in a segregated, clustered, condensed spot of some of

the Town's only affordable housing on the literal edge of town. As one resident put it in a comment letter, this is not the way to build a diverse and thriving community.

E. Environmental:

The Conservation Commission enumerated the following concerns with Project's impact on the environment. Those comments are attached here as Exhibit D. In short, there are four primary concerns.

First, the Commission confirmed during its regulatory review and permit issuance for Red Robin that there is a certified vernal pool and extensive wetlands adjacent to 81-85 Tisdale that should be formally delineated and approved by the Commission under an ANRAD pursuant to all applicable regulatory requirements before any further review of the project by the ZBA.

Second, the vernal pool adjacent to the proposed Project has already been impacted by the construction of the large structures and land disturbances on the adjacent Red Robin Project. The proposed additional construction for the Tisdale 40B raises several ecological and regulatory concerns including habitat destruction, biodiversity loss, and issues with water quality, erosion control, and hydrological balance.

Third, there should be a required 100 foot "No Disturb" buffer from the vernal pool will help protect and preserve the property's open space and forested landscape. The potential adverse impacts of the vernal pool can be avoided by locating all new structures and land disturbances 100 feet away from the vernal pool. The proposed plan for 81-85 Tisdale Drive indicates an almost total clear-cutting of the existing heavily wooded natural forest on the lots. This will have detrimental impacts on biodiversity, carbon sequestration, air quality, erosion control, and climate resilience.

Fourth and finally, the Project's stormwater and drainage infrastructure and long-term management plan must satisfy MassDEP's Stormwater Management Standards and performance standards. In order to do so, the proposed Project must maximize green infrastructure elements and low impact development best management practices that incorporate water conservation and natural resources protection efforts. It is not clear how the Project could satisfy these standards.

V. Conclusion

There is no doubt that more affordable housing opportunities are necessary in the Town of Dover. We, as a town, are not opposed to development of affordable housing. In fact, the Town has an approved Housing Production Plan on file with the Commonwealth, which we have taken the required steps to implement including approving a new zoning bylaw allowing Accessory Dwelling Units.

Rather, the Town is opposed to this particular proposal. Taken as a whole, the developer's application for 81-85 Tisdale presents a set of concerns: the integrity, candor, and financial solvency of the developer, the failure to link the proposed project with Red Robin when originally proposed, the various safety, infrastructure and environmental concerns, and the failure of this project to comply with the spirit of 40B.

Accordingly, the Dover Board of Selectmen respectfully request that you deny the requested Project Eligibility Letter for this Project.

Sincerely,



Michael Blanchard, Town Administrator

cc: Dover Board of Selectmen
 Dover Planning Board
 Dover Conservation Commission
 Dover Housing Task Force
 Dover Town Counsel – Anderson & Kreiger LLP

Exhibit A



MICHAEL J. SULLIVAN
Town Administrator

TOWN OF MEDFIELD

Office of
BOARD OF SELECTMEN

TOWN HOUSE, 459 MAIN STREET
MEDFIELD, MASSACHUSETTS 02052-2009

(508) 359-8505

November 17, 2016

Mr. Gregory P. Watson, AICP
Manager of Comprehensive Permit Programs
Massachusetts Housing Finance Agency
One Beacon Street
Boston, MA 02108-3110

Re: Application for Project Eligibility Determination/Site Approval Medfield
Meadows LLC; Municipal Comment Letter; Due November 18, 2016
MH ID No.873

Dear Mr. Watson:

In response to an application for Project Eligibility Determination/Site Approval (the "Application") submitted to the Massachusetts Housing Finance Agency (MassHousing) by Medfield Meadows, LLC for a proposed development of two hundred (200) units at the intersection of Dale Street and North Meadows Road (aka Route 27) in Medfield pursuant to Massachusetts General Laws, Chapter 40B, Sections 20-23 (Chapter 40B), the Medfield Board of Selectmen submits the enclosed material as written comment pursuant to 760 CMR 56.04 (3). The correspondence contains input and comments from Town department heads and officials. It is our understanding that some Medfield residents will be submitting their own comments.

For the reasons stated herein, the Board of Selectmen firmly recommend that MassHousing reject the Developer's PEL application. As noted herein, the Project is grossly *inconsistent with local needs* and the developer is ill equipped to construct and manage the ambitious project that is the subject of the PEL application.

I. Introduction

The proposed project (the "project") consists of two distinct sites bisected by North Meadows Road, a major north-south commuter/connector roadway; and includes two hundred (200) units on 6.24 acres, 3,576 sf of which is a certifiable vernal pool under local wetlands regulations. Fifty (50) units of the project will be affordable. Ninety (90) units are proposed in the four-story building on the west side North Meadows and one hundred and ten (110) units are proposed in

the 3-5 story building on the east side of North Meadows Road. The unit mix of the development is proposed as follows: forty-three (43) one bedroom units (with eleven (11) affordable), one hundred and twenty-six (126) two bedroom units (with thirty-one (31) affordable), and thirty-one (31) three bedroom units (with eight (8) affordable).

The existing property is adjacent to the active Medfield Department of Public Works municipal operations site, a town-sponsored 17-unit all-affordable housing development built in 1991, a historic cemetery, and several single-family dwellings. Dale Street and North Meadows Road are both well-traveled town-owned public ways.

II. Previous communication with developers

Prior to submittal to MassHousing the Applicants had a series of meetings with town staff, officials, and residents on the general concept and layout of the project.

- August 15, 2016 – Email Communication to Sarah Raposa, Town Planner, requesting a meeting to discuss a 40B rental project.
- August 17, 2016 – Sarah Raposa, Town Planner, met with Geoff Engler, Moira Cronin, Architect John Winslow and applicants John Kelly and Patrick Corrigan to view the proposed project. The plan shown is the same as the one submitted to MassHousing Site Approval Application. Feedback given to the applicant was that the plan's density was not only shocking also the bulk and height of two proposed buildings is totally out of scale with neighborhood, town and region. A more formal departmental meeting to be scheduled.
- September 8, 2016 – Meeting with key Town staff and department heads and the applicant team and consultants to give the Town an overview of the components of the application (design, engineering, etc.). The applicants said that they expect revisions based on comments, suggestions, and peer review over the coming months. The Applicants agreed to provide a fiscal impact analysis with their application.

The developers, John Kelly and Patrick Corrigan, did not stress an interest in providing family housing. Rather, they noted that the market units would contain superior finishes including nine-foot ceilings with crown moldings, granite and/or marble countertops and stainless steel appliances. They stated that because of the expected rental price points for the market units, there would be few children living in the complex, since young families would prefer to apply the rental dollars towards mortgage payments, rather than rent. They are designing their marketing plan on the assumption that the market units instead would be rented, primarily by young professionals and empty nesters looking to downsize. When asked about the massing of the two buildings, the architect, John Winslow, from the offices of Winslow Architects, Mass Avenue, Arlington, conceded that the complex was not in scale with the surrounding neighborhood or the Town of Medfield in general, but that he simply did what he was asked to do - design a complex with the maximum number of units possible. The project's landscape architect was

introduced and stated that the existing mature trees on the site, which presently provide a pleasing buffer, would all have to be removed. The project engineer was introduced but had not actually done any of the required analysis to evaluate the project's impacts, notwithstanding several significant concerns that are noted in this response letter.

- On October 18, 2016, at a public presentation of the proposed Medfield Meadows 200-unit apartment complexes, held at Medfield High School, the developers presented the project to a large crowd of concerned residents. Shockingly, the project architect reiterated his earlier concession that the development was out of scale with the surrounding neighborhood and with the Town in general, but that he had been asked to design the maximum number of units that could be located at the site. It was noted by the public that the proposed buildings are architecturally inconsistent. Plainly, the project's seven-story structure, including the underground parking on one parcel and a three story structure on the other parcel are massive in comparison to the nearby modest single family homes, including homes in an adjacent c. 40B project that the Town approved in 1991. A resident of the adjoining 40B development noted that the height of the building just 50 feet from her development would loom over her house and yard. A substantial amount of discussion was advanced regarding traffic impacts. During peak hours, this area of Medfield is very busy. At this juncture however, the Applicant had not even prepared a traffic study, again highlighting its lack of preparation. The lack of realistic recreational and open space in the development was also cited as a concern that is magnified by the fact that the projects border on one of the two busiest roads in town (Rt. 27), a significant danger for any children that may reside at the project. When questioned about his background and experience, Mr. Kelly indicated that he and his family had come to America seven years ago and were living in Sherborn and that this was their first project in the United States. This raised a number of concerns in that developing a high density affordable housing complex, with all of the restrictions imposed under c. 40B, can be a daunting task for an experienced developer and a near impossible task for a developer with no relevant experience whatsoever.

III. Developer's Experience

The Town is concerned that the developers do not have the requisite experience or track record to develop such an ambitious project. As noted above and evidenced by the "Development Experience" section of their Application, the developers have no 40B experience; have not developed any projects in the Commonwealth and have never even successfully developed a project in the United States. Upon hearing that Medfield Meadows was the developer's first project in the United States, inquiries were made by members of the public into the developer's background. It was reported to the Town that several of the people involved in the Medfield Meadows proposal may have been involved in projects that had failed and had been taken over

by government agencies in Ireland under separate but similarly named LLCs controlled by family members. It also appears that the developer may have previously attempted to develop a project in Florida but that the project never materialized and legal proceedings ensued. Other concerns were raised about apparent foreclosures and insolvency proceedings. The application identifies the following individuals as principals of two development entities:

Medfield Meadows LLC:

- John Kelly, 12 Haven Street, Dover, MA (aka John P. Kelly)
- Patrick Corrigan, 12 Haven Street, Dover, MA

RQC, LLC:

- John Kelly, same as above
- Karina Corrigan, wife of Patrick, address above
 - Note: RQC, LLC is a Limited Liability Company filed on March 17, 2016. The registered agent for this company is Karina Ann Corrigan and is located at 12 Haven Street, Dover, MA 02030. The company has two principals on record: John Patrick Kelly from Dover, MA and Karina Ann Corrigan from Dover MA.

It has come to Town's attention that legal proceedings may be pending involving individuals with same or similar names and addresses as follows:

- Patrick Corrigan Bankruptcy: United States Bankruptcy Court, District of Massachusetts; Case/AP Number 15-15059 ordering sale of property in Dover, MA owned by Haven Terrace LLC (Norfolk County Registry of Deeds Book 33852 Page 582, 02-12-2016)
 - Note: Haven Terrace is a Limited Liability Company filed on May 30, 2014. The registered agent for this company is Patrick Corrigan and is located at 12 Haven Street, Dover, MA 02030. The company has one principal on record: Patrick Corrigan from Dover, MA.
- Massachusetts Foreclosure Deed from Haven Terrace LLC (Norfolk County Registry of Deeds Book 34253 Page 165, 07-11-2016)

The Town is unable to determine if there is identity between principals named in application and named litigants. However, the Town has serious concerns about financial viability of proposed project if the principals are the same. We question the certifications made in their application on Page 24 of the PEL application. Accordingly, Town strongly recommends that MassHousing conduct a thorough inquiry into this matter in order to determine whether the *financial feasibility* of the project may be affected.

Again, the Town has not endeavored to confirm any of these assertions nor is it equipped to do so. However, in that MassHousing must be satisfied that the developer has submitted accurate

financial information and is worthy of receiving a subsidy for the development of affordable housing, we strongly recommend that further inquiries be made.

IV. Comments from Town Staff and Officials

Based on the information and plans that were submitted with the Application, the Town offers the following comments, which are useful in evaluating the project for consistency with local needs:

A. Environmental, Historical, and Archeological:

- The Conservation Commission issued a decision dated September 1, 2016 but that decision was based on an unknown project. While the Commission found that a negative Determination of Applicability (no wetlands impacts) was required under MA Wetlands Protection Act (WPA, the Commission concluded that under the local wetland Bylaw, which is considerably more stringent than the WPA, the Determination was necessarily positive due to the presence of both a certifiable vernal pool and its 100-foot vernal pool habitat and an isolated area of inundation containing wetlands vegetation. The Order of Resource Area Delineation stated that the boundaries shown on the Plan of Record (on file with the Commission) is accurate under MA WPA and other resource areas (Isolated Vegetated Wetlands and Certifiable Vernal Pool Habitat) are accurate under the Bylaw. Both the Determination and the Order of Resources have been appealed to the MA DEP (under the WPA) and Norfolk County Superior Court (under the local Bylaw) by a group of abutters. There can be little doubt that the Project would cause adverse impacts to the interests protected by the local wetland Bylaw.
- The Medfield Historical Commission and Archeology Committee report that Vine Lake Cemetery, which is adjacent to the project site, is on the National Register as a historic landscape resource. It is an active public cemetery where burials occur regularly. The cemetery contains historical resources that are several centuries old. There is potential damage to burial sites during construction and the long-term destruction of serene atmosphere would be irreparable. The Building 2 site is shown on the 1997 Public Archeological Laboratory (PAL) map of Archeologically Sensitive Area Map of Medfield.

B. Infrastructure:

- The Board of Water and Sewerage cannot yet commit to provide water service to the project. Before the feasibility of a water connection can be determined, the following water-related questions must be answered:
 - How much water supply is required to meet the needs of these units?
 - Will there be enough water pressure?
 - Can the existing infrastructure meet the forecasted demand?

- How will landscaping water needs be supplied?
 - How will fire protection needs be met?
- Similarly, the Board of Water and Sewerage cannot not yet commit to providing a sewer connection or extension to the project. Before the feasibility of a sewer connection can be determined, the following sewer-related questions must be answered:
 - Does the Medfield Wastewater Treatment Plant have enough sewer capacity to meet the needs of these units?
 - Can the existing infrastructure meet the forecasted demand?
- The Department of Public Works is concerned about following issues:
 - Interior and exterior site lighting.
 - The ability to handle snow storage or removal.
 - How will the solid waste and recycling be handled within the proposed developments? Will they each have on-site dumpsters and private haulers for solid waste and recycling?
 - Will there be a mechanism in place to disclose information to the renters that a municipal operation exists adjacent to the northerly building; and that the operation is 24-hours per day during snow events and other town emergency situations.
 - Stormwater to meet EPA & DEP standards of the July 1, 2017 EPA standards with O&M plan.
 - The Town is planning to install solar panels on the DPW facility roof to provide electricity for operation could be negatively impacted by shading (shadow) from the proposed Building 1.

C. Fire Protection and Life Safety:

- Fire Chief: project must meet fire protection codes and he is highly concerned about fire-fighting issues with the height of the garage/clearance of the fire truck and access around the buildings. Even though the fire department has a 75' aerial ladder truck emergency access will be problematic. Given the challenging topography and the locations of the buildings, expedient access to the upper floors is a significant concern. These issues must be resolved before Project Eligibility is issued. As MassHousing is aware, several Housing Appeals Committee decisions have rejected projects due to inadequate emergency access.
- Police Chief: Concerned about impact to existing general and commuter traffic issues. He would anticipate more commuter traffic with the number of market rate units proposed. At present, the Developer has not presented a suitable traffic study. Traffic must be evaluated for both impacts to level of service and for basic safety issues relating to the project's various entrances and exits. Significant traffic conflicts appear to exist.

- Building Commissioner: must meet building code requirements.

D. Overall Site Plan:

- The site plan is aggressively dense and exceeds all other densities found in Medfield.
 - The Parc at Medfield has a density of 10 units per acre and its 92 units are comprised of 4 distinct three-story buildings.
 - The building style (height and massing) is not typically found in the surrounding area. In fact, the Town surveyed the following area towns for buildings with at least 40,000 gross floor area and 3+ stories:

▪ Medfield – none	▪ Millis – none
▪ Dover – none	▪ Medway – two
▪ Sherborn – none	▪ Norfolk – none
- The building setbacks are completely inappropriate for this area. Whether or not shadow studies reveal an impact, it is inequitable to have a 5-story building approximately 50' from the small Cape-style homes off of Joseph Pace and John Crowder Roads. The Applicant proposes no visual or sound mitigation. Many units would also be facing the Town's public works facility. It is the Town's position that new residential housing – especially affordable housing – should be designed in a manner that allows assimilation into neighborhoods and the environment. The proposed project has none of these attributes and, rather, is an effort to shoehorn as many units of possible into an area that is ill suited for a large-scale garden style apartment development.
- The site plan is poorly designed for open space and recreational areas. There is very little meaningful open space provided as the small areas are located adjacent to parking lots and North Meadows Road which are both noisy and unhealthy for children if they are regularly breathing in vehicle exhaust.
- The parking plan is inadequate as it does not provide for a realistic number of off-street parking spaces for renters and visitors.
- The traffic patterns in the area are already congested at peak commuter hours. The Dale Street access/egresses are too close to the intersection to function properly with additional load.
- Sidewalks, crosswalks, and other measures needed for pedestrian safety need to be addressed.
- Safe school bus stop areas have not been depicted and must be addressed.
- Noise mitigation from external mechanical equipment such as emergency generators, air conditioning units, exhaust fans, etc. must be addressed; and noise impacts to the residents posed by the DPW facility and Route 27 must also be addressed.
- Noise mitigation/controls for dumpster services should be provided.
- Pest control plan for trash storage areas must be developed.
- Bike racks should be provided.

- Ensure there is enough driveway stacking areas for vehicles exiting the site onto Dale Street. Traffic backs up further than the access points are shown during commuter times.
- Light pollution from windows, exterior egress doors, and building mounted lights must be addressed.
- A full storm water management plan must be provided and evaluated.
- A construction management plan established, especially given concerns relating to the intersecting busy roadways serving the site.
- Adequate parking area lighting that is adequate for safety and keeps light from spilling out to abutters.

E. Municipal Planning and Affordable Housing Comments:

- The Town of Medfield is currently actively engaged in an update of its master plan. Until it is prepared, we rely on the housing goals articulated in Medfield's 1997 Master Plan Goals & Policies Statement as they may remain applicable today. The Applicants should provide a narrative on how their proposed project furthers Town goals such as these:
 - Protect Medfield's environmental quality, town character and fiscal condition as growth continues. (LU-2)
 - Decisions affecting land use should be guided by an understanding of the environmental, social, and fiscal implications of development.
 - Medfield will accommodate residential development that is consistent with the Town's character and its ability to provide high quality services. (H-1)
 - Residential development should be concentrated in areas that can accommodate development without jeopardizing the environment and town character.
 - Ensure that densities reflect infrastructure and natural resource constraints.
 - New housing development will include the variety of lot sizes, unit sizes and housing costs that contribute to Medfield's diverse community. (H-2)
 - These goals formed the basis for the housing vision stated in Medfield's 2004 Community Development Plan:
 - *Medfield will accommodate residential development that is consistent with the Town's character and its ability to provide high quality services while ensuring that units that are affordable to a range of incomes are also developed.*
- The Town has a locally approved Housing Production Plan (HPP) which was submitted to DHCD on October 18, 2016. Promising strategies for dispersing different types of affordable housing in our town include utilization buildable space at the Medfield State Hospital property and working with the Medfield Housing

Authority to develop approximately 40 units at Tilden Village to serve our aging population. Upper floor apartments or small-scale infill development with modest-sized homes or townhouses in the Downtown are identified as a strategy in the HPP.

The Town would encourage affordable housing development in appropriate locations, where there is the best potential for infrastructure, municipal services, and/or amenities to serve future residents. The Town prefers affordable housing development that is consistent with the town's suburban character and density, and that meets community housing needs identified in the HPP analysis.

- Medfield's Subsidized Housing Inventory is approximately 6.71% and an action plan to add 21 units of housing per year for the next five years to add a diversity of affordable housing options while keeping with the character of Medfield's distinct land use patterns, which is dominated by single-family homes with pockets of small-scale density.

V. D.H.C.D. Comprehensive Permit Design Guidelines

The Department of Housing and Community Development Guidelines under Section 3 - Findings, cites the regulations at 760 CMR 56.04(4), which set findings that are necessary for a determination of Project Eligibility by a Subsidizing Agency. Under the Guidelines, it states that "the Subsidizing Agency must give particular attention in reviewing the Project to the matters that relate to how the Project site plan and design relate to the existing development pattern(s) of the immediately surrounding area." It further states that these guidelines "are intended to draw attention to factors that are of particular importance when introducing a Project into existing surroundings to encourage a uniform perspective among Subsidizing Agencies and to create a more transparent review Process."

Among the factors to be considered are "(1) Relationship to Adjacent Building Typology. Generally, a Project is developed in the context of single family dwellings and introduces a different form of housing into the neighborhood. Assuming that this is the case, it is important to mitigate the height and scale of the buildings to adjacent sites. In this context, it is particularly important to consider the predominant building types, setbacks and roof lines of the existing context.

- The massing of the Project should be modulated and/or stepped in perceived height, bulk and scale to create an appropriate transition to adjoining sites.
- Where possible, the site plan should take advantage of the natural topography and site features or the addition of landscaping to help buffer massing.
- Design may use architectural details, color and materials taken from the existing context as a means of addressing the perception of mass and height."

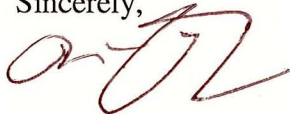
As discussed above, the architect hired by the developer admitted to the Town on two occasions that the density of the Medfield Meadows Project was not in keeping with either the density of the surrounding neighborhood or the Town of Medfield. The adjacent neighborhood is primarily composed of single family homes on lots ranging from five units per acre to one unit per acre. Medfield Meadows is 30 to 32 units per acre (depending upon which side of North Meadows Road). While factor (3) Density states that "appropriate density of residential dwellings depends upon a myriad of interconnected factors and must be determined case by case" it is logical that this level of density in this project is blatantly incompatible with the surrounding residential neighborhoods. The massing of this Project is not modulated and or stepped in perceived height, bulk and scale to create an appropriate transition to adjoining sites. In fact, it appears that several of the adjacent houses, which are, in fact, located in a 100% single family 40B development, would be dwarfed by the proposed buildings. The Project also proposes to remove hundreds of trees, many of them of a substantial size, exposing the site with its three and seven story building masses to the surrounding residential properties, which in no way "take(s) advantage of the natural topography and site features or the addition of landscaping to help buffer massing."

Furthermore the design of the project violates the guidelines as it fails to "consider the predominant building types, setbacks and roof lines of the existing context." Medfield Meadows consists of two large scale buildings with little architectural detail, considerable height and flat roofs, while the surrounding neighborhoods are overwhelmingly one or two story houses with peaked roofs.

VI. Conclusion

Based on the above, it is apparent that the proposed development is too intense for this site. There is no doubt that more affordable housing opportunities are necessary in the Town of Medfield, but such opportunities should be more respectful of existing neighborhoods and land uses, as well as the eventual residents of the development. This proposal is contrary to best practices for affordable housing. Accordingly, the Medfield Board of Selectmen respectfully request denial of the PEL Application.

Sincerely,



Mark L. Fisher, Chairman
Board of Selectmen

cc: Jessica L. Malcolm, 40B Specialist, MassHousing

Exhibit B

October 11, 2023



Town of Dover Planning Department

Mike Blanchard
Town Manager
5 Springdale Avenue
Dover, MA 02030

RE: Concerns Regarding the Proposed 40B Project at 81 and 85 Tisdale Drive

Dear Mike,

I am writing on behalf of the Planning Board to address our concerns regarding the proposed 40B project at 81 and 85 Tisdale Drive. We have carefully reviewed the Preliminary Eligibility Letter (PEL) application and plans for the aforementioned project, and have identified several significant issues that warrant attention and resolution. Our comments and concerns are outlined below:

1. **Previous Land Use Considerations:** In October of 2022, an Approval Not Required (ANR) plan was submitted by Michael and Nicole Murphy, which combined two lots and involved the separation of a portion of one of them for the construction of the 40B project known as Red Robin. During a meeting held on November 7, 2022, the Planning Board raised questions concerning the impact of the proposed ANR plan on access to 81 Tisdale Drive. It was determined that adequate screening existed between the lots, and subsequently, on November 30, 2022, the Planning Board endorsed the ANR plan for the Red Robin 40B project. However, it has come to our attention that the developer of the proposed 81 and 85 Tisdale 40B now intends to utilize the open space and amenities of Red Robin to meet the needs of the new 40B on Tisdale Drive. Had the Planning Board been apprised of this intention earlier, the ANR for Red Robin might have been designed differently, considering the interplay between the developments and the paramount importance of public safety.
2. **School-Age Children Safety:** Currently, there are 14 school-age children attending Chickering Elementary School from Tisdale Drive, and an additional 12 school-age children attending Dover Sherborn High School. This count does not include children below Kindergarten within the community. These children currently must walk to the end of Tisdale Drive in the morning to catch the bus, and similarly, they walk home from Tisdale and County Road at the end of the school day because the school bus cannot turn around in the cul-de-sac. This situation presents a concern, as it results in a substantial number of children waiting at a busy intersection during peak traffic hours in the morning. Introducing more children and 63 cars to Tisdale Drive could endanger the safety of all children residing on this road. In addition, as there is no sidewalk, all walkers and bike riders use the road as there is hilly land along a good portion of the

road. This too must be considered in a safety evaluation Traffic and safety will be further increased by the expected cars and trucks from guests, delivery trucks and service vehicles. There have been a multitude of accidents recorded at the intersection of 109 and Appletree Lane that both the fire and police departments can attest to. Appletree Lane is only 341 feet from the Tisdale-Rt. 109 intersection. Adding additional traffic to the area and adding more children waiting at a dangerous intersection for the bus is irresponsible.

3. The ownership of Tisdale is under review and it is unclear whether or not the road remains a private or public way. This matter should be reviewed in detail to determine ownership and access as it is determinative in any housing project on that side of Tisdale Drive. If improvements of any sort need to be made to the road to handle the additional traffic, who is responsible for the cost and if this impacts County Court land, what approvals are required?
4. Roadway Width and Emergency Access: Tisdale Drive is currently a 22-foot-wide road that culminates in a cul-de-sac. The roadway width and cul-de-sac dimensions are insufficient to accommodate the turning radius of a ladder truck, raising concerns about emergency access. This will create difficulty with the turning radii of ladder trucks attempting to access the proposed 40B off of Tisdale Drive and create potential bottleneck of emergency vehicles.
5. Impact on Original Development Intent: Tisdale Drive was initially required to connect to another roadway for emergency access but was unable to do so due to conservation issues. This limitation has direct consequences on the potential development, as the original 40B project on Tisdale was intended to have improved access and traffic flow, which are currently constrained by the existing layout. Adding additional housing and all its negative impacts are counterintuitive to the original design and its intentions and only serves to exacerbate an issue that has been known since County Court was first built. The negative impact on County Court, Dover's largest 40B project, must be taken into account.
6. Open Space and Amenity Allocation: The applicant has proposed the construction of a pathway between the proposed 81 and 85 Tisdale Drive 40B project and the Red Robin 40B project. This raises concerns as the open space and amenities within the Red Robin project were designed based on the number of units specified in that project's application. They did not account for, and therefore cannot adequately compensate for, the additional 42 units proposed in the new development. In fact, there are two small playgrounds at County Court which are likely closer than the ultimately undersized one at Red Robin and easily accessible to the new residents. There is also a trail between County Court and Draper Road which was approved by the Board of Selectmen so that County Court residents could safely walk on Draper Road without having to walk on Rt. 109. This too could result in more unauthorized foot traffic in County Court.
7. Inadequate Open Space: The allocation of just 5 acres leaves little room for open space and screening on the properties. The current plans indicate an almost total removal of the trees currently separating Tisdale Drive from the 81 and 85 house lots. This deficiency

could have detrimental impacts on the quality of life for residents and the overall aesthetic character of the community. Aesthetically, the design is totally out of character with County Court and relates only to Red Robin which is around the corner and not visible at the same time. Housing similar to the County Court townhouses would blend with the Tisdale Dr. neighborhood, unlike a 3-story apartment building.

8. Adjacent 40B Developments: The proximity of another 40B project adjacent to this development raises concerns about the potential negative impacts they may have on each other, including traffic congestion, increased demand for public services, and strain on local infrastructure. As Red Robin is not yet occupied, the impact of traffic on the corner of Rt.109 and Tisdale Drive from their units is unknown.
9. It appears that the Red Robin owners bought 81 and 85 Tisdale in 10/2021 and January, 2022, respectively, and obviously had plans to develop 81 and 85 Tisdale as they presented the Red Robin development to the ZBA. It is unclear and worth research with the ZBA on whether this overall area development plan was discussed during the comprehensive permit process. Given the intended sharing of some resources with Red Robin and the severe impact on County Court of phase 2, one wonders if the final Red Robin final plan would have been different if the issues now facing us had been addressed in a more holistic way with transparency by the developers, rather than them waiting the necessary time to allow phase 2 to be an independent application. At the Planning Board's 11/21/22 meeting, Paul McGovern stated that he owned 81 Tisdale but gave no indication that he had plans to change it from a lot with a single home.
10. It is unclear where water for Fire Suppression from these units will come from as Aquarion does not currently have the water capacity to supply hydrants as we were informed with our last 40B, Red Robin. Colonial Water Company, precursor to Aquarion, required very specific conditions (letter signed 11/2/2020) for them to provide water. As Red Robin is not yet occupied, its actual effect on Aquarion cannot yet be determined and this new development just raises the risks given the unknown. Due to the increasing use of Aquarion water, and the many recent water delivery and quality issues faced by Aquarions users, we feel it is necessary to have current and anticipated withdrawal rates and DEP recommendations studied.
11. The plans (C-101) indicate that a small dumpster pad will be located on the locked side of the emergency access road with Dover emergency personnel having access. As this is not a viable place for dumpsters, it appears that the ultimate dumpster placement will be within the driveway/parking area further limiting parking spots and traffic flow.
12. Had the two 40B developments taken place at the same time the parking for both projects could have been combined for the future use. The final red Robin permit has a unit count of 34, with 75 bedrooms and 62 parking spaces. This leaves .54 parking spaces per unit and 1.2 parking spaces per bedroom. The Town of Dover bylaws require 2 parking spaces per bedroom. The new Tisdale Avenue proposal is for 66 spots for 42 units (1.5 spots/unit) and 80 bedrooms (1.2 per bedroom). In a development miles from public transportation this project will make it difficult for 1-car family tenants to access necessities and jobs. Once again, given that Red Robin is not yet occupied, we have no

experience on whether the ratios will be sufficient. There is no parking available on Tisdale Drive.

13. To summarize, by using a 1-year separation between developments, the developers have not allowed Dover to address both developments as a whole, even though they are on contiguous lots. Had a 76-unit development been originally proposed, issues around traffic design, parking and service access, emergency services, open space availability, septic (the need for a water treatment plant vs. septic), safety considerations at the RT 109 school bus stop, and how to mitigate the impact on the quiet cul-de-sac 40B community of County Court could have been considered and resulted in a plan that better addresses these issues for all residents.

Considering these concerns, we request that you address these issues comprehensively in Dover's response to MassHousing.

Attached to this memo is a photo of what the residents of the County Court 40B development would see across Tisdale Drive.

Sincerely,
Jasmin Farinacci
Town Planner



10/10/2023. The upper photo was taken from across the road from 85 Tisdale with the County Court townhouses behind the photographer. The bottom photo removes the trees and adds the current Red Robin complex which is very similar in design to the Tisdale proposal.

Exhibit C



BOARD OF APPEALS
DOVER, MASSACHUSETTS 02030

TOWN OF DOVER
RECEIVED

2022 MAR 10 A 9:36

TOWN CLERK

TOWN OF DOVER
ZONING BOARD OF APPEALS
Decision No. 2020-04 – Comprehensive Permit
61-63 County Street, Dover, MA

Applicant: Red Robin Pastures, LLC

Application For: Comprehensive permit under G.L. Chapter 40B, Sections 20-23 for the construction of 34 rental apartments in one building at 61-63 County Street, Dover.

Dates of Hearing: February 24, March 25, April 26, June 14, August 16, September 30, October 18, November 1, November 15, November 30, and December 13, 2021, and January 18 and February 1, 2022. The Zoning Board of Appeals deliberated on February 1 and March 1, 2022.

Applicant Team: **Developer:** Red Robin Pastures, LLC; Paul McGovern, Principal
40B & Development Consultant: Geoffrey Engler, SEB, LLC
Architecture: Signature Designs Architecture Inc. by Henry Bobek, AIA
Civil Engineering: Ronald Tiberi, P.E.
Landscape Design: Green Bean Designs by Lar Greene
Traffic/Safety: Vanasse & Associates, Inc. by Jeffrey Dirk, P.E., PTOE

Board of Appeals: R. Alan Fryer, Chair
Members Erika Alders and LaVerne Lovell
Associate Members Michael Donovan and Hamilton Hackney
Voting: Fryer, Alders, and Lovell

Decision: To **GRANT** by a vote of 3 in favor and 0 opposed the comprehensive permit based on the findings and waivers and subject to the conditions stated below.

FINDINGS AND DECISION

1. On May 12, 2020, Red Robin Pastures, LLC (the “Applicant” and defined to include Red Robin Pastures, LLC, its heirs, successors, and assigns) submitted a Project Eligibility Application to MassHousing (the “Subsidizing Agency”) in order to develop 39 rental units at 61-63 County Street, Dover, MA (the “Site”), including a mix of one-, two-, and three-bedroom units in a three-and-a-half story building with a basement (the “Project”). The May 12 application called for 10 of the 39 rental units to be affordable to households earning 80% of the Area Median Income (“AMI”), adjusted for household size, as determined by the Subsidizing Agency.

2. The Site consists of the parcels identified as Map 25, Lots 10 and 11 and a portion of the parcel identified as Map 25, Lot 9B on the Dover Assessor’s Map, as shown on the Existing Conditions Plan Sheet (original issue date of December 18, 2020) Revision No. 4 dated December 2, 2021. It is located in the R-1 zoning district under the Dover Zoning Bylaw. Initially, the Site consisted only of the parcels identified as Map 25, Lots 10 and 11. By letter dated September 15, 2021, the Applicant informed the Board that it had purchased additional contiguous property, increasing the size of the Site from 2 acres to 2.52 acres. That additional property has been identified by the Applicant as being part of the parcel identified as Map 25, Lot 9B.

3. On July 20, 2020, the Dover Board of Selectmen, on behalf of and incorporating comments from Town Staff, submitted a letter to MassHousing raising concerns about the Application. The letter raised concerns related to its proximity to sensitive wetlands, the sufficiency of the existing water supply, fire and other emergency access, the height and scale of the proposed structure relative to nearby properties, and traffic concerns, among other issues.

4. On September 22, 2020, MassHousing issued a Project Eligibility Letter for the Project. The letter directs the Applicant to respond to the concerns raised in the municipal comment letter.

5. In a letter dated November 2, 2020, the president of the Colonial Water Company (“Colonial”) stated that it would provide water service to the Project subject to the following conditions:

- Colonial water could not be used for fire suppression; rather, an “independent” suppression system would be necessary;
- Colonial would monitor adherence to 65 gallons per capita water use;
- All units would be separately metered in a central mechanical room;
- No exterior irrigation would be permitted;
- Colonial would advise further on the necessity of an internal pumping system to service upper floors; and
- A water main extension could be required.

6. On December 23, 2020, the Applicant submitted a Comprehensive Permit Application (hereinafter referred to as the “Application”) to the Town of Dover Zoning Board of Appeals (the “Board”). The Application included preliminary architectural and civil/site plans for the Project, as well as a civil engineering and storm water management report, preliminary landscaping plan, and traffic impact analysis report from the Applicant’s consultants. The Application also included a preliminary list of waivers the Applicant requested from Dover’s Zoning and General Bylaws.

7. With written consent from the Applicant to extend the deadline to commence the hearing beyond the 30 days required by statute, the Board opened a duly noticed public hearing on the Application on February 24, 2021, and continued the hearing several times.

8. On February 1, 2022, the Board voted unanimously to close the public hearing as of February 4, 2022, in order to permit the Applicant to submit a revised landscaping plan.

9. The Applicant is qualified to submit the Application pursuant to 760 CMR 56.04 in that it has received a Project Eligibility Letter from MassHousing that contains the required findings, including that (a) it is or will become a “limited dividend corporation” under G.L. c. 40B, § 21 and 760 CMR 56.02; (b) it has a funding commitment from the Subsidizing Agency (MassHousing); and (c) it has “control of the site” under G.L. c. 40B, § 21 and 760 CMR § 56.02 by virtue of a quitclaim deed dated November 6, 2019, signed by the prior owners, and recorded as Document No. 1827910 at Page 124 of Book 1551 of the Middlesex County Registry District of the Land Court.

10. At the time of the Application, the Town of Dover had not met any of the statutory minima under G.L. c. 40B, § 20 or regulatory safe harbors under 760 CMR 56.00.

11. Under G.L. c. 40, § 53G, the Board retained the following consultants to conduct peer reviews of the Application at the Applicant’s expense:

- **Civil, Storm Water, and Traffic Engineering:** Tetra Tech, Inc. by Sean Reardon, P.E.;
- **Architecture:** Davis Square Architects, Inc. by Cliff Boehmer, AIA.

12. The Board also accepted the assistance of Judi Barrett of Barrett Planning Group LLC as a consultant at the expense of the MassHousing Partnership.

13. The Board held duly noticed public hearing sessions on February 24, 2021; March 25, 2021; April 26, 2021; June 14, 2021; August 16, 2021; September 30, 2021; October 18, 2021; November 1, 2021; November 15, 2021; November 30, 2021; December 13, 2021; and January 18 and February 1, 2022. The Board conducted a noticed site visit on March 11, 2021. The Board deliberated on February 1 and March 1, 2022, and voted unanimously on March 1, 2022 to issue this Decision granting the permit. Associate member Mike Donovan would have voted to deny the permit.

14. The documents submitted to the Board regarding the Project are listed in **Exhibit A** and constitute the Record for this decision.

15. The Board heard public comment at several of those hearing sessions and accepted public comment by mail, email, and hand-delivery during the hearing.

16. On April 24, 2021, Davis Square Architects, Inc. (hereinafter referred to as “Davis Square”) submitted a preliminary peer review report regarding design and architectural issues. Davis Square submitted further written comments on September 30, 2021. On April 25, 2021, Tetra Tech submitted a preliminary peer review report regarding civil and environmental engineering issues and traffic issues. Tetra Tech submitted further written comments on September 29 and November 30, 2021. Tetra Tech submitted a final peer report on February 2, 2022.

17. A working group focused on civil/environmental engineering and architectural issues was convened on May 20, 2021.

18. The final recommended conditions of each of these peer reviewers are included in the Conditions below. The Board finds that those conditions, and all other conditions in this Decision, address substantial Local Concerns that outweigh the regional need for affordable housing and are necessary for the preservation of public health, safety, and the environment.

19. On September 15, 2021, the Applicant submitted a letter to the Board noting certain changes in the plans, made largely in response to comments from Board members, the Board’s peer reviewers, and abutters. The changes included the aforementioned increase in the size of the lot, a change in the configuration of the building from a “U” shape to an “L/V” shape, a revised entrance drive, an increase in the front setback from County Street, the relocation of the primary site driveway from the left (west) side of the building to the right (east) side, among other changes. The unit count was reduced from 39 to 34 units, but the bedroom count remained unchanged at 75 bedrooms.

20. The Applicant submitted final versions of the site layout (Sheet C3), the retaining wall sections and elevations plan (Sheet C13), and the lighting plan (Sheet L2) on January 28, 2022, a final version of the landscaping plan (Sheet L1) on February 4, 2022, and final versions of all other architectural and civil/storm water plans on January 10, 2022 (collectively, the “Final Plans”).

21. According to the Final Plans, the Project will include one “L/V”-shaped apartment building of 3 stories and 44 feet in height. The apartment building will contain 34 dwelling units, of which 12 units will contain 3 bedrooms, 17 units will contain 2 bedrooms, and 5 units will contain 1 bedroom, for a total of 75 bedrooms.

22. According to the Final Plans, the Project will provide 62 surface-level parking spaces on the Site to the north/rear of the apartment building. The Final Plans show 3 dedicated handicapped parking spaces, 2 electric vehicle charging spaces, and 5 guest parking spaces. The

Final Plans show a looped entry/exit drive on the south/front of the Site, between the apartment building and County Street.

23. The Applicant submitted an initial list of requested waivers with its Application. On January 10, 2022, the Applicant submitted a revised waiver list adding a request for a waiver of Demolition Review under Chapter 96 of the Dover General Bylaws. On January 11, 2022, the Applicant withdrew the request for a waiver of Chapter 96. On January 24, 2022, the Applicant requested an additional waiver of Section 263-5-K of the Rules and Regulations for the Dover Wetlands Protection Bylaw (this Request, together with the original requested waivers, the “Final Waiver List”). The Board’s findings on the requested waivers follow below.

24. On December 10, 2021, MassHousing issued two letters to Geoffrey Engler sanctioning him for his misrepresentations to MassHousing concerning a 40B project in Wellesley. MassHousing suspended Mr. Engler from participating in future MassHousing 40B projects. MassHousing allowed Mr. Engler to continue working on pending 40B projects that he was involved in, including this Project. MassHousing required Mr. Engler to submit a written certification to MassHousing that he has not made any “false or misleading statements in applications and/or other submissions to MassHousing, and know[s] of no undisclosed facts, agreements or changes of circumstances that would cause statements made to MassHousing to be false, misleading, or inaccurate.”

25. At the Board’s request, Mr. Engler then submitted to the Board a certification by him dated January 18, 2022 that, in connection with this project, he has not made any “false or misleading statements in applications and/or other submissions to the Dover Zoning Board of Appeals, and know[s] of no undisclosed facts, agreements or changes of circumstances that would cause statements made to the Zoning Board of Appeals to be false, misleading, or inaccurate.”

26. On January 18, 2022, Mr. McGovern represented to the Board that no person or entity other than Red Robin Pastures, LLC has any present or contingent financial or other interest in the proposed project and that MassHousing has not raised any issues as to any other parties involved in the project or any other project of the Applicant or its agents that is subject to review by MassHousing.

27. Based on all the evidence, the Board unanimously finds that, provided that the Project complies with the conditions below, the need for the affordable housing provided by the Project outweighs the Local Concerns identified during the public hearing.

28. Pursuant to G.L. c. 40B, the Board unanimously GRANTS a Comprehensive Permit to the Applicant for the Project based on the Waivers listed below and contingent on compliance with all of the conditions stated below.

29. Unless otherwise stated, the Board may designate an agent or agents to take any actions or make any decisions described below.

WAIVERS

30. The Board's findings and actions on the waivers in the Final Waiver List follow below. The Board makes no findings regarding and does not grant any waivers not requested in the Final Waiver List. The Board grants only those waivers described below in this section of the Decision.

31. **Waiver from Dover Zoning Bylaw §§ 185-9, 10: Basic Requirements and Schedule of Use Regulations:** Section 185-9 prohibits uses not specifically allowed in the respective zoning districts. Section 185-10.29 provides that multifamily residences are prohibited in R-1 zoning districts. To the extent provided by this Decision and allowed by the other waivers and conditions in this Decision, the Board finds that this waiver is Consistent with Local Needs and is required to permit the construction and operation of the Project. Accordingly, the Board hereby **GRANTS** this waiver.

32. **Waiver from Dover Zoning Bylaw § 185-16: Conformity:** This section of the Zoning Bylaw requires lots, buildings, and structures to conform to the dimensional parameters set forth in § 185, Attachment 1, "Schedule of Dimensional Requirements." To the extent provided by this Decision and allowed by the other waivers and conditions in this Decision, the Board finds that this waiver is Consistent with Local Needs and is required to permit the construction and operation of the Project. Accordingly, the Board hereby **GRANTS** this waiver.

33. **Waiver from Dover Zoning Bylaw § 185-17: Schedule of Dimensional Requirements:** This section of the Zoning Bylaw, including Attachment 1 thereto, the Schedule of Dimensional Requirements incorporated therein, sets forth dimensional parameters in each zoning district. The Board's findings and decisions about particular dimensional parameters follow below:

Front Setback: Required – 40 feet; Requested – 38 feet.

The minimum front setback required in the R-1 District is 40 feet. The Applicant's initial proposal called for a front setback of 18 feet. In response to comments from the Board and its architectural peer reviewer, the Applicant revised the shape and orientation of the building, increasing the front setback by 20 feet to the final proposed setback of 38 feet. This change confers several benefits, such as reducing future residents' exposure to noise from fast-moving traffic on County Street and accommodating an entry/exit driveway to facilitate passenger pick-up/drop-offs, package deliveries, and the like. Further, increasing the front setback reduces the apparent massing of the building from County Street. Meanwhile, the building will continue to screen the Project's parking area from vehicles passing by on County Street. For these reasons, the Board finds that the increased front setback in the Final Plans is an improvement on the setback in the Applicant's original proposal. The Board further finds that the current waiver request is relatively small (5% of the required setback) and moreover that it is Consistent with Local Needs and is required to permit the construction and operation of the Project. Accordingly, the Board hereby **GRANTS** this waiver.

Maximum Building Height: Required – 35 feet; Requested – 44 feet.

The maximum height allowed in the R-1 District is 35 feet. The Applicant's initial proposal called for a maximum building height of 50 feet. In response to comments from the Board and its architectural peer reviewer, the Applicant reduced the maximum height of the building to 44 feet. This change confers several design benefits, such as reducing the apparent massing of the building from neighboring properties and County Street and facilitating fire protection. Despite the height reduction, the revised design accommodates the same number of bedrooms as the original design included in the Application. The Board finds, however, that requiring a further reduction in the height of the Project or denying this waiver request altogether would necessitate unit and/or bedroom count reductions. The Board further finds that this waiver is Consistent with Local Needs and is required to permit the construction and operation of the Project. Accordingly, the Board hereby **GRANTS** this waiver.

Maximum Building Stories: Required – 2.5 stories; Requested – 3.5 stories.

The maximum number of stories allowed in the R-1 District is 2.5. The Applicant's initial proposal called for a maximum number of 3.5 stories to accommodate lofted living space in some of the residential units. In response to comments from the Board and its architectural peer reviewer, the Applicant eliminated the lofted spaces and reduced the maximum number of stories of portions of the building to 3, with some other portions of the building reduced further to 2.5 stories. This change confers several benefits, such as reducing the apparent massing of the building from neighboring properties and County Street and facilitating fire protection. Despite the height reduction, the revised design accommodates the same number of bedrooms as the original design included in the Application. The Board finds, however, that requiring a further reduction in the number of stories of the Project or denying this waiver request altogether would necessitate unit or bedroom count reductions. The Board further finds that this waiver is Consistent with Local Needs and is required to permit the construction and operation of the Project. Accordingly, the Board hereby **GRANTS** this waiver to allow 3 or 3.5 stories only for those portions of the building so drawn on the Final Plans.

34. Waiver from General Bylaw Chapter 217, Sanitary Bylaws:

In its initial Application, the Applicant requested waivers from two provisions of the Dover Board of Health's Sewage Disposal System regulations (codified at Dover General Bylaws, Chapter 217). Sitting as the local permitting authority for these local regulations under M.G.L. c. 40B, the Board finds as follows:

Section 217-3.C(6)(a) & (b): 100' setback requirement from designated wetland areas.

The Applicant has revised its plans since its initial Application so that there is now more than 100 feet between the proposed subsurface disposal system (a Presby system that has received general use approval from the Massachusetts Department of Environmental Protection for innovative/alternative wastewater disposal systems) and proximate waterways, such as the vernal pool to the northeast of the Site. So long as this distance greater than 100 feet is maintained, no waiver of this provision is required.

Section 217-3.C(10)(c): Prohibition on locating a soil-absorption system below a parking lot or other impervious area.

The Applicant's list of requested waivers erroneously requested a waiver under section number 217-3(7) but correctly stated the request for a waiver of the "prohibition of soil absorption system under parking area." The Board is treating the request as a request for a waiver of this Section 217-3.C(10)(c). The Final Plans propose to locate the wastewater disposal system below the parking lot to the rear of the building. The Sanitary Bylaw permits the Board of Health or its agent to waive this prohibition on a case-by-case basis. Relying on the reports from its peer reviewer, the Board finds that a waiver of this provision will not unreasonably interfere with access to the proposed wastewater disposal system for maintenance or testing purposes. Further, the Board finds that locating the wastewater disposal system on unpaved portions of the Site (*i.e.*, to the north) would detrimentally require the system to be located closer to the offsite wetlands and vernal pool to the north of the Site. The Board further finds that this waiver is Consistent with Local Needs and is required to permit the construction and operation of the Project. Accordingly, the Board hereby **GRANTS** this waiver.

The Board's grant of waivers from these provisions of Chapter 217 does not relieve the Applicant of its duty to obtain a permit from the Board of Health under state law, namely 310 CMR § 15.000, Title 5 of the State Environmental Code. Nor do these waivers relieve the Applicant of its duty to comply with other, unwaived provisions of Chapter 217. Pursuant to G.L. c. 40B and 760 CMR § 56.05(11), the Board will review any changes to this Comprehensive Permit that may be necessitated by the Board of Health's action.

35. Waiver from General Bylaw Chapter 263, Dover Wetlands Protection Bylaw and Regulations:

In its initial Application, the Applicant requested waivers from portions of the Town of Dover Conservation Commission's Rules and Regulations (codified at Dover General Bylaws, Chapter 263) implementing the Dover Wetlands Protection Bylaw (Dover General Bylaws, Chapter 181). Specifically, the Applicant requested a waiver of "Section 263-5-I – Vernal Pools. Any work within 100 feet of a Vernal Pool must not impair its capacity to function as a Vernal Pool" and "Section 263-5-J-2 Setbacks – No disturbance & No structure." The Board has treated these requests as requests for waivers from provisions of Section 263-5-J – Vernal Pools and Section 263-5-K(2) – Setbacks, and on January 24, 2022, the Applicant confirmed the Board's interpretation. Further, on January 24, 2022, the Applicant also added a request for a waiver of Section 263-5-K(1) – Tree Filter Zone. Sitting as the local permitting authority for these local regulations under M.G.L. c. 40B, the Board finds as follows:

Section 263-5-J and Section 263-5-K(2): Vernal Pools -- Setback requirements for work, disturbance, and other activity within 100 feet of a vernal pool: The Dover Conservation Commission's Regulations afford more protection to wetlands than the State Wetlands Protection Act. In particular, the Regulations state that "work within 100 feet of a Vernal Pool must not impair its capacity to function as a Vernal Pool" and that "[n]o activity shall be permitted within 100 feet of the delineated edge of a Vernal Pool." The Applicant has inspected the wetlands to the northeast of the Site and delineated a vernal pool. The Board's

peer reviewer has reviewed and concurred with the delineation. The Applicant has not yet sought a legally binding delineation of the wetlands or the vernal pool from the Conservation Commission. The Final Plans show that a small portion of the parking lot will be constructed within the 100-foot “do not impair” and “do not disturb” zone of the vernal pool. A retaining wall will encroach within the 100-foot zone to a greater degree. The Board finds that, conditional on the Applicant’s compliance with an Order of Conditions under the Wetlands Protection Act, the infringement on the no-disturb zone and any impairment to the vernal pool that may result is outweighed by the regional need for affordable housing. The Board further finds that this waiver is Consistent with Local Needs and is required to permit the construction and operation of the Project. Accordingly, the Board hereby **GRANTS** this waiver.

Section 263-5-K(1): Tree Filter Zone – Prohibition on the removal of more than 50% of trees in any 100-foot section of Buffer Zone: The Dover Conservation Commission’s Rules and Regulations afford protection to vegetation in the buffer zone to promote soil stabilization, wildlife habitat, shading, and other benefits. Specifically, Section 263-5-K(1) states that “no more than 50% of the tree cover [can] be removed for any 100-foot section of Buffer Zone, except in cases of hardship where the applicant can demonstrate that no reasonable alternative exists,” and the Regulation further defines covered trees as those four-inches or greater in diameter four feet off the ground. At the hearing on February 1, 2022, the Applicant stated that approximately 24,500 square feet of the Site is within the buffer zone and estimated that it intends to remove approximately 80% of the vegetation and trees in the buffer zone. The Applicant had not previously submitted a plan to the Board showing the vegetation and trees to be removed. Accordingly, the Board conditions this waiver on the Applicant’s submission to the Conservation Commission of a tree- and vegetation-removal plan (a “Removal Plan”) as part of the Notice of Intent. The Removal Plan shall identify existing trees and trees to be removed and shall show reasonable efforts to preserve trees and vegetation within the buffer zone. The Board further finds that, conditional on the Applicant’s compliance with an Order of Conditions under the Wetlands Protection Act and unwaived provisions of Chapter 263 and on the Applicant’s restoration of trees and vegetation consistent with the landscaping plan, the loss of trees and vegetation in the buffer zone is outweighed by the regional need for affordable housing. The Board further finds that this waiver is Consistent with Local Needs and is required to permit the construction and operation of the Project. Accordingly, the Board hereby **GRANTS** this waiver.

The Board’s grant of waivers from these provisions of Chapter 263 does not relieve the Applicant of its duty to obtain a permit from the Conservation Commission under state law, namely G.L. c. 131 § 40 and 310 CMR § 10.00. Nor do these waivers relieve the Applicant of its duty to comply with other, unwaived provisions of Chapter 263. Pursuant to G.L. c. 40B and 760 CMR § 56.05(11), the Board will review any changes to this Comprehensive Permit that may be necessitated by the Conservation Commission’s action.

CONDITIONS

A. Regulatory Conditions

36. All of the units shall be rental units unless a change to the tenure of the proposed units is approved in accordance with 760 CMR § 56.07(4)(a). There shall be no more than 34 dwelling units.

37. At least 25 percent of the units (i.e., at least 9 units) shall be and remain affordable and shall be marketed to eligible households whose annual income does not exceed 80 percent of AMI, adjusted for household size as determined by the Subsidizing Agency (the "Affordable Units"). Subject to approval by MassHousing as the Project Administrator, the Affordable Units and all the other units shall be eligible to be included in the Town's Subsidized Housing Inventory (SHI) maintained by DHCD.

38. The Applicant shall notify the Town Administrator, Land Use Director, and Town Counsel when building permits are issued so that the Town may prepare the request forms to add the units to the SHI. The Applicant shall cooperate with the Town as needed to add the units to the SHI.

39. The Affordable Units shall remain affordable permanently, and the Project shall remain a rental project (unless a change in tenure is approved in accordance with 760 CMR § 56.07(4)(a)) so long as the Project does not comply with the Zoning Bylaw. This condition ensures that the units shall continue to serve the public purpose for which this Comprehensive Permit is granted.

40. The Affordable Units shall be dispersed throughout the Project as designated by the Applicant by agreement with the Subsidizing Agency, and they shall not be segregated from the market-rate units. To the extent feasible and subject to the approval of the Subsidizing Agency, Affordable Units and market-rate units shall be constructed proportionately with respect to the number of bedrooms, approximate unit size, and floor location. The Affordable Units shall include similar or equivalent features and finishes as the market-rate units. If the Applicant obtains occupancy permits for the units in phases, each phase shall include a proportionate number of affordable units.

41. The Applicant shall execute a Regulatory Agreement, countersigned by the Subsidizing Agency as required under G.L. c. 40B, and submit annual reports to the Subsidizing Agency in accordance with the Regulatory Agreement.

42. The Applicant shall recertify to the Subsidizing Agency annually, or less frequently as may be required by the Subsidizing Agency, the continuing eligibility of any tenant in an affordable unit. If a previously eligible tenant becomes ineligible to occupy an affordable unit, the Applicant may charge the tenant market rate rent; however, the Applicant shall comply with the Subsidizing Agency's requirements for converting another unit to an Affordable Unit. Upon request by the Town, the Applicant shall provide the Town with all necessary information to determine whether the required affordability levels are in place. The terms of the Regulatory

Agreement executed by the Applicant and the Subsidizing Agency shall govern the terms of tenant eligibility and recertifications.

43. The Applicant shall enter into a Local Regulatory Agreement with the Town, in a form and substance reasonably acceptable to the Subsidizing Agency, the Town, and Town Counsel (the “Local Regulatory Agreement”), which shall be recorded with the Norfolk County Registry of Deeds against the Property before issuance of any building permit for the Project. The Local Regulatory Agreement shall secure the affordability of the units and their monitoring after the expiration of the Regulatory Agreement for as long as the Project is not in compliance with the Zoning Bylaw. The Town shall send a draft of the Local Regulatory Agreement to the Applicant within 60 days after the Dover Town Clerk issues a Certificate of No Appeal on the Comprehensive Permit Decision.

44. The Local Regulatory Agreement shall (a) become effective only if and when the Regulatory Agreement with the Subsidizing Agency is terminated, expires, or is otherwise no longer in effect and is not replaced with another regulatory agreement with another Subsidizing Agency; (b) require that the Project shall remain a rental project so long as it does not comply with the Zoning Bylaw; (c) require that at least 25% of the apartments shall be rented in perpetuity to low- and moderate-income households as those terms are defined in G.L. c. 40B, §§ 20-23; (d) restrict or limit the dividend or profit of the Applicant if and as required under G.L. c. 40B and 760 CMR 56.00, et seq.; and (e) restrict the number of allowed units as set forth in this Comprehensive Permit. If this Comprehensive Permit is modified, the Applicant and the Town shall modify the Local Regulatory Agreement as necessary to conform it to the modified Comprehensive Permit.

45. The Local Regulatory Agreement shall constitute a restrictive covenant, be recorded, be enforceable by the Town, and require that the Affordable Units remain affordable rental units in perpetuity as long as the Project is not in compliance with the Zoning Bylaw.

46. Each condition in this Decision shall run with the land and shall, in accordance with its terms, be applicable to and binding on the Applicant.

47. While the Regulatory Agreement with the Subsidizing Agency (or one with another Subsidizing Agency) is in effect, the Subsidizing Agency shall be responsible to monitor compliance with affordability requirements pursuant thereto. However, the Town may request, and the Applicant shall provide, all information that was provided to the Subsidizing Agency, and the Town may take any enforcement steps allowed under G.L. c. 40B and 760 CMR 56.00 regarding excess profits and affordability.

48. If and when the Local Regulatory Agreement takes effect, the affordability requirements shall be enforceable by the Town.

49. Nothing in this Decision shall be deemed to limit the Town's authority to enforce this Comprehensive Permit in the legal exercise of its zoning enforcement powers. If and when the Town becomes responsible for monitoring the affordability requirements for the Project, the

Applicant shall pay the Town a monitoring fee that is consistent with the monitoring fees required by the Subsidizing Agency.

50. To the extent allowed by the Subsidizing Agency, the Applicant shall provide local preference categories for the maximum allowable percentage of Affordable Units as determined by MassHousing, as requested by the Town during the initial lease-up of the Project. The Town shall be responsible for demonstrating the need for local preference to MassHousing, in order for MassHousing to approve a local preference category. The Applicant's selected affordable housing administrator shall provide examples to the Town regarding what MassHousing has commonly accepted from other municipalities to demonstrate the need for a local preference. The Town shall retain responsibility for preparing the demonstration of local need, and the affordable housing administrator shall submit such demonstration to MassHousing.

51. The Applicant shall implement this local preference pursuant to procedures approved by the Subsidizing Agency and that comply with all applicable law. The costs associated with the marketing of units in the Project, including the advertising and processing for the Affordable Units, shall be borne by the Applicant.

52. The Applicant shall develop a marketing plan for the Affordable Units for review and approval by the Subsidizing Agency, said plan to comply with the local preference. The Applicant shall maintain records of its marketing efforts, which the Town may review for compliance with the preference upon request. It shall submit to the Town a report on marketing activity at the Project during the initial lease-up period, demonstrating compliance with the local preference requirement.

53. The Applicant shall cooperate with the Town's preparation of any documentation required for approval of the local preference categories by the Subsidizing Agency.

54. The Applicant shall annually submit to the Town copies of all documents and information regarding its costs and revenues from the Project that it has provided to the Subsidizing Agency.

55. The Town, by and through the Board and the Building Department, shall have continuing jurisdiction over the Project to ensure compliance with the terms and conditions of this Decision.

56. Before the issuance of a building permit, the Applicant shall obtain Final Approval from the Subsidizing Agency pursuant to 760 CMR 56.04(7) and shall provide evidence of such Final Approval to the Building Department and the Town. At the discretion of Town departments and officials with jurisdiction, permits for demolition, excavation, foundations, site infrastructure/utilities, and other site preparation work may be approved prior to Final Approval.

B. General Conditions

57. The Applicant shall apply to modify this permit pursuant to 760 CMR 56.05(11) as necessary following review of the Project by the Board of Health and the Conservation Commission.

58. If no modifications are necessary following review and approval of the project by the Board of Health and the Conservation Commission, the Applicant shall submit to the Board and the Building Department fully coordinated architectural, civil engineering/storm water, structural, and landscaping plans prior to the issuance of a building permit.

59. The Project shall be constructed in accordance with the Final Plans and the Conditions in this Decision. The Applicant shall comply with all local by-laws, rules, and regulations of the Town of Dover and its boards, officers, and commissions unless expressly waived in this Decision.

60. The Project shall comply with all applicable state and federal laws, codes, standards, and regulations including, but not limited to, the following:

- a. Massachusetts State Building, Plumbing, and Electrical Codes; the Massachusetts Mechanical Code; and the Massachusetts Stretch Energy Code;
- b. EPA and DEP storm water management standards and industry best management practices (except where stricter standards are imposed in this Decision, including through the Local Storm Water Bylaw) for construction of the drainage infrastructure;
- c. Massachusetts Architectural Access Board regulations;
- d. The Massachusetts State Fire Code;
- e. The Massachusetts Wetlands Protection Act (M.G.L. c. 131 § 40) and the associated regulations (310 CMR 10.00 *et seq.*);
- f. The Massachusetts Endangered Species Program;
- g. The Massachusetts Environmental Policy Act; and
- h. Section 404 of the Clean Water Act.

61. All utilities on the Site shall be installed underground.

62. The Applicant shall, at its own expense, retain a Registered Professional Engineer and Land Surveyor to set elevations for all appropriate work, conduct field inspections during construction, and prepare as-built plans. Site inspections by the Town or its departments or consultants shall not constitute acceptance of utilities by the Town or replace as-built approval or certification by the Applicant's engineer.

63. The Final Plans shall be reviewed by the Building Department for compliance with the State Building Code and this Decision.

64. All water, sewer, and drainage infrastructure facilities for the Project shall be constructed and fully operational before the issuance of the first occupancy permit.

65. All utility work and any other roadwork in any public right of way shall be performed in compliance with the applicable regulations of the Town, including requirements for street opening permits and trench permits.

66. The General Contractor shall be duly licensed in Massachusetts and insured. All construction shall be performed in accordance with accepted engineering and construction standards.

67. All landscaping that is to be installed between the access drive on the west side of the Building and the westerly side lot line of the Site, including the fencing, shall be installed in accordance with the landscaping plan, as shown on the Landscape Plan Sheet L1 (original issue date of December 18, 2020) Revision No. 8 dated February 2, 2022 (the "Final Landscape Plan"), before the issuance of a certificate of occupancy. No certificate of occupancy shall issue until the Building Department has certified in writing that all such landscaping has been installed. The Applicant shall consult with the abutter at 65 County Street prior to seeking approval for any modifications or changes to the landscaping plan for the landscaping on the westerly side lot line.

68. All structures and site improvements within the Property shall remain private in perpetuity, including any and all ways, parking areas, street lighting, drainage, buildings, and sewer and water infrastructure. Notwithstanding the foregoing, this provision shall not be interpreted to limit the ability of the Applicant to convert the Project to some other form of ownership, subject to the project eligibility requirements of 760 CMR § 56.04(1). The Applicant shall bear the cost of all maintenance, repairs, replacement, snow plowing, and trash removal on the Property in perpetuity.

69. The Applicant shall provide management of the Project twenty-four hours a day, seven days a week, during and after construction, either by on-site management or an off-site property management entity that is available by phone. If the Applicant engages a property management company, the Applicant shall post the company's name and telephone number prominently on or adjacent to the front door of the building and shall give the Building Department a current copy of the property management contract. The Applicant shall give the construction supervisor's telephone number to the Building Department and the Police Department.

70. Fire hydrants, fire department connections, the fire suppression water tank, and related signage shall be located consistent with the Final Plans and shall be approved by the Fire Department prior to the issuance of a building permit, such approval not to be unreasonably withheld.

71. The Project shall have a designed, approved, and installed fire suppression sprinkler system, including attics and storage spaces, as required by the International Building Code and Massachusetts Fire Protection Codes. The Applicant shall submit, in its building permit application, final fire alarm/sprinkler plans to the Fire Chief for review and approval, such approval not to be unreasonably withheld. It shall install the sprinklers in compliance with G.L. c. 148, § 261 and the State Building Code.

72. Before the commencement of construction, the Applicant shall obtain a National Pollutant Discharge Elimination System (NPDES) General Permit from Environmental Protection Agency, if necessary for construction of the Project. For the purposes of this Comprehensive Permit, “commencement of construction” shall include grubbing and clearing.

73. Before the issuance of any building permit, the Applicant shall:

- a. Submit to the Building Department a final Storm Water Pollution and Prevention Plan (SWPPP) detailing specific sedimentation, erosion, and dust control measures;
- b. Submit to the Building Department a description of the specific operation and maintenance (“O&M”) measures for all storm water/drainage facilities, including any temporary facilities required to minimize the threat of transmission of mosquito-borne diseases to the residents in and near the Project;
- c. Any violations of the erosion, sedimentation, dust control, and storm water provisions of these provisions shall be subject to enforcement pursuant to Chapter 159 of the Dover General Bylaws.

74. Fertilizer, pesticide, and herbicide use shall be minimized to the extent practicable. Fertilizer shall be phosphorus-free. The use of fertilizers, pesticides, and herbicides within 100 feet of the bordering vegetated wetlands and the vernal pool is prohibited.

75. All grading shall be consistent with the Final Plans.

76. The Applicant shall not enter onto private property without obtaining the necessary permission or legal right to do so, in advance.

C. Construction and Bonding Conditions

77. Pursuant to G.L. c. 44 § 53G, the Applicant shall fund a special account to assist the Building Department's inspections of the Project. Multifamily residential developments comparable to the Project are rare in Dover, and none are currently under construction. The Building Department accordingly focuses its inspection activities on smaller residences and intends to engage a contractor experienced with multifamily inspections for the Project. To mitigate this expense, the Applicant shall deposit \$5,000 in said 53G account prior to issuance of a building permit and shall replenish said account as needed to continue to engage the contractor, with a maximum limit of \$15,000. The Town shall refund to the Applicant any remaining balance in the account upon the issuance of an occupancy permit. The Applicant will have the opportunity to review the proposal and scope-of-work of the Town contractor prior to engagement. The Town and the Applicant shall cooperate regarding the retention of the contractor and the funding of the 53G account so as not to delay the issuance of the building permit.

78. The Applicant shall authorize the Building Department, the Board, and their agents to enter the Site during construction of the Project to determine compliance with the provisions of this Decision. The Town's agents shall provide at least 24 hours' notice prior to entry, except in the case of exigent circumstances or emergency. The Town's agents shall comply with applicable health and safety requirements such as hardhat, safety glasses, and work boot requirements.

79. The Applicant shall comply with any duly issued enforcement orders by the Building Department regarding construction of the Project.

80. Before the issuance of a building permit, the Applicant shall include in its Final Plans a test pit summary plan, including test pit logs showing the performance date and the qualifications of the person performing the tests. All elevations on the test pit summary plan should refer to the same vertical datum.

81. Erosion controls shall be continuously maintained throughout the construction. Disturbed areas shall be brought to final finished grade and stabilized permanently against erosion as soon as practicable. Bare ground that cannot be permanently stabilized within 60 days shall be stabilized using annual rye grass following U.S. Natural Resource Conservation Service (NRCS) procedures.

82. No certificate of occupancy for any unit shall be issued until all site drainage and utility work serving the Project is completed and operational and a binder course of pavement for all driveways and parking areas serving the Project has been installed.

83. Prior to the beginning of site preparation activities, the Applicant shall provide to the Town a satisfactory performance bond or comparable surety instrument, which shall not expire unless and until it is satisfactorily replaced by the Applicant or released by the Building

Department. The amount of such surety shall be determined by the Building Department, and such surety shall be released after all site drainage and utility work serving the Project is completed and operational and after a binder course of pavement for all driveways and parking areas serving the Project has been installed.

84. Before the issuance of a certificate of occupancy, the Applicant shall provide to the Town a satisfactory performance bond or comparable surety instrument, which shall not expire unless and until it is satisfactorily replaced by the Applicant or released by the Building Department. The amount of such surety shall be determined by the Building Department to ensure the completion of all remaining required work provided on the Final Plans as determined by the Building Department, including, without limitation, landscaping. The surety shall be held in accordance with the Town's normal procedures, and it shall be released by the Building Department only upon the satisfactory completion of the work in question as determined by the Building Department.

85. Before the commencement of construction, the Site and Engineering Plans, finalized as necessary as provided in this Decision, shall be signed and sealed by a Massachusetts Professional Engineer and a Massachusetts Registered Landscape Architect and filed with the Building Department, and shall include the following at a minimum:

- a. Utilities, including on-site utilities and connections to utilities in adjacent public ways, which shall conform to all requirements of the Town, private utility companies having jurisdiction, and all applicable codes;
- b. Storm Water Pollution and Prevention Plan (SWPPP) describing the mitigation of sedimentation and erosion, including details regarding temporary drainage basins;
- c. Details of any temporary construction signs; and
- d. Delineation of construction staging areas.

86. Before the issuance of a building permit, the Applicant shall submit to the Building Department a letter from the Project architect or his/her designee confirming that the Project complies with applicable Architectural Access Board Regulations.

87. The applicant shall provide to the Town a performance bond or comparable surety instrument before starting any activity authorized by this Decision in a public way, on Town property, or in any Town easement ("Authorized Activity") to ensure the proper and timely completion of all such work. The amount of such surety shall be determined by the Highway Department, consulting as necessary with the Building Department. The instrument shall not expire until it is satisfactorily replaced by the Applicant or released by the Highway Department.

88. The Applicant may submit requests to the Building Department or the Highway Department, as the case may be, to reduce any of the sureties required by this Decision as work progresses. Such requests shall include the amount of the requested reduction, a list of the work that remains outstanding, and a cost estimate for that work. Any reduction approved by the Building Department or the Highway Department shall be based on the relevant department's judgment as to the actual cost to complete the remaining work. The Town shall not unreasonably refuse to approve a reduction request in an amount that it determines to be appropriate.

89. Before the issuance of a building permit, the Applicant and the general contractor shall hold a preconstruction meeting with the Building Department, Highway Department, Director, and Town Engineer (or any of their designees) to review this Comprehensive Permit and to establish a construction and inspection schedule. Prior to the issuance of a building permit, the Applicant shall submit a Construction Management Plan for review and approval by those officials. The Applicant shall be subject to the Town's construction bylaws.

90. The Construction Management Plan shall address the following matters:

- i. Hours of construction
Construction shall only occur Monday through Saturday between the hours of 7:00 a.m. and 5:00 p.m., except that during the months of June through August, Construction Activities may continue until 7:00 p.m., and there shall be no construction activity on Federal holidays. Work outside these hours shall be permitted only if and as allowed by applicable local bylaws and/or with the express permission of the Building Department.
- ii. Truck routes
 - number of truck trips
 - hours of operation for truck trips
 - size of and specification of trucks
 - plans to mark truck with identification placards
- iii. Trash and debris removal
- iv. Rodent and pest control
- v. Construction Phasing and Schedule including timing and phasing of construction site clearing; construction of roadways and utilities; construction of buildings, etc.
- vi. Communications, including the Contractor's representative(s) available 24/7 and emergency contacts

- vii. Noise and Dust Control
 - Control Plan
 - Mitigation Measures
 - Monitoring Reporting
 - Tree removal (chipping, etc.)
 - Public street cleaning and repair
- viii. Construction Staging
 - Staging areas
 - Site office trailers
 - Storage trailers/containers
 - Open storage areas
 - Delivery truck holding areas
 - Re-fueling areas
- ix. Traffic and Parking (during construction)
 - On-site locations
 - Off-site locations
 - Snow removal
 - Police details (as required by the Dover Police Department after consultation and paid for by the Applicant)
 - Warning signs

91. The Construction Management Plan shall further show the proposed building footprint and limit of excavation, construction trailers, contractor parking, construction dumpsters, emergency access, material/soil stockpile areas, delivery/turnaround area, crane staging area (if applicable), and construction period erosion and sedimentation controls meeting requirements of the USEPA NPDES Construction General Permit and any Order of Conditions issued by the Dover Conservation Commission.

92. Construction vehicles may not park on Route 109/County Street.

93. The Town may assess fines and other non-criminal penalties to enforce the Construction Management Plan.

94. The Applicant shall at all times use all feasible best efforts to minimize inconvenience to residents in the general area. During construction, the Applicant shall provide means to secure the front entrance to the Site at appropriate times to protect against unauthorized entry or vandalism, and all construction materials shall be stored or stockpiled in a safe manner. Any floodlights used during the construction period shall be located and directed so as to prevent undue spillover or illumination onto adjacent properties. All construction activities are to be conducted in a workmanlike manner.

95. Before starting any Authorized Activity, the Applicant shall provide to the Building Department:

- a. The company, name, address and business telephone number of the general contractor or its agent available 24/7 who shall have overall responsibility for construction activities on site;
- b. A copy of a municipal lien certificate showing that all taxes, assessments and charges due on the Property have been paid;
- c. Certification that all required federal, state and local licenses and permits for said Authorized Activity has have been obtained;
- d. Evidence that Dig-Safe was notified at least 72 hours before commencing the work, if applicable.
- e. Proof that street signage is in place to ensure that emergency personnel can locate the Site to protect and secure the Site and construction personnel; and
- f. At least 48 hours written notice. If activity on the Site ceases for longer than one month, notice shall be given again before work is resumed.

96. During construction, at the end of each workday, the Applicant shall ensure that all erosion control measures are in place and secure all materials and equipment. Upon completion of all work on the Site and before as-built approval, all debris and construction materials shall be removed and disposed of in accordance with state laws and regulations, and the Applicant shall notify the Building Department in writing of the final disposition of the materials.

97. Covered dumpster(s) shall be used during construction to keep debris within the Site, and the Applicant shall be responsible for the prompt removal of any debris which escapes enclosure. Use of the dumpster(s) shall be limited to the duration of the active construction period.

98. All fill used in connection with this Project shall be clean fill, as approved by the applicable Town of Dover department or official with jurisdiction. No fill shall contain any trash, refuse, rubbish or debris, including, but not limited to: lumber, brick, asphalt, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, appliances, motor vehicles or any part of the foregoing. Any fill subject to specialized disposal in conformance with current environmental criteria shall not be used, and the Applicant shall bear the cost of removing any unclean fill.

99. Within 45 days of the completion of construction, the Applicant's site engineer of record shall certify that the Project was constructed in substantial conformance with the Final Plans and this Decision.

100. Before the issuance of the certificate of occupancy, the Applicant shall submit to the Building Department for review and approval a set of draft As-Built Plans, with a .pdf copy, showing all improvements (including all water, wastewater, drainage, and other utilities) and evidence of substantial compliance with this Comprehensive Permit and any other permits required for the Project. All utilities must be in working order (pressure tested, etc.) before the certificate will be issued. Before the issuance of the certificate of occupancy, the Applicant shall submit to the Town Engineer for review and approval a mylar of the final As-Built Plans stamped by a Registered Professional Engineer, a .pdf copy, and AutoCAD plans in a version approved by the Town Engineer, and shall submit a paper copy to the Building Department.

101. All on-Site catch basins, detention basins, infiltration systems, and other storm water management facilities shall be cleaned at the end of construction. Thereafter, the Applicant shall be responsible for maintaining the on-Site storm water management facilities in accordance with generally accepted practice.

102. The Applicant shall be permanently responsible for the following:

- a. All plowing, sanding, and snow removal. Snow shall be piled in designated locations shown on the Final Plans. If snow narrows any travel area on the Site to less than 18 feet and all designated snow removal locations have been filled, the Applicant shall transport snow from the Site for legal disposal at the direction of the Fire Chief. Snow accumulations at the Site entrance shall not be more than three feet high or impair sight distances for vehicles using the Project driveway or any driveways on abutting driveways;
- b. All Site maintenance and a regular schedule for that maintenance;
- c. Repair and maintenance of all on-Site driveways and infrastructure;
- d. Annual inspection, maintenance and cleaning of all elements of the drainage system, including but not limited to catch basins, drain manholes, detention basins, swales, and pipelines;
- e. Operation and maintenance of the water service from the connection with the main owned by the Colonial Water Company (including any successor entity to Colonial);
- f. Operation and maintenance of the wastewater disposal system, consistent with the manufacturer's specifications and any permit issued by the Board of Health under Title 5 of the State Environmental Code, 310 C.M.R. 15.000;
- g. Maintenance of any easements shown on the Final Plans; and

h. Site lighting.

103. Before issuance of a certificate of occupancy, the Applicant shall review the proposed location of equipment and mail boxes, including parcel delivery areas, with the Postmaster and install any required infrastructure.

104. No stumps or construction debris shall be buried or disposed of at the Site.

105. The Applicant shall use all means available to them to minimize inconvenience to residents in the vicinity of the Property during construction.

106. All construction vehicles shall park on the Site or at other locations approved in the Construction Management Plan. The Applicant's agents, representatives, and/or employees shall not park their motor vehicles or construction equipment on County Street.

D. Special Conditions

107. This Comprehensive Permit may be transferred only as provided by 760 CMR 56.05(12)(b).

108. Any changes to the Project after issuance of the Comprehensive Permit shall be reviewed by the Board in accordance with 760 CMR 56.05(11). Proposed adjustments to the Final Plans shall be submitted to the Building Department, which shall determine whether the adjustment constitutes a "minor adjustment" or a "change". Minor adjustments may be approved by the Building Department. Any proposed changes other than minor adjustments shall be submitted to the Board under applicable regulations. The Building Department shall assess whether a proposed adjustment is a "minor adjustment" or "change" with reference to the factors in 760 CMR 56.07(4)(c) and (d).

Water Supply

109. The Applicant intends for the Project to be served by water service provided by Colonial Water Company ("Colonial," and inclusive of any corporate parent, subsidiary, successor, assign, or affiliate of Colonial). The Town shall not bear the expense of serving the Project with water and shall not be liable for any adverse conditions associated with the availability of, or the condition of, water provided by Colonial.

110. Before the issuance of a building permit, the Applicant shall obtain an updated "will-serve" letter from Colonial.

111. Before the issuance of a building permit, and consulting as necessary with the Fire Department, the Applicant shall confirm that the tank used to store water on-Site for fire suppression purposes is located outside the "collapse zone," or as otherwise approved by the Dover Fire Department.

112. The Applicant shall cooperate with Colonial to enforce a 65 gallon per capita, per day water use limit. To the extent permitted by the Subsidizing Agency, the Applicant shall

include enforceable provisions in its leases limiting water use to 65 gallons per capita, per day. The Applicant shall provide a location for water meters for each unit and permit Colonial access to install and maintain such meters.

113. The Applicant shall not use water provided by Colonial for outdoor irrigation or watering.

114. The Applicant shall install an interior pumping system, at no expense to the Town, if Colonial deems it necessary to service the top floors of the Project.

115. The Applicant and Colonial shall finance and construct any water main extension in County Road that may be necessary to supply the Project, at no expense to the Town.

Wetlands Protection

116. Prior to the issuance of a building permit, the Applicant shall obtain an Order of Conditions or other appropriate approval from the Dover Conservation Commission under the state Wetlands Protection Act, G.L. c. 131 § 40, 310 C.M.R. § 10.000, and the unwaived provisions of the Dover Wetlands Protection Bylaw, Chapter 263. Pursuant to G.L. c. 40B and 760 CMR § 56.05(11), the Board will review any changes to this Comprehensive Permit that may be necessitated by the Conservation Commission's action.

Wastewater

117. Prior to the issuance of a building permit, the Applicant shall obtain a permit for on-site sewage disposal from the Dover Board of Health reviewing the Project pursuant to Title 5 of the State Environmental Code, 310 C.M.R. 15.000. Pursuant to G.L. c. 40B and 760 CMR § 56.05(11), the Board will review any changes to this Comprehensive Permit that may be necessitated by the Board of Health's action.

118. In the event the Board of Health approves the Applicant's proposal to use the Presby innovative/alternative wastewater disposal system and said system results in excess emissions of sewer gas, the Applicant, in consultation with the Building Inspector and the Board of Health, shall implement all feasible measures to mitigate odors from the sewer gas emissions.

119. The Applicant shall file duplicate copies of its DEP-required annual operations-and-maintenance reporting for an innovative/alternative system with the Board of Health. Said annual reports shall address emissions of sewer gas from the system.

Traffic & Parking

120. The Applicant shall maintain sight lines pursuant to § 196-5 of the Town of Dover Rules and Regulations and AASHTO standards. The Applicant shall maintain the Site curb cuts, driveways, and vegetation such that clear sight triangles are maintained within 15 feet of County Street and such that all plantings and other obstructions are no higher than 3 feet in height above street level. Specifically, unobstructed sight triangles shall be maintained consistent with the Final Plans and the Board's civil engineering peer reviewer's final comment letter dated

November 30, 2021. The sight triangles shall be perpetually maintained and kept clear by the Applicant. The Applicant shall provide an annual written report to the Building Department regarding its maintenance activities to ensure the sight triangles remain clear.

121. Before the issuance of a building permit, the Applicant shall prepare a Traffic Signal Warrants Analysis for the Route 109/Walpole Street intersection. The Applicant shall submit the Analysis and a summary report to the Board.

122. Before issuance of a certificate of occupancy, the Applicant will provide bicycle parking on the Site in a number to be determined in consultation with the Building Department and at the location shown on the Final Plans.

123. Before the issuance of a certificate of occupancy, the Applicant shall submit a Transportation Demand Management Plan (“TDM Plan”) to the Building Department for review and approval, such approval not to be unreasonably withheld. The TDM Plan shall include a parking lot control plan and shall identify strategies to encourage the use of public transit and to manage deliveries and ride-sharing service pick-ups and drop-offs.

124. Before the issuance of a certificate of occupancy, the Applicant will discuss methods for facilitating school bus pick-up/drop-off with the Dover-Sherborn Regional School District. The Applicant will provide evidence of such discussions to the Building Department.

Storm Water Management

125. The Applicant shall follow the construction sequence and strategy set forth in the plans approved by the Board’s civil engineering peer reviewer in his letter dated November 30, 2021, regarding erosion and sedimentation controls, unless otherwise directed in a permit from the Conservation Commission.

126. The Applicant shall comply with all erosion and sediment control conditions set forth in any Order of Conditions issued by the Conservation Commission.

Noise

127. The Project shall comply with all applicable noise regulations, including, without limitation, G.L. c. 111 §§ 142A-M, 310 CMR 7.00, and the Department of Environmental Protection’s Noise Policy.

128. The Project’s HVAC systems will be located on the roof of the building, as shown on the Final Plans, where they shall be visually screened by the building from abutting property owners.

129. Prior to the issuance of a certificate of occupancy, the Applicant shall hire the services of a sound control expert and, in consultation with the Building Inspector and abutters, conduct (1) a baseline natural ambient background sound pressure level survey over a 24 hour period on the eastern, western and northern property borders and (2) a sound pressure level survey over a 24 hour period on the eastern, western and northern property borders with all

HVAC units in operation. Data reduction and results shall demonstrate that the HVAC systems do not violate state DEP standards, such as by increasing the ambient background noise level by 10 dB or more above the natural ambient baseline. In the event of a violation, in consultation with the Building Inspector and abutters, and at its own expense, the Applicant shall implement mitigation measures to comply with DEP standards, including the 10 dB standard.

Design

130. Before issuance of a building permit, the following aspects of the Project shall be administratively reviewed and reasonably approved by the Building Department. To facilitate such review, the Applicant shall provide samples of building materials and colors:

- a. Coordination of façade development;
- b. Preliminary materials and colors; and
- c. Final materials and colors.

Construction of the Project shall be consistent with the approved materials.

131. The Project shall comply with the Massachusetts Architectural Access Board accessibility regulations.

Landscaping

132. The landscaping shall be installed as shown on the Final Landscape Plan. The landscaping as depicted on the Final Landscape Plan shall be maintained in a healthy condition in perpetuity, normal maintenance excepted.

133. The Applicant shall consult with a certified arborist as necessary and shall implement measures adequate to protect existing landscaping, including protections for the critical root zones of existing trees.

134. The Final Plans have been amended at the request of the Fire Department to provide a fire access lane on the west side of the Project building within the approximately thirty-two foot setback between the building and the property line. The fire lane shall be comprised of grass pavers. It shall be approximately ten feet wide and its eastern edge shall be no farther than approximately ten feet from the building. The remaining buffer zone between the abutting property and the building shall be landscaped so as to screen the neighboring residence. Elements of such screening shall include trees of various species, heights, and maturities and a solid wooden fence, as shown on the Landscaping Plan (Sheet L1 of the Final Plans). The final elements of such landscaping shall be designed in consultation with the abutter and shall be approved by the Fire Chief so as not to interfere with Fire Department apparatus.

135. Before the issuance of an occupancy permit, the Applicant shall establish an escrow account of no less than \$5,000 to fund landscaping improvements on the western

abutter's property at 65 County Street. The Applicant shall make best efforts to enter into an agreement with the owner of 65 County Street for purposes of utilizing the escrowed funds for the benefit of landscaping improvements on the neighbor's property to mitigate visual or other changes caused by the Project. The Applicant shall make its landscape architect available to assist with a concept plan, and the Applicant shall undertake the installation of the selected plantings on behalf of the owner of 65 County Street at no cost to the owner.

136. During construction, the existing vegetation along the westerly side lot line of the site is to remain wherever possible.

Lighting

137. All exterior lighting at the Site shall be Dark Sky-compliant and shall not allow spillover of light onto adjoining properties in excess of that permitted by law. The Applicant shall assess the feasibility of using ground-level fixtures rather than light poles.

138. The Board approves the Lighting Plan reviewed by the Board's civil engineering peer reviewer in his November 30, 2021 letter, and shown on the Lighting Plan Sheet L.2 (original issue date of December 14, 2020) Revision No. 4 dated January 28, 2022 (the "Final Lighting Plan"). Further, prior to the issuance of an occupancy permit, the Applicant shall submit a report demonstrating that Project lighting does not spill onto abutting properties.

E. Lapse

139. This Comprehensive Permit shall lapse three years from the date that it takes final effect (i.e., the date that it is filed with the Town Clerk, subject to tolling in the event of any appeal and as provided in 760 CMR 56.05(12)(c)) unless construction on the Project has commenced within such period.

140. Construction under this Comprehensive Permit shall be completed within five years from the date the Permit takes final effect.

141. The Applicant may apply to the Board for extensions of these deadlines under 760 CMR 56.05(12) before any lapse occurs.

F. Waivers

142. The Applicant shall comply with the Dover Zoning Bylaw and all other Town bylaws, regulations, and rules in effect on the date the Application was filed with the Board except as expressly waived in this Decision.

F. Validity, Modification, and Appeal

143. In the event an authority of appropriate jurisdiction determines that any provision of this Decision is illegal and unenforceable, such provision may be severed and stricken from this Decision without affecting the validity of the remaining provisions of this Decision.

Dover Zoning Board of Appeals
Decision 2020-04 – 40B Comprehensive Permit
61-63 County Street, Dover, MA

144. This Comprehensive Permit shall not be valid until the Town Clerk certifies that no appeal has been filed. The Applicant shall provide proof of recording with the Norfolk County Registry of Deeds to the Town Clerk and the Building Department.

145. Any modification of this Comprehensive Permit shall be subject to 760 CMR 56.00.

146. Any person aggrieved by this Decision may appeal within 20 days as provided by G.L. c. 40B, §§ 20-23.

Dated this 10th day of March, 2022.

Board of Appeals



By: R. Alan Iyer
Its: Duly-authorized Chair

A true record of the Board of Appeals



By: LaVerne Lovell
Its: Duly-authorized Secretary

Received March 10, 2022


Dover Town Clerk

EXHIBIT A – The Record

Note: Record items are hyperlinked, if available, and on file with the Town Clerk. Further information, including videos of ZBA hearings, are available on Town's website, <https://www.doverma.gov/543/Red-Robin-Pastures>. The Applicant has at various times, and most recently on December 13, 2021, provided a "Submittal List" of documents submitted to the Board in relation to this application. The Submittal List is incorporated by reference herein solely for supplementing the items below.
<https://www.doverma.gov/DocumentCenter/View/2063/Submittal-List-121321>.

1. **Soil Suitability Assessment Report** (Cheney Engineering Co., Sept. 4, 2019)
(<https://www.doverma.gov/DocumentCenter/View/2012/Soil-Suitability-Assessment-Report---61-63-County-Street-09042019>)
2. **Red Robin Pastures – Project Eligibility Application to MassHousing** (May 2020) (https://www.doverma.gov/DocumentCenter/View/1289/Red-Robin-Pastures_P11-App)
3. **Municipal Comment Letter on Project Eligibility Application** (June 1, 2020)
(https://www.doverma.gov/DocumentCenter/View/1290/61-63-County-St_municipal-comment-letter)
4. **Colonial Water Company – Conditional Will-Serve Letter** (Nov. 2, 2020)
(<https://www.doverma.gov/DocumentCenter/View/1395/Colonial-Water-Co-Letter>)
5. **Memo re: Fire Protection Demand** (Wozny/Barbar Consulting Engineers, Dec. 1, 2020) (<https://www.doverma.gov/DocumentCenter/View/2010/Memo-Fire-Demand-12012020>)
6. **Comprehensive Permit Application** (December 23, 2020)
(https://www.doverma.gov/DocumentCenter/View/1288/Comp-Permit-Application_122320)
 - Section 1 – Introduction and Request for Findings of Fact
 - Section 2 – Project Data Summary
 - Section 3 – Applicant Status
 - Section 4 – Project Eligibility Letter
 - Section 5 – Development Team Identification
 - Section 6 – Evidence of Site Control
 - Section 7 – Sample Regulatory Agreement
 - Section 8 – Traffic Impact Assessment
 - Section 9 – Schematic Plan Sets
 - Section 10 – Proposed Waiver List
7. **Applicant's Response to Town Comments on Project Eligibility Application**
(Feb. 19, 2021) (<https://www.doverma.gov/DocumentCenter/View/1300/Applicant-Response-to-Municipal-Comment-Letter-February-2021>)
8. **Updated Presentation Drawings** (Apr. 14, 2021)
(<https://www.doverma.gov/DocumentCenter/View/1521/Red-Robin-Updated-Presentation->

Drawings-04-14-21)

9. **Architectural Peer Review Report** (Davis Square Architects, Apr. 23, 2021)
(<https://www.doverma.gov/DocumentCenter/View/1520/Architectural-Peer-Review-Report-42321>)
10. **Engineering Peer Review Report** (Tetra Tech, Apr. 25, 2021)
(<https://www.doverma.gov/DocumentCenter/View/1532/Engineering-Peer-Review-Report-42521>)
11. **Revised Site and Civil Plans** (June 14, 2021)
(<https://www.doverma.gov/DocumentCenter/View/1792/Red-Robin-Pastures-61421>)
12. **Revised Site and Civil Plans** (July 12, 2021)
(<https://www.doverma.gov/DocumentCenter/View/1739/Revised-Plans---71221>)
13. **Applicant's Response to Peer Review Comments** (July 30, 2021)
(<https://www.doverma.gov/DocumentCenter/View/2258/Applicants-Response-to-Peer-Review-and-Board-Comments-Final-7302021>)
14. **Wetland Delineation and Vernal Pool Investigation Report** (Deborah Anderson, July 30, 2021) (<https://www.doverma.gov/DocumentCenter/View/1797/Red-Robin-Pastures-61-County-Street-Dover---Wetland-Delineation-and-Vernal-Pool-Investigation-Report-submitted-8112021>)
15. **Landscape Screening Exhibit** (Aug. 11, 2021)
(<https://www.doverma.gov/DocumentCenter/View/1796/Red-Robin-Landscape-Screening-Exhibit-submitted-8112021>)
16. **Revised Stormwater Report** (Ronald Tiberi, P.E., Sept. 13, 2021)
(<https://www.doverma.gov/DocumentCenter/View/1868/Red-Robin-Stormwater-report-0921>)
17. **Site Access Assessment** (Vanasse & Associates, Inc., Sept. 14, 2021)
(<https://www.doverma.gov/DocumentCenter/View/1867/63-County-Road-Access-Assessment-091421>)
18. **Applicant's Narrative of Proposed Changes in Response to Peer Review** (Sept. 15, 2021) (<https://www.doverma.gov/DocumentCenter/View/1866/Red-Robin---Narrative-of-proposed-changes>)
19. **Revised Site and Civil Plans** (Sept. 21, 2021)
(<https://www.doverma.gov/DocumentCenter/View/1869/Stamped-Red-Robin-Presentation-Drawings-092121>)
20. **Architectural Peer Reviewer's Further Comments** (Davis Square Architects, Sept. 21, 2021)
(<https://www.doverma.gov/DocumentCenter/View/2259/Davis-Square-Dover-RedRobin-Letter-2-2021-9-21>)

21. **Engineering Peer Reviewer's Further Comments** (Tetra Tech, Sept. 29, 2021)
(<https://www.doverma.gov/DocumentCenter/View/2260/TetraTech-Dover-RedRobin-Letter2-with-att-2021-09-29>)
22. **Statement Regarding Water Issues** (Gerry Clarke, BOH Chair, Sept. 29, 2021)
(<https://www.doverma.gov/DocumentCenter/View/2262/Gerry-Clarke---Statement-1-re-water-issues-9-29-21>)
23. **Further Statement Regarding Water Issues** (Gerry Clarke, BOH Chair, Oct. 18, 2021)
(<https://www.doverma.gov/DocumentCenter/View/2263/Gerry-Clarke---Statement-2-re-water-issues-10-18-2021>)
24. **Mounding Report** (Onsite Engineering, Inc., Oct. 25, 2021)
(<https://www.doverma.gov/DocumentCenter/View/2008/Dover-Mounding-Report-10252021>)
25. **Applicant's Revised Site and Civil Plans and Presentation Documents** (October 28, 2021) (<https://www.doverma.gov/DocumentCenter/View/2011/Red-Robin-Presentation-Drawings-10282021>)
26. **Applicant's Final Response to Further Peer Review Comments** (Nov. 17, 2021)
(https://www.doverma.gov/DocumentCenter/View/2022/Red-Robin-Pastures_Response-to-Tetra-Tech-Peer-Review_V1_Nov-17-2021)
 - a. **Applicant's Initial Response to Further Peer Review Comments** (Oct. 12, 2021) (<https://www.doverma.gov/DocumentCenter/View/2007/Applicant-Response-to-TetraTech-Comments-10122021>)
 - b. **Letter to Town Clerk Regarding Applicant's Initial Response** (Nov. 18, 2021) (<https://www.doverma.gov/DocumentCenter/View/2023/Ltr-Town-Clerk-re-Applicant-Response-to-TetraTech-Comments-111821>)
27. **Engineering Peer Reviewer's Further Comments** (Tetra Tech, Nov. 30, 2021)
(<https://www.doverma.gov/DocumentCenter/View/2319/TetraTech-Dover-RedRobin-Letter3-2021-11-30>)
28. **Applicant's Revised Site and Civil Plans and Presentation Documents** (Dec. 5, 2021) (<https://www.doverma.gov/DocumentCenter/View/2062/Red-Robin-Presentation-Drawings---1252021>)
29. **Applicant's Revised Waiver Request List** (Jan. 10, 2022)
(<https://www.doverma.gov/DocumentCenter/View/2232/Waiver-Request---1102022>)
30. **Engler Certification to Zoning Board of Appeals** (Jan. 18, 2022)
(<https://www.doverma.gov/DocumentCenter/View/2318/Engler-Certification-to-Zoning-Board-of-Appeals-01182022>)
31. **Applicant's Revised Site and Civil Plans** (Jan. 31, 2022)
(<https://www.doverma.gov/DocumentCenter/View/2233/Red-Robin-Updated-Presentation->

Drawings-13122)

32. **Engineering Peer Reviewer's Further Comments** (Tetra Tech, Feb. 2, 2022)
(<https://www.doverma.gov/DocumentCenter/View/2261/TetraTech-Dover-RedRobin-Letter-4-2022-02-02>)
33. **Revised Landscaping Plan** (Feb. 2, 2022)
(<https://www.doverma.gov/DocumentCenter/View/2230/Red-Robin-Landscape-Plan>)
34. **Applicant's Revised Site and Civil Plans** (Feb. 3, 2022)
(<https://www.doverma.gov/DocumentCenter/View/2234/Red-Robin-Updated-Presentation-Drawings-2322>)
35. **Draft Decisions** (Various dates from December 2021 through February 2022)
36. **Videos of ZBA Meetings** (available at <https://www.doverma.gov/543/Red-Robin-Pastures>)
37. **Meeting Minutes**
38. **Miscellaneous Comments and Correspondence from Abutters and the Public**

Exhibit D



Town of Dover CONSERVATION COMMISSION

5 Springdale Ave., Dover MA 02030

Mike Blanchard
Dover Town Administrator
5 Springdale Avenue
Dover, MA 02030

October 20, 2023

RE: Concerns Regarding the Proposed 40B Project at 81 and 85 Tisdale Drive

Dear Mike,

As requested, I'm writing on behalf of the Conservation Commission regarding concerns related to the proposed 40B Project located at 81 and 85 Tisdale Drive. I have carefully reviewed the Preliminary Eligibility Letter (PEL) application and site plans for this project and have identified several significant wetlands protection and environmental issues that the Commission believes warrant attention and resolution. While the Commission has not yet received an application for a permit for this project under the Mass. Wetlands Protection Act, we believe that addressing the comments and concerns outlined below will help protect the wetland resources and water quality and wildlife habitat values of the area.

1. Need for New Delineation of Wetland Resource Areas and Vernal Pool:

As a result of the Commission's regulatory review and permit issuance for the adjacent Red Robin 40B Project (DEP#144-0880), the Commission confirmed that there is a certified vernal pool and extensive wetlands adjacent to the 81 and 85 Tisdale project that should be formally delineated and approved by the Commission under an ANRAD pursuant to all applicable regulatory requirements before any further review of the project by the ZBA in order to maximize the protection of the wetlands and vernal pool and their associated wildlife habitat values. Due to the fact that vernal pools should be observed and delineated only during the Spring seasonal time frame, the Commission requests that the vernal pool be accurately delineated and the boundaries of the wetlands are approved by the Commission using the delineation criteria under the State Wetlands Protection Act and the NHESP during the Spring seasonal time frame.

2. All Structures and Land Disturbance Should be Located 100 feet from the Delineated Boundaries of the Certified Vernal Pool

The vernal pool adjacent to the proposed 81 and 85 Tisdale Drive 40B property has already been impacted by the construction of the large structures and land disturbances on the adjacent Red Robin 40B Project. The construction of additional large scale structures and land disturbance at 81 and 85 Tisdale Drive near the vernal pool raises a number of ecological and regulatory concerns due to the unique characteristics and ecological importance of these unique and valuable wetland features. Vernal pools are ecologically important for a variety of reasons and disturbance near them can have significant adverse impacts, which can be avoided by locating all new structures and land disturbances 100 feet away from the vernal pool. The Commission's specific concerns associated with development and disturbance near the vernal pool include the following:

- * **Habitat Destruction:** Vernal pools are critical habitats for many species, including amphibians, insects, and plants. Some of these species may be rare, threatened, or endangered. Construction, development and disturbance in close proximity can lead to habitat destruction and a decline in these species.
- * **Biodiversity Loss:** Vernal pools and wetlands are rich in biodiversity and development near them can lead to the loss of native plant and animal species diversity. This loss can have cascading effects on the entire ecosystem.
- * **Water Quality:** Vernal pools contribute to the overall health of the area's ecosystem by acting as natural filters, trapping sediments and pollutants from surface water before it reaches other bodies of water and groundwater. Development near a vernal pool and wetlands can compromise water quality, by reducing their capacity to filter and purify water. Construction activities and runoff can introduce pollutants and disrupt the natural water quality in the vernal pools.
- * **Hydrological Balance:** Vernal pools play an important role in the local hydrological balance by storing water and reducing flooding. Building and land disturbance near a vernal pool and wetlands can alter their natural hydrology resulting in adverse impacts to the surrounding environment.
- * **Erosion Control:** Construction near vernal pools can increase the risk of erosion and sedimentation in these sensitive ecosystems. Sediment runoff can clog the vernal pool and harm the organisms that rely on them.
- * **Climate Change Impact:** Vernal pools and wetlands store carbon and help mitigate the effects of climate change. Disrupting these resources can release stored carbon and reduce their capacity to sequester more, contributing to climate change.

3. Requiring a 100 foot “No Disturb” Buffer from the Vernal Pool will help protect and preserve the property’s Open Space and Forested Landscape:

The proposed plan for 81 and 85 Tisdale Drive indicates an almost total clear-cutting of the existing heavily wooded natural forest including the removal of almost all trees and other vegetation that will result in significant detrimental impacts. The importance of protecting open space and trees on the 81 and 85 Tisdale property, which is adjacent to the existing Tisdale Drive Housing Development and the large scale Red Robin 40B project, is critical for the following reasons:

- * **Biodiversity:** Trees and open spaces provide valuable habitats for a wide range of plant and animal species. Protecting these areas helps preserve biodiversity and supports ecosystem health.
- * **Carbon Sequestration:** Trees absorb carbon dioxide during photosynthesis, helping mitigate climate change by reducing greenhouse gas concentrations in the atmosphere.
- * **Air Quality:** Trees filter pollutants from the air, leading to improved air quality. They also release oxygen, which is vital for human and animal life.
- * **Erosion Control:** Vegetation, including trees, helps prevent soil erosion by stabilizing the soil with their roots, reducing the risk of landslides and loss of fertile topsoil.
- * **Climate Resilience:** Trees and open spaces can act as buffers against extreme weather events by absorbing excess rainfall, reducing flood risk, and providing shade during heatwaves.

4. Ensure Compliance with DEP Stormwater Management Standards: The project’s stormwater and drainage infrastructure and long-term management plan must meet the MA DEP’s Stormwater Mgt. Standards and performance standards, and as a result the proposed project at 81 and 85 Tisdale Drive must maximize the project’s green infrastructure elements and low impact development best management practices that incorporate water conservation and natural resources protection efforts including:

- * Landscaping that consists of low-water-use and native plantings and prohibit irrigation for plantings/lawn;
- * Prohibit the use of pesticides, herbicides and inorganic fertilizers within 100 ft. of all wetlands and vernal pool.

5. Compliance with MA Sustainable Development Criteria Scorecard & Principles

Under the 40B Application Process, the property owner/applicant is required to adhere to these criteria and principles including the following:

- * **Protect Land and Ecosystems:** including protection of critical habitats & wetlands
- * **Use Natural Resources Wisely:** including construction of buildings and infrastructure that conserve natural resources by reducing waste and pollution through efficient use of land, energy, water and materials; uses alternative technologies for water and/or wastewater treatment, uses low impact development (LID) or other innovative techniques.

6. Conservation Commission Revocation of Wetlands Permit for Applicant

Patrick Corrigan, DEP #144-0874

It is a matter of record that the Conservation Commission voted to approve a property owner/abutter's request to revoke a wetlands permit issued by the Commission to Mr. Patrick Corrigan, one of the applicants/owners of the proposed 81 and 85 Tisdale Drive 40B Project. The Commission opened the Public Hearing on this permit revocation request at their Dec. 14, 2022 meeting and voted unanimously at their Public Hearing on January 11, 2023 to revoke, for good and just cause, the Wetlands Permit MA DEP #144-0874 issued to Applicant Patrick Corrigan for the proposed project at 6 Haven Terrace. (See attached Conservation Commission Meeting Minutes of 12/14/22 and 1/11/23 documenting the public hearing and facts and rationale related to the permit revocation).

The Commission requests that you include these concerns and issues in the Town of Dover's response to MassHousing on this project.

Very truly yours,

Janet Hartke Bowser

Conservation Commission Agent

Cc: Planning Board
Board of Health
Open Space Committee
Building Inspector

Attachments: Conservation Commission Meeting Minutes of 12/14/22 & 1/11/23

Conservation Commission Meeting Minutes 12/14/2022, 7:30 PM

Commission Members Attending: John Sullivan, Tim Holiner, Amey Moot, Anna Nagy, Jim McLaughlin. Absent: Christy Violin and Sarah Monaco.

Other Attendees: Consultant Agent Janet Bowser, Lori Hagerty, Conservation Office, Olympia Bowker, Anderson Kreiger, James Grillo, DGS, LLP, Justin O'Connell, Danielle Sheer, David Forrest, Ligris, Casey Sack, RF Lawyers, Preston Clinton, RF Lawyers, Brett Berman, J. Freeman, Attorney, John Murphy, Natureworks, Ardi Rrapi, Cheney Eng., Brian Nelson, Metrowest Eng., Diane Simonelli, Field Resources, David Parrish, Sherborn Development, Joyce Hastings, GLM Eng.

Residents: William Murray, John D'Souza, Justine Kent-Uritam, Val Lin, Sam Lin, Ellie Herd, Vardhan Srinivasa.

7:30 Hearing to Review / Revoke Orders of Conditions Permits

Request to Revoke OOC #144-842 Haven Meadows

Request to Revoke OOC #144-874 Haven Manor

The hearing for Request to Revoke OOC 144-842 and 144-874 was opened. John Sullivan, Chairman, reviewed the Orders of Conditions. He stated 144-842 has been closed out and issued a Certificate of Compliance. No work was done under that OOC. 144-874 is an open Order of Conditions which was granted based on plans as submitted and shown on the plans. This concerns a request to revoke OOC. It concerns 25 Haven St. and 6 Haven Ter. Planning Board Rescinded without prejudice their vote to endorse the ANR Plan for 6 Haven Ter./25 Haven St. and Zoning Board issued a Notice of Decision with a vote to deny the request and there is pending litigation. It is up to the parties involved to explain why this should be revoked. If the plan is not as Conservation approved, then it is unable to move forward.

Attorney James Grillo, DGS Law, represented the owners of 25 Haven St. said his clients were not aware any of this was going on. He asked if the OOC require the consent of a landowner?

John Sullivan said at some point the paperwork for 144-842 was issued after ownership changes within the 21-day period the Commission has to issue a permit. The Town will now be sure the document is recorded. Now we'll address 144-874. That is still an open permit.

Attorney Grillo said his clients had no knowledge or participation in any of this. They had no idea what was going on until a Violation Notice was sent. As far as 144-874, in order for anyone to obtain an OOC that should be someone who is an owner of a property or someone acting on their behalf.

John Sullivan said the application has a signature of Justin O'Connell, one of the beneficiaries. We had landowner participation and this all came to our attention after the violation notice. We had a landowner signature. We were told after the fact, it was the signature of the beneficiary and not the Trustee. The Trustee was also sent a copy of the Notice of Violation by mail using the address provided by the Assessor. We are now being told the owners weren't aware of this.

Attorney Grillo said Haven Realty Trust has owned 25 Haven St. since 1/29/21. There are 2 issues, ownership and consent. Ownership is Haven Realty Trust. His clients are telling the Commission they do not consent. His clients did not understand what processes were going on in the Town of Dover. Any agreement was based on something they'd be consulted on and agreed to in the future. His clients were not involved in the process, they were not consented and are not consenting now. There is no ownership or consent to proceed with 144-874. Mr. Corrigan never exercised the option so the document is irrelevant. The violation notices that have been documented is reason for this to be rescinded. His clients were not aware of the land

donation to the Town as a part of 25 Haven St. He said the temporary access was planned to go through his client's front yard, attached to their driveway.

John Sullivan did not recall that from the plans. He asked Agent Bowser about a temporary construction road going through the front of 25 Haven that Attorney Grillo referred to. She does not recall that on a plan that was reviewed or approved by the Commission.

Attorney Grillo said the Trustee did not sign the document. He did not want to discuss the scribble signature at the meeting tonight and how it was obtained. He said this Commission is without authority to proceed with 144-874 and so it should be revoked at this time. He said other Town boards have stopped this process. He asked if all the Commission members received a copy of his Dec. 7th letter asking this be revoked. Clearing of vegetation was started and stopped by his client on their property. All Commissioners received a copy of Attorney Grillo's letter.

There was discussion regarding the Notice of Violation sent by the Dover Con Com. Attorney Grillo discussed tree removal on the property of 25 Haven St. Agent Bowser said the violation she responded to was reported by abutters. Her site visit was to evaluate reported removal of trees and vegetation within the wetlands buffer zone at 8 Haven Ter and 6 Haven Ter. In violation of the OOC permit. She said the Notice of Violation was sent for tree and shrub removal at those locations and the removal stopped before reaching the stream. She did not enter the property at 25 Haven St., which is outside the wetland jurisdictional areas and the Notice of Violation was issued only for work done at 6 and 8 Haven Ter.

Attorney John Friedman, representing Mr. Corrigan, agreed the litigation should not be discussed at tonight's hearing. He said the Trustee and beneficiaries were aware of the circumstances and that he sent documents to Town Counsel to show that. He further requested the Commission take no action today until the court makes their decision. He said his client, Patrick Corrigan, always had rights to the 25 Haven St. land and it was agreed to prior to the property being sold. He said it has been recorded at the Registry of Deeds as part of the transactional documents.

Attorney Friedman said according to the option, his client has a right to purchase the portion of land at 25 Haven St. for 5 years after the Definitive plan has been approved.

The Chair discussed the usual process of a developer filing as an applicant and the landowner signs off, giving their permission. Are you saying the option you have does not require landowner consent?

Attorney Friedman said that is correct. As long as it is for 3 or fewer lots, they have already consented to this.

The Chair asked for clarification. Attorney Friedman said it was clear in the option what Pat Corrigan was allowed to do as long as the beneficiaries of 25 Haven St. were left with 3.88 acres of land. Attorney Friedman said that was the only requirement.

Attorney Brett Berman, also representing the litigants in this case, voiced his concern about the current discussion as it pertains to the hearing request to rescind.

The Chair explained this portion of discussion was coming to an end. The Commission needed to hear from both parties. They will not be making a decision tonight. He asked for input from Town Counsel.

Attorney Olympia Bowker, Anderson Krieger, Town Counsel said if the parties wish to submit further information while the public hearing is open, they may. It is up to the Commission if

they wish to take public comment. She advised the Commission take all available information before continuing the public hearing.

Preston Clinton, Attorney for Patrick Corrigan along with Mr. Friedman- He requested the option be part of the administrative record.

Commissioners had no further questions.

The Chair asked Town Counsel if this is a public document? Attorney Friedman said it has already been recorded at the Registry of Deeds. Town Counsel confirmed these are public documents and confirmed all of the materials received are part of the administrative record. She also added they'll need additional time to review the 200 plus pages received in the last day or so. Attorney Friedman said he understood that.

Attorney Grillo said the quote in section 9 from the document discussed states in the event the grantee exercises his rights... so it requires the exercise of the option and agreement over the terms. He also voiced concern about the cloud put on the Title of a landowner's real estate by recording at the Registry of Deeds.

The Chair asked Commissioners if they think the hearing should be opened up to public comment. 2 Commission members indicated they believe it should be. There were no further Commission comments.

The Chairman opened the public hearing up for comment by abutters. Justine Uritam recommended all parties be introduced at the beginning of the hearing. She also asked about a plan to use 25 Haven Street as access for construction vehicles. She remembers conversation and questioned if that is on a plan.

The Chairman discussed a continuance of the hearing for 4 weeks to the date of 1/11/23. Motion was made and seconded to continue the hearing to the meeting of 1/11/23. Roll call vote: Tim-Y, Anna-Y, Amey-Y, Jim-Y, John-Y.

Any additional information must be submitted by 1/4/22.

8:58 Request for Determination of Applicability

80 Wilsondale St. Owen, invasive plant removal and re-planting-John Murphy, Natureworks

Having been duly published, the hearing for 80 Wilsondale St. was opened. Present for the applicant was John Murphy, Natureworks for the after the fact planting of native plants. Agent Bowser visited the site and recommended issuance of a Negative Determination of Applicability with 4 special conditions listed in her memo dated 12/11/22. Motion was made and seconded to close the hearing and issue a Negative Determination of Applicability with special conditions described by Agent. Roll call vote: Tim-Y, Anna-Y, Amey-Y, Jim-Y, John-Y.

Notice of Intent

144-890 167 Claybrook Rd., porch, trellis, side door roof, front steps, West, Cheney Eng.

Having been duly published, the hearing for 167 Claybrook Rd. was opened. Present for the applicant was Ardi Rrapi, Cheney Engineering for the proposed porch, trellis, side door roof and front steps work. Agent Bowser visited the site, reviewed plans and recommended issuance of an OOC with 3 special conditions listed in her memo dated 12/11/22. The applicant requested to change condition #3 to "pending all necessary permits". There was further discussion of the required appeal period after issuance. Motion made and seconded to close the hearing. Roll call vote: Tim-Y, Anna-Y, Amey-Y, Jim-Y, John-Y. Motion made and seconded to issue an OOC approving the project as presented with 3 special conditions and change #3 to applicant shall secure all required permissions from various boards. Roll call vote: Tim-Y, Anna-Y, Amey-Y, Jim-Y, John-Y.

Continued Notices of Intent

144-889 18 Walpole St., porch, terrace, landscape, hardscape-Brown, Brian Nelson, Metrowest Eng.

Present for the applicant was Brian Nelson, Metrowest Engineering for the continued hearing for a porch and terrace addition and also landscaping/hardscaping. A revised plan was submitted dated 11/30/22. Brian has discussed bounds with Tom French, DLCT as suggested by the Commission. Agent Bowser described the 2 waiver requests and also 3 standard and 4 special conditions.

Motion made and seconded to close the hearing. Roll call vote: Tim-Y, Anna-Y, Amey-Y, Jim-Y, John-Y.

Motion made and seconded to grant waiver request #1 for work in the 50' no disturb setback.

Roll call vote: Tim-Y, Anna-Y, Amey-Y, Jim-Y, John-Y.

Motion made and seconded to grant waiver request #2 for work in the 70' no structure setback.

Roll call vote: Tim-Y, Anna-Y, Amey-Y, Jim-Y, John-Y.

Motion made and seconded to issue an OOC approving the project with the 7 special conditions noted by the Agent. Roll call vote: Tim-Y, Anna-Y, Amey-Y, Jim-Y, John-Y.

144-885 92 Haven St., site work in the buffer zone, Iansiti, Diane Simonelli, Field Res.

Present for the continued hearing on behalf of the owner was Diane Simonelli, Field Resources. She described the revised site plan and said the wetland line was re-evaluated based on hydric soil conditions as requested by the Agent and has been re-flagged. Agent Bowser stated that she re-inspected and confirmed the accuracy of the new wetland delineation and noted that the wetland line has been moved upland by over 20 feet in some locations based on the new accurate delineation. Agent Bowser said a revised waiver request is required for the 50' and 70' setbacks in the buffer zone. Diane requested a continuance to the next meeting on 12/28/22 and the Commission granted the request.

Request for CoC

144-867 4 Sterling Dr., Rafter/Calumet, GLM Eng.

This item was continued to the next meeting on 12/28/22.

Cont. Discussion

45 Miller Hill Rd., Cert. of Compliance update request by owner, Rafter-GLM

Present for the applicant was Joyce Hastings, GLM Engineering. The Commission discussed the continued Request for CoC, the waiver requirements and fees, and the mitigation planting.

Motion made and seconded to grant a waiver request for the wall. Roll call vote: Tim-Y, Anna-Y, Amey-Y, Jim-Y, John-Y.

Motion made and seconded to grant a waiver request for the 50% basal tree area in light of the mitigation planting. Roll call vote: Tim-Y, Anna-Y, Amey-Y, Jim-Y, John-Y.

Motion made and seconded to issue a CoC for 45 Miller Hill Rd with 4 permanent conditions outlined in Agent Bowser recommendation memo dated 12/11/22. Roll call vote: Tim-Y, Anna-Y, Amey-Y, Jim-Y, John-Y.

25 Miller Hill Rd., BZ Restoration Planting Plan-update, GLM

Present on behalf of the applicant was Joyce Hastings, GLM Engineering. The site plan, DEP delineation forms and buffer zone restoration planting plan were all submitted and Agent Bowser recommended approval of the plan as all her comments have been addressed and recommended issuance of an amended Enforcement Order. Joyce discussed Agent Bowser's comments and reviewed her responses, specifically the following:

#3 She requested a change to the recommended straw wattles and silt fence because the orange construction fence and mulch sock are already installed. Agent Bowser agreed the current fence could be maintained. She requested a change to amend conditions #4 and #6 as specified in her comment memo dated 12/11/22.

The Commission considered the requests and agreed to the changes.

Motion made and seconded to approve the buffer zone restoration plan. Roll call vote: Tim-Y, Anna-Y, Amey-Y, Jim-Y, John-Y.

Motion made and seconded to approve an Amended EO with conditions listed in Agent Bowser's report with modifications suggested in the applicant's report. Roll call vote: Tim-Y, Anna-Y, Amey-Y, Jim-Y, John-Y

Discussion

10:00 PM Agent's Report

1. Updates on Active Permits, Compliance, Enforcement & Wetland Protection Issues:
2. MAPC Technical Assistance Grant Application - Wetlands Protection/Climate Resiliency – This will be a Pro-Bono Effort by Agent.
3. 129 & 143 Dedham Street Permitting Update- There will be potential future plans submitted for these addresses.
4. Conservation Land Management Work Group Update- The work group met to compose an outline with goals. Wyld Woods is a first priority.
5. 19 Pond Street Enforcement Order Update Re: Restoration Plantings, Signage & Bounds-Agent confirmed the work at the site is complete.

Tim left at 10:12 PM

6. 3 & 6 Sterling Drive, 80 Greystone Rd. - Status of OOC Required BZ Restoration Plantings-
3 Sterling - Joyce Hastings, GLM said plantings have been installed and she will send a report. It will require 2 growing seasons.
6 Sterling – Joyce will submit a report. Phase II planting to finish in the Spring.
7. 12 & 14 Miller Hill Road - Update Re: Report of Possible Tree Removal Violations in Buffer Zone- Correspondence was received from The Trustees who hold a CR on land at 36 Farm St. that has been cleared of a significant number of trees by one of the abutting property owners. Agent Bowser provided an update on the status of this situation. The Commission discussed waiting to see the Trustees response or send a violation letter now from Conservation. The Chair suggested they revisit this in March. Agent Bowser recommended inviting property owners to a meeting after Jan. 11th. She recommended sending a letter to #12 and #14.
8. 8 Greystone – Agent waiting for monitoring reports.

Discussion

Jim McLaughlin discussed the Wilsondale cart path. Amey discussed trails at Schaffner Ln.(CR) and Wilsondale trails. John Sullivan discussed alternate trail coordination with The Trustees, Park & Rec, and Selectmen. There was further discussion of easements in general and monitoring responsibility. Jim will continue to work with George Sedgewick, Planning Board. The Commission work group plans to work on the Rules and Regs Subdivision and Large Lot Development Section.

Adjourned 10:30 PM.

Documents:

25 Haven St., Haven Meadows/Manor:
 144-842 CoC, 25 Haven St., Haven Meadows, 4/4/22
 DGS Law, James Grillo, Letter re: 25 Haven St., 12/7/22

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Rudolph Friedman, LLP letter re: 25 Haven St., 12/13/22
OOC 144-874, 25 Haven St., Haven Manor, 6/29/22
80 Wilsondale St. RDA 1/27/22, Landscape Plan, Natureworks, Jon Russo, 11/17/22
167 Claybrook Rd., Proposed Addition Plan, 8/17/22, NOI Narrative 11/18/22, Cheney Eng.
18 Walpole St., Metrowest Eng. Plan 11/30/22, NOI Narrative 11/9/22, Brian Nelson
92 Haven St. Field Resources NOI Plan rev. 12/13/22
4 Sterling Dr. CoC Request, 12/5/22, As-Built Plan GLM, Robert Truax, 11/29/22
45 Miller Hill Rd., CoC Req. 2/6/21, rev. As-Built Plan 11/16/22, GLM, rev. buffer zone
mitigation plan, 11/16/22, GLM, Tree Count/Waiver Req., GLM, 3/7/21
25 Miller Hill Rd., Rev. Restoration Plant Plan, GLM, 11/16/22
Agent Bowser Regulatory Report and recommendation memo dated 12/11/22

Conservation Commission Meeting Minutes 1/11/2023, 7:30 PM

Commission Members Attending: John Sullivan, Tim Holiner, Amey Moot, Anna Nagy, Jim McLaughlin, Christy Violin Absent: Sarah Monaco.

Other Attendees: Consultant Agent Janet Bowser, Lori Hagerty, Conservation Office, Nina Pickering and Olympia Bowker, Anderson Kreiger, Town Counsel.

Kevin O'Leary, Jillson Co., Russ Waldren, Applied Ecological Science for Pegan Ln ANRAD

Diane Simonelli, Field Resources, for 92 Haven St. NOI

James Grillo, Davagian, Grillo & Semple, LLP and Brett Berman, Fox Rothschild representing Justin O'Connell and Danielle Sheer, 25 Haven St.

Casey Sack, Preston Clinton, Jonathon Freidman, and Rudolph Friedman from Rudolph Friedman, LLP representing Patrick Corrigan.

Residents: William Murray, John D'Souza, Sam Lin, Vardhan Srinivasa.

Continued ANRAD Hearing

144-888 Pegan Ln., Lots 24,25,26-Malm

Present for the continued hearing was Kevin O'Leary, Jillson Co. and Russ Waldren, AES Russ Waldren visited the site with Paul McManus and they adjusted several wetland flags in a few areas. Agent Bowser recommended approval of the ANRAD and issuance of an ORAD. Motion made and seconded to close the hearing. Roll call vote: Jim-Y, Christy-Y, Amey-Y, Anna-Y, Tim-Y, John-Y. Motion made and seconded to approve the ANRAD as presented. Roll call vote: Jim-Y, Christy-Y, Amey-Y, Anna-Y, Tim-Y, John-Y.

Continued NOI Hearing

144-885 92 Haven St., site work in the buffer zone, Iansiti

Diane Simonelli, Field Resources was not able to attend. The hearing was continued to the next meeting on 1/25/23.

Cont. Hearing to Review / Revoke Orders of Conditions Permits

Request to Revoke OOC #144-842 Haven Meadows

Request to Revoke OOC #144-874 Haven Manor

Order of Conditions DEP#144-842 was granted a Certificate of Compliance for no work done and that document has been recorded at the Norfolk County Registry of Deeds.

Order of Conditions DEP#144-874 – There is a dispute and an Option. Parties have requested this Order be revoked as they did not agree with the Order of Notice of Intent. Property owner signature was not obtained. Trustee did not sign so application is incomplete. The Conservation Commission's job is to enforce the Wetland Protection Act for the Town of Dover and not to judicate legal decisions.

The Chair asked if there is any additional information the Commission has not received since the last meeting. Brett Berman asked the Commission to consider the property owner signature is a missing requirement. He said the Order is void and must be revoked.

Jonathon Friedman said all information has been submitted, but they want to make the Commission aware of a fact they did not previously have. He discussed the Option with the 5-yr period to exercise. The Court will decide if this Option is terminated. His client is the applicant with rights to the Option of the land as the applicant. The Notice of Intent was

executed by one of the beneficiaries and they had granted permission and they have the right to exercise documents on their behalf per the option. He asked the Commission to take no steps until the Court decides the Option.

Nina Pickering asked Jonathon Friedman if he is saying the beneficiary has the right to sign on behalf of the owner. He said they have been granted that right through the Option. That is why he is asking the Commission to wait until the Court decides. The Nominee Trust says the beneficiary can sign on behalf of the owner. The Trustee acts on behalf of beneficiaries.

Brett Berman said they cannot sign on behalf of the owner and also the Option has not been exercised by the applicant.

Nina (to Jonathon Friedman) said you're asking the Commission to not grant revocation. If a revocation is granted, what is the harm to your client? Jonathon said he has no loss, but it appears to be an interpretation that the Commission agrees with one side rather than the other side. Mr. Corrigan doesn't have to exercise the Option rights to have the Option rights in the future.

The Chair asked if Commission members had any questions. There were none.

Nina said in these circumstances it is prudent to require a Trustee signature. If the Option allows beneficiary signature, but the beneficiary is saying this is not what they want to do, it seems the Trustee should be signing as owner.

The Chair asked if any members of the public had any questions/comments. There were none.

Jonathon Friedman asked how the revocation would benefit the Commission or the land itself. He asked why it would be appropriate rather than suspension or a court order resolution.

Nina spoke on the reason to revoke. She said there is a legal concern about granting an Order of Conditions which is invalid without a signature and there is a cloud on the Title of a resident's property. There is legal risk to the Town leaving the Order as issued.

There were no further comments.

Motion was made and seconded to close the hearing. Roll call vote: Jim-Y, Christy-Y, Amey-Y, Anna-Y, Tim-Y, John-Y.

Motion was made to revoke Order of Conditions #144-874 for good and just cause. Motion seconded. Roll call vote: Jim-Y, Christy-Y, Amey-Y, Anna-Y, Tim-Y, John-Y.

The Order of Conditions is hereby revoked.

Request for CoC

144-867 4 Sterling Dr., Rafter/Calumet, GLM Eng.

This item was continued to the next meeting on 1/25/23 at the applicant's request.

Discussion

Town Report – Commissioner approval of draft

Motion made and seconded to accept the Town Report as presented. Roll call vote: Jim-Y, Christy-Y, Amey-Y, Anna-Y, Tim-Y, John-Y.

TM Warrant Articles

Warrant Article for appropriation to Conservation Fund

Warrant Article for Dover Wetlands Protection Bylaw Ch. 181-update language

Motion made to approve the 2 TM Warrant Article placeholders as listed on the agenda. Roll call vote: Jim-Y, Christy-Y, Amey-Y, Anna-Y, Tim-Y, John-Y.

Work Group Discussion

Christy updated the Commission that discussions and meetings have included the wording on signage related to conservation land regulations including the prohibition of motorized vehicle/motor bikes so police can enforce and reference the statute.

There was discussion of the Wylde Woods boy scout bridge and fixing with professional help and also winterize the current bridges.

Jim McLaughlin left the meeting at 8:52 PM.

Agent Bowser said no RDA would be required for trail maintenance because it is replacement of a prior structure.

Agent's Report

1. Updates on Active Permits, Compliance, Enforcement & Wetland Protection Issues:
2. Red Robin 40B Project - Pre-Construction Site Meeting, Monitoring & Project Schedule-Agent Bowser said Red Robin received their approval and when reports begin coming in she'll update the Commission.
3. ConCom Land Mgt. Work Group Update & Conservation Fund Warrant Article - Deadline Jan. 13th
4. Bridge Street/DLCT Culvert Repair Project - Jan. 9th Site Inspection & Update-Agent Bowser met with Kevin McCabe, DPW Director, and he will clean out. It is maintenance of an existing structure so no permits needed.
5. Charles River Watershed Climate Compact - ConCom to Complete Strategic Plan Stakeholder Survey-Agent Bowser previously distributed the survey to the Commission and requested that they complete the strategic plan survey.
6. 6 Sterling Drive - Notice of Violation Needed for OOC Required BZ Restoration Plantings Report-Agent Bowser said seasonal monitoring reports during the growing season are due and she suggested a Notice of Violation and send to 6 Sterling by certified mail with photos and information with current conditions – email also.
7. 25 Miller Hill Road - Update on Stormwater Management Corrective Actions-Agent Bowser said David Parrish, Sherborn Development, fixed the situation with silt sock and improved erosion control.
8. 12 & 14 Miller Hill Road - Update Re: Report of Possible Tree Removal Violations in Buffer Zone-Agent Bowser said the owners are hiring arborists to give valuation of the trees removed.

Adjourned 9:13 PM.

Documents:

1 Pegan Ln ANRAD:

Conservation Minutes 1/11/2023

Jillson Co. rev. plan Kevin O'Leary, 12/21/22

DEP Field Data Forms, Russ Waldren, AES 9/22/21, 11/28/22, 12/2/22, 12/9/22

EcoTec Report, Paul McManus, 12/22/22

92 Haven St. Field Resources NOI Plan rev. 12/15/22, Bradley Simonelli, PLS

25 Haven St., Haven Meadows/Manor:

144-842 CoC, 25 Haven St., Haven Meadows, 4/4/22 (recorded copy)

OOC 144-874, 25 Haven St., Haven Manor, 6/29/22

Davagian Grillo Semple, LLP, James Grillo, letter re: 25 Haven St., 12/7/22

Rudolph Friedman, LLP, Jonathon Friedman, letter re: 25 Haven St., 12/13/22

Town Report draft, no date

TM Warrant Articles draft, no date

Agent Bowser Regulatory Report and recommendation memo dated 1/8/23

Email from Agent Bowser Re: Bridge Street/DLCT Culvert Repair Project Site Inspection with Kevin McCabe, DPW Director, Dated 1/6/23

Email from Agent Bowser Re: Charles River Watershed Climate Compact Strategic Plan Stakeholder Survey, Dated 1/6/23

Email from Dave Parrish of Sherborn Development Re: 25 Miller Hill Road - Update on Required Stormwater Management Corrective Actions, dated 1/2/23