

December 6, 2024

VIA ELECTRONIC MAIL: gchimento@doverma.gov

Mr. George Chimento, Chair
Zoning Board of Appeals, Town of Dover
Dover Town House
5 Springdale Avenue
Dover, MA 02030

Re: 81-85 Tisdale Drive, Dover, Massachusetts

Dear Chairman Chimento and Members of the Zoning Board of Appeals:

Please be advised that this firm represents Tisdale Land, LLC (the “Applicant”), with regard to an application for a comprehensive permit, pursuant to G.L. c. 40B (the “Application”), to construct one building comprised of forty-two (42) residential apartment units (eleven (11) of which will be affordable), located on 5.10 acres of land at 81-85 Tisdale Drive, in Dover, Massachusetts (the “Project”). As you are aware, Zoning Board of Appeals (the “ZBA”) Chairman Chimento had requested via an email, dated November 5, 2024, that the Applicant provide written responses to: 1) questions raised by the Board of Selectmen (the “Selectmen”) of the Town of Dover (the “Town”), in a letter penned by the Town Manager, dated October 27, 2023, to Michael Busby, Relationship Manager with the Massachusetts Housing Finance Agency (hereinafter the “Town’s October 2023 Letter”); and 2) questions raised by the County Court Condominium Trust (the “Condominium Trust”), in a letter, dated November 4, 2024, from the Condominium Trust’s legal counsel, to ZBA Chairman Chimento (the Condominium Trust’s November 2024 Letter”). This correspondence serves to respond to the questions iterated in both the Town’s October 2023 Letter and the Condominium Trust’s November 2024 Letter, as enumerated below.

The underlying purpose of the comprehensive permit process, pursuant to G.L. c. 40B, is to facilitate the development of affordable housing by simplifying the permitting process such that a single application is submitted to the ZBA instead of to various Town boards. The ZBA, in making its decision on a comprehensive permit application, may take into consideration the recommendations of the Town’s various other boards and also has the authority to use the testimony of consultants. *See* G.L. c. 40B, § 21. Where, as here, the Town’s stock of affordable

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housing is below ten percent (10%) at the time of the application, there is ““a rebuttable presumption that there is a substantial [affordable] Housing Need which outweighs Local Concerns.”” *Eisai, Inc. v. Housing Appeals Committee*, 89 Mass. App. Ct. 604, 610 (2016) (citing *Zoning Board of Appeals of Sunderland v. Sugarbush Meadow, LLC*, 464 Mass. 166, 171 (2013) and quoting from 760 Code Mass. Regs. § 56.07(3)(a) (2012)). Whether the ZBA’s decision is consistent with “local needs” refers to the Town’s concerns regarding public health, design, and open space, in relation to the Project. *See Eisai* at 610 (citing *Zoning Board of Appeals of Wellesley v. Ardemore Apartments Ltd. Partnership*, 436 Mass. 811, 815 (2002)). The ZBA must balance the Town’s need for affordable housing with these local concerns; and, in issuing a decision on the comprehensive permit application, the ZBA must ensure that any planning objections to the Project reasonably accommodate affordable housing.

By way of background, on February 5, 2024, MassHousing, acting as Subsidizing Agency under the Comprehensive Permit Guidelines issued by the Executive Office of Housing and Livable Communities (“EOHLC”), issued a written determination of Project Eligibility, i.e., the Project Eligibility Letter (“PEL”) to the Applicant for the Project. The PEL states that the location of the Project is “suitable for residential use and development and that such use would be compatible with surrounding uses and would address the local need for housing” and that the density of the Project “is acceptable given the proposed housing type.” It is worth noting that the Town’s October 2023 Letter requests that MassHousing reject the Application and deny project eligibility and cites to various concerns as reasons therefor. Specifically, Sections I through III of the Town’s October 2023 Letter, express concern over the location of the Project and the Applicant’s qualifications as reasons for MassHousing to deny project eligibility. However, by virtue of the PEL, and as authorized under G.L. c. 40B, 760 CMR § 56.00, et seq., and the Comprehensive Permit Guidelines issued by the EOHLC (collectively, the “Comprehensive Permit Rules”), MassHousing determined that the Applicant is qualified and that the Project is appropriately sited. As the statutory authority to make these determinations rests exclusively with MassHousing—and not with the municipality, any questions raised in either the Town’s October 2023 Letter or the Condominium Trust’s November 2024 Letter that relate to the Applicant’s qualifications or the Project’s location are moot and will not be addressed in this correspondence. The Applicant offers responses to the remaining questions, as identified below from the Town’s October 2023 Letter and the Condominium Trust’s November 2024 Letter, for the ZBA’s consideration.

Questions Raised in the Town's October 2023 Letter and the Condominium Trust's November 2024 Letter:

A. Infrastructure

i. Roads

Both the Town and the Condominium Trust have expressed concern over Tisdale Drive being built originally as a private road measuring twenty-one feet (21')¹ in width, and they question whether Tisdale Drive could handle the increase in traffic and parking that the Project would produce. Further, the Town questions the current ownership of Tisdale Drive, i.e., whether it privately owned by the Condominium Trust. Vanasse has provided to the ZBA a letter, dated November 19, 2024, which is attached hereto as **Exhibit A**, to address the concerns cited by the Town and the Condominium Trust. These concerns are discussed, in turn, below.

a. Ownership Access of Tisdale Drive

The Condominium Trust claims that Tisdale Drive is a private roadway owned by the Condominium Trust and that the Applicant has no legal right to access Tisdale Drive without the consent of the County Court Condominium Association. However, the Applicant has determined that Tisdale Drive is listed as a public street in the Town of Dover official street list,² and there is a record of public acceptance of Tisdale Drive at the May 2005 Town Meeting.

Based upon the information made available by the Town, Tisdale Drive was accepted as a public street by Town Meeting in May 2005 in response to multiple petitions by the residents of the Tisdale neighborhood, including the residents within the County Court Condominium. Moreover, the two driveways serving the Property appear to have been constructed and used in reliance of these rights, and these pre-existing access rights were recognized in the applicable deeds and in the comprehensive permit that was recorded for the project that is now the County Court Condominium. Accordingly, research of the historical development of Tisdale Drive and the land around it demonstrates that the Property benefits from a perpetual right and easement to use Tisdale Drive for all purposes for which roads and ways are commonly used in the Town. This conclusion is based on the documents and analyses outlined in more detail in a memorandum, dated December 4, 2024, from Sullivan & Worcester LLP to the Applicant, a copy of which is attached hereto as **Exhibit B**.

¹ While the Town and the Condominium Trust identify Tisdale Road as being twenty-two feet (22'), a report provided by the Applicant's traffic consultant, Vanasse & Associates, Inc., Transportation Engineers and Planners ("Vanasse"), states that Tisdale Road measures twenty-one feet (21') in width.

² Attachment 1 to Chapter 160 of the General Bylaws of the Town of Dover.

b. Traffic Concerns

The Town and the Condominium Trust are concerned with the impact that the Project would have on the volume of traffic on Tisdale Drive. Vanesse conducted a traffic study in March 2024 as a part of the October 10, 2024 *Transportation Impact Assessment* (the “October 2024 TIA”) that was prepared by Vanesse in support of the Project. The study performed by Vanesse was prepared in consultation with MassDOT, the Town’s Planning Department, and the Town of Westwood Planning Division. The Project is expected to add 284 vehicles per day on an average weekday to Tisdale Drive, with an addition of 17 vehicles during weekday morning peak hour and 21 vehicles during the weekday evening peak hour.

Vanesse concludes in its TIA that the Project will not result in a significant increase on motorist delays or vehicle queuing, and all movements along Route 109 approaching Tisdale Drive are predicted to continue to operate with negligible vehicle queuing.

c. Roadway Width

Vanesse states that a 21-foot-wide roadway is sufficient to accommodate two-way traffic and emergency vehicle response and that the Project would create no significant impact to vehicles utilizing Tisdale Drive. Further, Vanesse reports that width of Tisdale Road would not need to be increased to accommodate the Project. Based on these considerations, Vanesse concludes that Tisdale Drive provides the appropriate width to accommodate two-way travel and the additional traffic related to the Project.

ii. Water

The Town and the Condominium Trust have expressed concern over the impacts that the Project may have on the quality and/or volume of the water supply in the Tisdale neighborhood. The Applicant understands that the Tisdale neighborhood currently uses common water administered by Aquarion Water Company of Massachusetts (“Aquarion”), which is a private water company. For your reference, a copy of Aquarion’s 2023 Water Quality Report is attached as **Exhibit C**. The Town and the Condominium Trust are concerned that the Applicant would not be able to ensure the Project would have sufficient access to water for its residents and for fire suppression purposes.

Aquarion would be the water service provider for the Project. Aquarion has provided the Applicant with a letter, dated May 2, 2023, a copy of which is attached hereto as **Exhibit D** (the “Aquarion Commitment Letter”), confirming that Aquarion “has sufficient water supply to meet the . . . residential demand for the [Project] . . .” The Aquarion Commitment Letter contains the same restrictions as those required and applied at Red Robin Pastures. Specifically, the Aquarion Commitment Letter notes that its commitment does not include water for irrigation or fire suppression. Accordingly, the Applicant will provide an underground storage tank and associated infrastructure of sufficient size to store water for the mandated fire suppression needs for the

property. This tank will be filled from external sources and will not use Aquarion Water as a source. This underground tank is shown on the project plans. The intent is to use drought resistant landscaping and/or a low volume on-site well to meet irrigation needs. In summary, neither fire suppression nor irrigation for the Project will use Aquarion water to meet the needs of this Project.

iii. Trash

The Town questions the proposed placement of a dumpster pad on the locked side of the emergency access road, as the proposed location appears to be within the driveway/parking area and limits parking spots and traffic flow. In response to the Town's concerns, the dumpster pad has been eliminated altogether from the Project. Instead, the Project plans now include a trash room in the interior of the Building.

iv. Parking

The Town and the Condominium Trust have expressed concern over the Applicant having proposed 65 parking spaces for 42 apartment units and have indicated that 65 parking spaces is inadequate for the Project. Town parking restrictions currently are in place along Tisdale Drive, and the Project will not change that. The Town states that the Zoning Bylaws "require 2 parking spaces per bedroom,"³ and the Condominium Trust erroneously cites to § 185-34 of the Town of Dover Zoning Bylaws (the "Zoning Bylaws"), claiming that "residential developments must provide for at least two (2) parking spaces per dwelling unit."⁴ However, these assertions are misplaced.

The Project site is located in the R-1 single-Family Residence (1 acre) zoning district (the "R-1 Zoning District"), where multi-family residential developments are not permitted. As such, off-street parking requirements are not defined in the Zoning Bylaws for this use. Section 185-34 of the Zoning Bylaws, on which the Condominium Trust relies in asserting that two parking spots are required for each of the Project's 42, does not apply to the R-1 Zoning District. Rather, § 185-34, by its own terms, applies specifically to "any building intended for a use *other than a residential use* and permitted in the *Business District, Medical-Professional District and the Manufacturing District . . .*" (Emphasis added.).

It is worth noting that, while not applicable to the R-1 Zoning District where the Project is sited, a more relevant section of the Zoning Bylaws to reference here is § 185-42.E., which applies to Multifamily Residence Zoning Districts and requires "1.5 car spaces for each dwelling unit, with such additional temporary parking spaces as may be approved by the Planning Board." Were § 185-42.E of the Zoning Bylaws applicable to the Project, it would be required to have 63 parking spaces for 42 apartment units. The Project proposes 65 parking spaces for its 42 apartment units.

³ See the Town's October 2023 Letter at p. 6.

⁴ See Condominium Trust's November 2024 Letter at p. 3.

Therefore, the number of proposed parking spaces for the Project, while not defined in the Zoning Bylaws, exceeds the 63 parking spaces that would be required under § 185-42.E of the Zoning Bylaws, if the Project were sited within a Multifamily Residence Zoning District. Accordingly, the Project should not be required to provide more than 65 parking spaces, as proposed.

B. Fire Protection and Life Safety

i. Pedestrian Accommodations/School-Age Children Safety

The absence of a sidewalk located along Tisdale Drive does not equate to an inherent safety deficiency, as sidewalks are not always provided along low volume residential roadways with slow travel speeds, such as Tisdale Drive. Vanesse does note, however, that it is desirable to provide sidewalks along roadways where pedestrians are expected, and where sidewalks can be accommodated. It is recommended by Vanesse that the Town, the Condominium Trust, and the Applicant work together to establish a separate pedestrian accommodation (such as a sidewalk) along Tisdale Drive. *See Exhibit A* at p. 2.

ii. Roadway Width and Emergency Access

Vanesse reports that the Fire Code (NFPA®1, Fire Code, National Fire Protection Association; Quincy, Massachusetts 2015) requires a clear width of 20 feet for fire department access. The current width of Tisdale Drive exceeds the requirements of the Fire Code for life safety access to serve the existing residential units of the County Court Condominium and the Project. Vanesse explains that this standard is established “to ensure that sufficient width is afforded for a vehicle (second or subsequent responding emergency vehicle) to pass an emergency vehicle that is staged curbside responding to an emergency.” *See Exhibit A* at p. 2.

Based on these considerations, Vanesse concludes that the existing width of Tisdale Drive meets the requirements of the Fire Code for life safety access.

C. Open Space and Recreation

The Town questions the Applicant’s proposal to construct a pathway between the Project and Red Robin Pastures, presumably for residents of the Project to utilize the open space/recreational amenities of Red Robin Pastures. However, this is not—and never has been—the intent of the Project. This Project and Red Robin Pastures are independent of each other. In the Applicant’s narrative to MassHousing, the Applicant states “It is proposed to create natural paths through the adjacent woodland/wetlands for the use of the residents, subject to approval.” In addition to the natural paths, as proposed, there is sufficient, suitable open space within the confines of the Project to provide facilities for the sole use of the residents of the Property, such as a tot lot, dog park, patio areas, etc. Moreover, as discussed more fully below, the Project could

share its open space facilities with Red Robin Pastures, and vice versa, should the Project avail itself of the option to do so.

The inclusion of the “preserv[ation of] open spaces” as a category of local need in G.L. c. 40B, § 20, addresses the *general* municipal preservation of open spaces, which term is defined in 760 CMR § 56.02 as “land areas, including parks, parkland, and other areas which contain no major structures and are reserved for outdoor recreational, conservation, scenic, or other similar use by the general public through public acquisition, easements, long-term lease, trusteeship, or other title restrictions which run with the land.” The Zoning Bylaws, however, do not contain any requirement relating to open space or recreational areas within the R-1 Zoning District where the Project is sited, nor do the Zoning Bylaws require open space or recreational areas for multi-family dwellings. Therefore, there is no local regulation or requirement that would prevent the Project from meeting the open space requirement under G.L. c. 40B as proposed, i.e., utilizing the walking path and open space/recreational amenities of neighboring Red Robin Pastures. *See 383 Washington Street, LLC, Appellant Braintree Zoning Board of Appeals, Appellee, 2020 MA. HAC. 20-04, 26–27, 2022 WL 826386, at *18* (citing *Herring Brook Meadow, LLC v. Scituate, No. 2007-15*, slip op. at 25 (Mass. Housing Appeals Comm. May 26, 2010) (Board of Appeals has the burden to prove a local concern protected by the Town’s local requirements or regulations, that it applies to the proposed development, and that the specific interests identified in the local regulation are important at the site)).

The ZBA cannot point to specific requirements contained in the Zoning Bylaws to impose any specific open space/recreational area requirements on the Project. *See Surfside Crossing, LLC, Appellant Nantucket Zoning Board of Appeals, Appellee, 2019 MA. HAC. 19-07, 24, 2022 WL 4381123, at *16*. Accordingly, the use of the neighboring open space and recreational area at Red Robin Pastures, which is owned by the same personnel as the developer of the Project—but under a different entity, would satisfy the requirements under G.L. c. 40B, as the open space there would be accessible to the residents of the Project. *Cf. Dennis Housing Corporation Appellant Dennis Board of Appeals, Appellee, 2002 MA. HAC. 01-02, 11, 2002 WL 34082291, at *6* (finding off-site open space could not be utilized by developer to satisfy open space requirement because it was not owned by developer, not physically accessible, and residents were not guaranteed access)).

D. Environment/Conservation Commission Review

The Town’s October 2023 Letter references several concerns as expressed by the Conservation Commission regarding the Project’s potential impacts on the environment. More specifically, these concerns relate to the Project’s proximity to a vernal pool and wetlands and the Project’s stormwater and drainage infrastructure. However, because these concerns fall under the jurisdiction of the Conservation Commission—and not the ZBA, these issues need not be addressed by the Applicant at this juncture. For the reasons outlined below, the Applicant must first obtain a comprehensive permit from the ZBA before filing a Notice of Intent with the Conservation Commission.

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Under G.L. 131, § 40 (the Wetlands Protection Act), an applicant must normally apply for and obtain all approvals required for a project under local bylaws prior to filing a Notice of Intent, if the permits are feasible to obtain. *See* 310 CMR § 10.05(4)(e), which states:

The requirement under M.G.L. c. 131, § 40 to obtain or apply for all obtainable permits, variances and approvals required by local by-law with respect to the proposed activity shall mean only those which are feasible to obtain at the time the Notice of Intent is filed.

The regulations, however, treat projects under G.L. c. 40B differently and do not require a “feasibility” determination. Specifically, 310 CMR § 10.05(4)(e) provides:

When an applicant for a comprehensive permit (under M.G.L. 40B, §§, 20 through 23) from a board of appeals has received a determination from the board granting or denying the permit and, in the case of a denial, has appealed to the Housing Appeals Committee . . . said applicant shall be deemed to have applied for all permits obtainable at the time of filing.

In 2021, the Massachusetts Superior Court interpreted this regulation as requiring applicants of Chapter 40B developments to first obtain a comprehensive permit from the local zoning board of appeals before filing a Notice of Intent with the conservation commission. A copy of the Superior Court decision in *Revers v. Department of Environmental Protection* is attached hereto at **Exhibit E** for your reference. Accordingly, the Applicant need not address at this time the concerns of the Conservation Commission, as outlined in the Town’s October 2023 Letter.

I hope that this information is helpful to the ZBA in considering the Application. We look forward to meeting with you on December 12th. In the interim, should you have any additional questions regarding the Application, please don’t hesitate to call or email me directly.

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Thank you for your time and kind consideration of this matter.

Sincerely,

MIRRIONE, SHAUGHNESSY
& UITTI, LLC

Tanya D. Trevisan

Tanya D. Trevisan, Esq.

cc: Tisdale Land, LLC
Dillon G. Brown, Esq. (via email: dbrown@meeb.com)

Encls.

EXHIBIT A



35 New England Business Center Drive
Suite 140
Andover, MA 01810

Ref: 9964

November 19, 2024

Mr. George Chimento, Chair
Dover Board of Appeals
Dover Town House
5 Springdale Avenue
P.O. Box 250
Dover, MA 02030

Re: Proposed Multifamily Residential Development
81 & 85 Tisdale Drive
Dover, Massachusetts

Dear Chair Chimento and Members of the Board of Appeals:

Vanasse & Associates, Inc. (VAI) is responding to the comments that were raised in the November 4, 2024 letter from Marcus, Errico, Emmer & Brooks, P.C. (MEEB) on behalf of the Board of Trustees of the County Court Condominium Trust (the "Condominium Trust") concerning the proposed multifamily residential development to be located at 81 and 85 Tisdale Drive in Dover, Massachusetts (hereafter referred to as the "Project"). Specifically, MEEB has alleged that Tisdale Drive is "currently unequipped to serve a project of this magnitude" referring to the Project and goes on to state that the roadway width and layout are inadequate to accommodate the potential increase in traffic and emergency vehicle access, and that the absence of sidewalks poses potential safety issues.

Tisdale Drive is a variable width, paved roadway that traverses a general north-south direction for a distance of approximately 1,000 liner feet (lf) north of County Street (Route 109) before terminating in a cul-de-sac configuration. At Route 109, Tisdale Drive provides two (2) 16± foot wide travel lanes that are separated by an 8± foot wide raised island that is 45± feet in length. To the north of the island, the cross-section of the Tisdale Drive tapers to 21± feet in width. At present, Tisdale Drive provides access to the County Court Condominiums, a 56-unit residential condominium development. Traffic counts that were conducted in March 2024 as a part of the October 10, 2024 *Transportation Impact Assessment* that was prepared by VAI in support of the Project (the "October 2024 TIA") indicate that Tisdale Drive accommodated approximately 19 vehicles during the weekday morning peak-hour and 26 vehicles during the weekday evening peak-hour, which is equivalent to approximately 250 vehicles per day on an average weekday (two-way, 24-hour volume).¹ As documented in the October 2024 TIA, the Project is expected to add 284 vehicles per day on an average weekday to Tisdale Drive, with 17 added vehicles during the weekday morning peak-hour and 21 added vehicles during the weekday evening peak-hour.

¹Based on traffic volume data collected along Route 109 in March 2024 in conjunction with the October 2024 TIA, peak-hour traffic volumes are approximately 9.0 percent of the traffic that occurs on an average weekday (two-way, 24-hour volume).

Adequacy of Roadway Width

A 21-foot wide roadway is sufficient to accommodate two-way traffic and emergency vehicle response. As documented in the October 2024 TIA, the intersection of Route 109 at Tisdale Drive is predicted to operate with limited delay and vehicle queuing, with motorists exiting Tisdale Drive predicted to experience delays of approximately 30 seconds to exit to Route 109 on average after the construction of the Project with residual vehicle queuing of up to one (1) vehicle, neither of which are considered significant or that would indicate the need to increase the capacity of Tisdale Drive to accommodate the Project. Additionally, the Fire Code (NFPA®1)² requires a clear width of 20 feet for fire department access roads. The current width of Tisdale Drive exceeds the requirements of the Fire Code for life safety access to serve the existing residential units and the Project. This standard is established to ensure that sufficient width is afforded for a vehicle (second or subsequent responding emergency vehicle) to pass an emergency vehicle that is staged curbside responding to an emergency. Accordingly, the 20-foot width is intended to allow for two vehicles to travel within the roadway width.

Based on these considerations, it is apparent that Tisdale Drive provides appropriate width to accommodate two-way travel and the additional traffic that will be associated with the Project. Further, the existing width of Tisdale Drive meets the requirements of the Fire Code for life safety access.

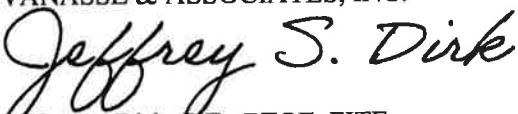
Pedestrian Accommodations

The absence of a sidewalk along Tisdale Drive in and of itself does not imply that there is an inherent safety deficiency. Sidewalks are not always provided along low volume residential roadways with slow travel speeds such as Tisdale Drive. That being said, it is desirable to provide sidewalks along any roadway where pedestrians are expected and where sidewalks can be accommodated. To the extent that there is a concern regarding increased traffic and the safety of pedestrians, it is recommended that consideration be given to coordination between the Town, the Condominium Trust and the Project proponent to establish a separate (from the traveled-way) pedestrian accommodation along Tisdale Drive or to installing traffic calming measures (i.e., speed humps or raised intersections) in conjunction with appropriate pedestrian and traffic calming warning signs.

We trust that this information is responsive to the comments that were identified in the November 4, 2024 letter prepared by MEEB on behalf of the Condominium Trust concerning the adequacy of Tisdale Drive to accommodate access to the Project. If you should have any questions, please feel free to contact me.

Sincerely,

VANASSE & ASSOCIATES, INC.



Jeffrey S. Dirk, P.E., PTOE, FITE
Managing Partner

Professional Engineer in CT, MA, ME, NH, RI, and VA

JSD/jsd

²NFPA®1, *Fire Code*, National Fire Protection Association; Quincy, Massachusetts; 2015.

EXHIBIT B

To: Tisdale Land LLC

From: Gregory S. Sampson

Date: December 4, 2024

Re: Rights to use of Tisdale Drive by Tisdale Land LLC

This memorandum summarizes our review of certain issues relating to the use of the street known as Tisdale Drive in Dover, Massachusetts by Tisdale Drive LLC, the owner of property located at 81 and 85 Tisdale Drive (collectively, the “Property”). We understand that certain landowners have asserted that Tisdale Drive is not a public street, despite the road being listed as a public street in the Town of Dover official street list¹ and despite there being a record of public acceptance of the road at the May 2005 Town Meeting. Based upon the information made available by the Town of Dover, it appears that the acceptance of Tisdale Drive by the town of Dover was done at the specific request of the residents of Tisdale Drive, including the residents within the County Court Condominium. Notwithstanding the outcome of the public street question, our research of the historical development of Tisdale Drive and the property around it demonstrates that the Property benefits from a perpetual right and easement to use Tisdale Drive for all purposes for which roads and ways are commonly used in the Town of Dover. This conclusion is based on the following documents and analysis:

Original Subdivision Layout

Tisdale Drive appears to have been originally proposed as part of the “Woodland Estates” definitive subdivision plan, which was a subdivision of land owned by Pribhu L. Hingorani, Trustee of 71 Realty Trust (“71 Realty”). The subdivision was approved by the Town of Dover Planning Board in July, 1988. The subdivision plan was recorded in the Norfolk County Registry of Deeds as Plan 726 of 1988 (the “1988 Subdivision Plan”). The 1988 Subdivision Plan showed 8 residential lots. A portion of Lot 8 was identified as “Lot B” and a portion of Lots 5 and 6 were identified as “Lot C.” Notes on the plan indicated that Lot B and Lot C were to be conveyed to abutting property owners pursuant to separate agreements.

In connection with the recording of the approved 1988 Subdivision Plan, 71 Realty also recorded a subdivision Covenant in Book 8028, Page 100² and a Grant of Roadway Easement in Book 8028, Page 109 (the “Roadway Easement”). Pursuant to the Roadway Easement, 71 Realty granted “to the Inhabitants of the Town of Dover the perpetual right and easement to use Tisdale Drive and Bullard Hillway as shown on [the Definitive Subdivision Plans] for all purposes for which roads and ways are commonly used in the Town of Dover...”.

¹ Attachment 1 to Chapter 160 of the General Bylaws of the Town of Dover.

² All Book and Page references refer to the Norfolk County Registry of Deeds.

Following the recording of the 1988 Subdivision Plan and the Roadway Easement, 71 Realty subsequently conveyed Lot B as shown on the 1988 Subdivision Plan to Ralph K. Maider and Joan K. Maider, Trustees of 61 Country Street, Dover, Realty Trust ("61 County") pursuant to a deed recorded in Book 8159, Page 417 (the "Lot B Deed"). 61 County was the owner of the land immediately adjacent to Lot B and it fronted along Tisdale Drive. In exchange for the conveyance of Lot B, 61 County conveyed a portion of its property, designated as "Lot A" on the 1988 Subdivision Plan to 71 County.

The Lot B Deed was conveyed by 71 County:

...subject to the payment of \$15,000.00 as to Grantor, (and its successors and assigns) for every buildable lot in excess of two (2) with frontage on Tisdale Drive as shown on said plan that Grantee, (and its successors) and assigns may hereafter obtain which obligation shall operate as a covenant running with the land hereby conveyed as well as upon Grantee's contiguous land and which shall be binding on Grantee and its successors and assigns for the benefit of Grantor and its successors and assigns.

As noted above, at the time that the 1988 Subdivision Plan and the Lot B deed were recorded, 61 County owned land on the east side of Tisdale Drive, immediately abutting Tisdale Drive and Lot B, as each were shown on the subdivision plan. The language quoted above that was incorporated into the Lot B Deed indicate that 61 County, the grantee under the Lot B Deed, had rights to establish at least two, and possibly more, buildable lots with frontage on Tisdale Drive.³

Chapter 40B Approval - County Court Condominium

Following approval of the 1988 Subdivision Plan, 71 Realty apparently decided to pursue an alternative development plan for its property and applied for and obtained a comprehensive permit under M.G.L. Chapter 40B from the Dover Board of Appeals for a 56 unit condominium development. The original comprehensive permit was recorded in Book 9069, Page 549 (the "40B Approval"). Condition #13 of the 40B Approval stipulated that:

To the extent that Tisdale Drive or any part thereof is constructed as shown on the previously approved subdivision plans for Woodland Estates, nothing in this Decision shall be constructed as altering any rights afforded to abutters to the east of the Site by virtue of the fact that some or all of those lots may have frontage on a way shown on a plan approved and endorsed in accordance with the Subdivision Control Law.

Like the Lot B Deed, the condition in the 40B Approval also indicate that abutters to the east of the "Site" owned by 71 Realty had potential rights to Tisdale Drive, as abutters to the drive with frontage on an established subdivision way.

1988 Subdivision Plan Rescission

Subsequent to the issuance of the 40B Approval, the Dover Planning Board voted to rescind the 1988 Subdivision Plan along with the Roadway Easement, pursuant to a Notice of Rescission of Subdivision Plan recorded in Book 9705, Page 119 (the "Subdivision Rescission"). Of particular

³ The agreement to pay compensation to Grantor upon approval of such buildable lots would otherwise be meaningless.

note, there is no record of any consent to such rescission by 61 County, as owner of Lot B. This is important because the Subdivision Control Law specifically states:

No modification, amendment or rescission of the approval of a plan of a subdivision or changes in such plan shall affect the lots in such subdivision which have been sold or mortgaged in good faith and for a valuable consideration subsequent to the approval of the plan, or any rights appurtenant thereto, without the consent of the owner of such lots, and of the holder of the mortgage or mortgages, if any, thereon; provided, however, that nothing herein shall be deemed to prohibit such modification, amendment or rescission when there has been a sale to a single grantee of either the entire parcel of land shown on the subdivision plan or of all the lots not previously released by the planning board.⁴

This statutory protection essentially means that the Subdivision Rescission did not apply to Lot B, which was a lot shown on the 1988 Subdivision Plan that was sold in good faith for valuable consideration subsequent to the approval of the plan and prior to the purported rescission.⁵ Therefore, Lot B continued to benefit from the rights afforded by the Roadway Easement, namely to use Tisdale Drive “for all purposes for which roads and ways are commonly used in the Town of Dover.”

The rescission being ineffective as to Lot B is significant, because Lot B was combined with other land of 61 County that immediately abutted Lot B and that fronted on Tisdale Drive. As reflected in the Lot B Deed and the 40B Approval, use of Tisdale Drive for frontage and access was contemplated for this land of 61 County. Lot B, being a portion of the Property, continues to benefit from the right and easement afforded to it by the Roadway Easement.

Status of Tisdale Drive as Public Street

As noted above, Tisdale Drive was accepted as a public street at the May, 2005 Town Meeting and it is currently listed as a public street in the official records of the Town of Dover. We recognize that there does not appear to be an order of taking recorded in the Registry of Deeds following the acceptance, which is a statutory requirement for establishment of a public way where the land is to be taken.⁶ Based on the acceptance being initiated by the residents of Tisdale Drive, however, it is possible that the interest in the road was vested in the Town by other means. We recommend that additional research be conducted relating to the petition by the residents of Tisdale Drive to establish the road as a public way.

Conclusion

The documentation made available by the Town of Dover indicates that Tisdale Drive was accepted as a public street by the Town of Dover in May, 2005 in response to multiple petitions by the residents of Tisdale to accept the road. Additional research is required to confirm that the

⁴ M.G.L. c. 41, §81W.

⁵ We also note that the Recission does not appear to contain a statement by the Planning Board that the rescission does not affect any lot conveyed subsequent to the approval of the subdivision plan. A statement to this effect is a requirement for recording under M.G.L. c. 41, §81X.

⁶ M.G.L. c. 82, §24.

Town obtained title to the road in connection with the acceptance in a manner consistent with statute.

Notwithstanding, if Tisdale Drive were to be considered a non-public street, the determination would not necessarily eliminate rights of access to the Property over Tisdale Drive. As established above, access rights were granted to a predecessor-in-title to the Property, and such rights were not relinquished. The two driveways serving the Property appear to have been constructed and used built in reliance of these rights, and these pre-existing access rights were recognized in both the Lot B Deed and the 40B Approval.

EXHIBIT C



DOVER SYSTEM | PWS ID#: MA3078006



Stewards of the Environment™

2023 WATER QUALITY REPORT

IN THIS REPORT

- 3-5 Water Quality Table
- 6 Monitoring Unregulated Contaminants
- 7 Your Health Is Our Priority
- 8 Lead in Drinking Water:
The Facts
- 9 Water Protection and Conservation
- 10 Glossary

Este informe contiene información importante sobre su agua potable. Pida a alguien que lo traduzca para usted, o hable con alguien que lo entienda.

Letter from the Vice President



Dear Aquarion Customer:

I am pleased to share that in 2023 Aquarion Water Company continued its commitment in delivering high-quality water to our valued customers. Over 7,600 tests conducted across our water systems confirmed that our water consistently meets or surpasses both state and federal water quality standards.

*John Walsh
Vice President, Operations
Aquarion Water Company
of Massachusetts*

We continue to invest in our wellfields, treatment facilities, pump stations, and distribution piping to ensure the reliable delivery of high-quality water. To keep customer rates affordable, Aquarion has sought state funding for several projects, and for those projects related to perfluoroalkyl and polyfluoroalkyl substances (PFAS), we are also pursuing settlements with the companies that manufactured these chemicals.

As part of the Lead and Copper Rule Revisions (LCRR), we are also developing an inventory of Aquarion-owned and customer-owned service lines to identify lead service lines in our service area. This inventory marks the initial phase of our efforts to eliminate any lead service lines in our water systems.

Lastly, thank you for your ongoing commitment to water conservation. Given the unpredictable shifts in precipitation, last year's abnormally wet weather could well be replaced by drier weather this year. For some helpful conservation tips, please check out page 9 in this report or visit www.aquarionwater.com/conserve.

With Appreciation,

A handwritten signature in blue ink that reads "John Walsh".

John Walsh

Questions About Your Water Quality Report?

Customers who have questions about water quality should call us at **800-832-2373**. Customers also may email us at waterquality@aquarionwater.com, or visit www.aquarionwater.com.



For discolored water, service problems or after-hours emergencies, or to participate in a public meeting, call **800-732-9678**.

Massachusetts Department of Environmental Protection:

[www.mass.gov/info-details/
public-drinking-water-system-operations](http://www.mass.gov/info-details/public-drinking-water-system-operations)

U.S. Environmental Protection Agency's Safe Drinking Water Hotline: **800-426-4791** or
www.epa.gov/safewater

Water Quality Table

Your water has been tested for more than 100 compounds that are important to public health. This table only reports detected compounds, all of which were below the amounts allowed by state and federal law. Most of these compounds are either naturally occurring or introduced as treatment to improve water quality. Monitoring frequency varies from daily to once every nine years per EPA regulation, depending on the parameter. Our testing encompasses the full range of regulated inorganic, organic and radiological compounds and microbiological and physical parameters. Results shown here are for detected compounds only.

SUBSTANCE (Units of Measure)	LIKELY SOURCE	MCLG	MCL	COMPLIANCE	TEST DATE	AVERAGE	RANGE
INORGANIC COMPOUNDS							
Barium (ppm)	Erosion of natural deposits	2	2	YES	2023	0.044	0.031 - 0.062
Copper (ppm)	Corrosion of household plumbing systems	1.3	AL = 1.3	YES	2023	0.48 ⁺	
Lead (ppb)		0	AL = 15	YES	2023	3 ⁺⁺	
Nitrate (ppm)	Runoff from fertilizer use; leaching from septic tanks, sewage; erosion of natural deposits	10	10	YES	2023	2.973	1.290 - 4.570
DISINFECTANT							
Chlorine (ppm)	Water additive used to control microbes	MRDLG = 4	MRDL = 4	YES	2023	0.64	0.06 - 1.71
ORGANIC COMPOUNDS							
Haloacetic Acids 5 (ppb)	By-product of drinking water chlorination	NA	60	YES	2023	33 ⁺	4 - 79
Total Trihalomethanes (ppb)		NA	80	YES	2023	58 ⁺	9 - 104
PFAS6# (ppt) - Draper Wells (offline in 2023)	Discharges and emissions from industrial and manufacturing sources associated with the production or use of these PFAS, including production of moisture and oil resistant coatings on fabrics and other materials. Additional sources include the use and disposal of products containing these PFAS, such as fire-fighting foams	NA	20	YES	2023	68 [^]	59 - 75
PFAS6# (ppt) - Chickering Wells		NA	20	YES	2023	17.7 [^]	15 - 19
PFAS6# (ppt) - Francis Street Wells		NA	20	YES	2023	13 [^]	6 - 15
PFAS6# (ppt) - Knollwood Wells		NA	20	YES	2023	10 [^]	8 - 10

Continued on page 4

SUBSTANCE (Units of Measure)	LIKELY SOURCE	SMCL	TEST DATE	AVERAGE	RANGE	HEALTH AND/OR AESTHETIC EFFECTS
SECONDARY CONTAMINANTS MONITORING RESULTS						
Aluminum (ppb)	Residue from water treatment process; erosion of natural deposits	200	2023	10	ND < 2 - 20	May produce colored water
Chloride (ppm)	Naturally present in the environment	250	2023	80	64 - 96	May produce a salty taste
Manganese (ppb)	Erosion of natural deposits	50	2023	20	ND < 0.6 - 55	Use of water containing manganese at concentrations above the secondary MCL may result in aesthetic issues including the staining of laundry and plumbing fixtures and water with an unpleasant bitter metallic taste, odor, and/or black-brown color.
Sulfate (ppm)	Runoff and leaching from natural deposits; industrial wastes	250	2023	15.3	13.6 - 16.4	May produce a salty taste
Total Dissolved Solids [TDS] (ppm)	Runoff and leaching from natural deposits; seawater influence	500	2023	223	195 - 241	May produce hardness, deposits, colored water, staining, salty taste
Zinc (ppm)	Corrosion of household plumbing systems; erosion of natural deposits	5	2023	0.02	ND < 0.002 - 0.069	May produce a metallic taste

FOOTNOTES

- ◆ 90th percentile value in copper monitoring. Result is representative of customer sampling stagnant water. No locations exceeded the action level for copper. Highest 90th percentile value shown.
- ◆ 90th percentile value in lead monitoring. Result is representative of customer sampling stagnant water. No locations exceeded the action level for lead. Highest 90th percentile value shown.

^A Average is the highest quarterly average of all sample sites. Values in the range are individual measurements.

⁺ Value is the highest locational annual average of quarterly measurements for disinfection byproducts in the distribution system. Values in the range are individual measurements.

Public Notification
We provided this notification in last year's report, which shared water quality information from the 2022 calendar year. Because this monitoring was missed in 2023, we are repeating the notice in this year's report to ensure all customers receive this information.

We are required to monitor your drinking water for specific contaminants on a regular basis. Results of regular monitoring are an indicator of whether or not our drinking water meets health standards. During the first quarter 2023 monitoring period, we did not complete all monitoring for manganese at the Knollwood wells and therefore cannot be sure of the quality of our drinking water during that short time. The Knollwood wells were taken offline on January 11 for improvements, and a sample should have been collected beforehand.

This was not an emergency and there is nothing you need to do at this time. We collected additional samples in the second, third, and fourth quarters of 2023, which all showed nondetectable levels of manganese. The results from these samples are included in the Water Quality Table on page 4 of this report.

Please share this information with all the other people who drink this water, especially those who may not have received this notice directly (for example, people in apartments, nursing homes, schools, and businesses). You can do this by posting this notice in a public place or distributing copies by hand or mail.

Maximum Contaminant Level (SMCL) for manganese of 50 ppb (parts per billion or micrograms per liter). In addition, MassDEP's Office of Research and Standards (ORS) has set a drinking water guideline for manganese (ORSG), which closely follows the EPA public health advisory for this mineral. Drinking water may naturally have manganese and, when concentrations are greater than 50 ppb, the water may be discolored and taste bad. Over a lifetime, the EPA recommends that people drink water with manganese levels less than 300 ppb and, over the short term, it

Health Effects

Manganese: Manganese is a naturally occurring mineral found in rocks, soil, ground water and surface water. It is necessary for proper nutrition and is part of a healthy diet; but it can have undesirable effects on certain sensitive populations at elevated concentrations. The United States EPA and MassDEP have set an aesthetics-based Secondary Maximum Contaminant Level (SMCL) for manganese of 50 ppb (parts per billion or micrograms per liter). In addition, MassDEP's Office of Research and Standards (ORS) has set a drinking water guideline for manganese (ORSG), which closely follows the EPA public health

advisory for this mineral. Drinking water may naturally have manganese and, when concentrations are greater than 50 ppb, the water may be discolored and taste bad. Over a lifetime, the EPA recommends that people drink water with manganese levels less than 300 ppb and, over the short term, it recommends that people limit their consumption of water with levels over 1,000 ppb, primarily due to concerns about possible neurological effects. Children up to 1 year of age should not be given water with manganese concentrations over 300 ppb, nor should formula for infants be made with that water for more than a total of 10 days throughout the year.

PFAS: Some people who drink water containing PFAS in excess of the MCL may experience certain adverse effects. These could include effects on the liver, blood, immune system, thyroid, and fetal development. These PFAS may also elevate the risk of certain cancers.

Sodium: Sodium-sensitive individuals such as those experiencing hypertension, kidney failure, or congestive heart failure, who drink water containing sodium should be aware of levels where exposures are being carefully controlled.

Other Monitored Substances

Source Water Assessment Report

The Massachusetts DEP's Source Water Assessment Program (SWAP) has evaluated each water source to identify potential contamination and states that the sources that supply drinking water to the Dover System have a moderate-to-high susceptibility to potential contamination. The SWAP report is available on the DEP website. Go to www.mass.gov and enter source water assessment report in the search bar.



Monitoring Unregulated Contaminants

Unregulated contaminants are elements that currently have no health standards for drinking water and are not reported in the regulated contaminants table on page 3. Nickel is an unregulated contaminant that is monitored at the same time as the required monitoring for inorganic compounds.

Substance (Units of Measure)	Detected Level			
Unregulated Contaminants	OSRG	Test Date	Average	Range
Sodium (ppm)	20	2023	46	40 - 50
Perfluorobutanesulfonic Acid [PFBS] (ppt)	N/A	2023	4	2 - 6
Perfluorohexanoic Acid [PFHxA] (ppt)	N/A	2023	15	2 - 41

Your Health Is Our Priority

Drinking water, including bottled water, may reasonably be expected to contain at least small amounts of some contaminants. The presence of contaminants does not necessarily indicate that water poses a health risk. To ensure tap water is safe to drink, the EPA and MassDEP prescribe regulations that limit the amount of certain contaminants in water provided by public water systems. The Food & Drug Administration (FDA) and Massachusetts Department of Public Health (DPH) Regulations establish limits for contaminants in bottled water that must provide the same protection for public health.

More information about contaminants and potential health effects can be obtained by calling the EPA's Safe Drinking Water Hotline, **800-426-4791**.

Where Does Your Water Come From?

The water provided to our Dover customers comes from several groundwater supply wells. These groundwater sources are located off Francis Street, Knollwood Drive, Draper Road and Chickering Drive. The first three wellfields are interconnected and serve the majority of our customers. The Draper wells were not in service in 2023. The Chickering Drive source is

independent of the others and serves just that area. The water from each well is treated and then distributed to our customers through an extensive network of pipes. Dover's water system serves approximately 1,810 people with an average amount of water delivered in 2023 of 155,500 gallons per day.

How Is Your Water Treated?

All water from the wells is filtered naturally underground. The water then receives pH adjustment for corrosion control. We also chlorinate the water at the Draper Road and Picardy pumping stations. In June last year we added chlorination treatment to the Knollwood wells.

Cryptosporidium

The EPA requires public water systems that use surface water sources to monitor for Cryptosporidium. This is a microbial pathogen found in lakes and rivers throughout the U.S. that can cause gastrointestinal illness if consumed. Aquarion continues to monitor its surface water sources and has not detected Cryptosporidium.

Copper

Copper is an essential nutrient, but some people who drink water containing copper in excess of the action level* over a relatively short period of time could experience gastrointestinal distress. Some people who drink water containing copper in excess of the action level over many years could suffer liver or kidney damage. People with Wilson's Disease

chlorine, which is added to water to eliminate bacteria and other microorganisms. Currently there are limits on two types of DBPs known as Total Trihalomethanes (TTHM) and Total Haloacetic Acids (THAA). Some people who drink water containing DBPs that exceed these limits over many years may experience problems with their livers, kidneys, or central nervous systems, and may have an increased risk of getting cancer.

The state has implemented new DBP regulations that change how compliance with the standards is determined. The intent is to increase protection against the potential health risks associated with DBPs. Aquarion Water Company continues to evaluate its systems to ensure compliance with DBP regulations.

Immuno-compromised persons

Some people may be more vulnerable to contaminants in drinking water than the general population. Immuno-compromised persons such as persons with cancer undergoing chemotherapy, persons who have undergone organ transplants, people with HIV/AIDS or other immune system disorders, some elderly, and infants can be particularly at risk from infections. These people should seek advice about drinking water from their health care providers. The EPA and the Center for Disease Control and Prevention (CDC) guidelines on appropriate means to lessen the risk of infection by Cryptosporidium and other microbial contaminants are available from the Safe Drinking Water Hotline, **800-426-4791**.

Disinfection By-Products

Disinfection by-products (DBPs) are chemicals formed during the disinfection process, when naturally occurring organic matter reacts with

Major sources of copper in drinking water include corrosion of household plumbing systems and erosion of natural deposits.

*The concentration of a contaminant which, if exceeded, triggers treatment or other requirements which a water system must follow.

Lead in Drinking Water: The Facts

If present, elevated levels of lead can cause serious health problems, especially for pregnant women and young children. Lead in drinking water comes primarily from materials and components associated with service lines and home plumbing. Aquarion Water Company is responsible for providing high quality drinking water but cannot control the variety of materials used in plumbing components. Fortunately, the Lead in Drinking Water Act, which took effect in January 2014, requires a significant reduction of the lead content in new plumbing components that contact drinking water. As a result, the lead content in new pipes, fittings, fixtures, and solder must be reduced from 8% to 0.25%.

Customers can minimize the potential for lead exposure when water has been sitting for several hours by running the tap for 30 seconds to 2 minutes before using water for drinking or cooking. If you are concerned about lead in your water, you may wish to have your water tested. Information on lead in drinking water, testing methods, and steps you can take to minimize exposure is available from the Safe Drinking Water Hotline or at epa.gov/safewater/lead. Aquarion maintains a regular schedule for lead monitoring.

EPA and DPH have established extensive regulations for water utilities to follow regarding lead. If lead is present in drinking water, it can cause numerous harmful effects on a person's health. The EPA has determined there is no safe level of lead.

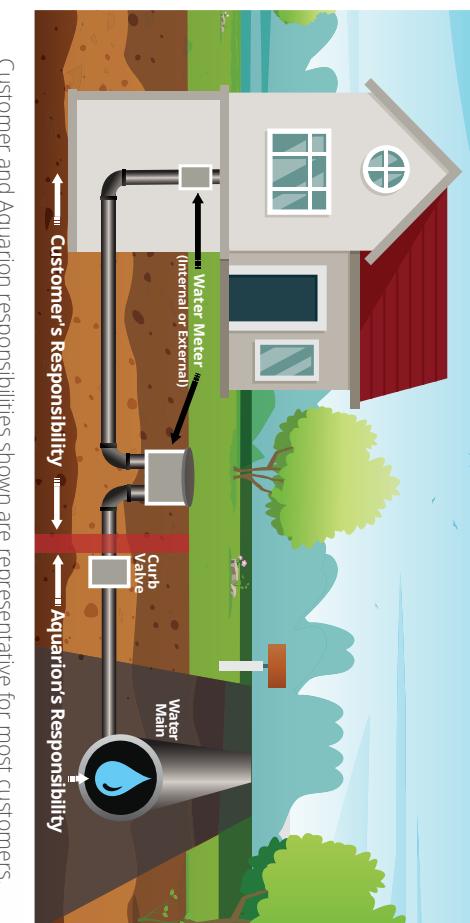
Health Effects

Lead is especially harmful for infants and young children, causing developmental delays, learning difficulties, irritability, loss of appetite, weight loss, sluggishness, fatigue, abdominal pain, vomiting, constipation and hearing loss.

Effects on adults may include high blood pressure, abdominal pain, constipation, joint pains, muscle pain, decline in mental functions such as abstract thinking and focus, numb or painful extremities, headache, memory loss, mood disorders, fertility issues in men, and miscarriage or premature birth in pregnant women.

What to do About Lead in a Service Line

A service line is the pipe that connects a customer's premises to Aquarion's water main in the street (see illustration above). Homes built before 1986 may have lead service lines (with a few exceptions, most were installed in



Customer and Aquarion responsibilities shown are representative for most customers.

Other Precautions You Can Take

There are other ways to reduce the risk of lead exposure from your water pipes:

- ✓ If you have not used any of your faucets for a number of hours (for example, overnight or while you are at work), run the water for 2 minutes. This will bring in fresh water from our water main, which contains no lead.
- ✓ Always use cold water for drinking, cooking and preparing baby formula.

This will help reduce your potential exposure to lead in drinking water.

- ✓ Periodically remove and clean the faucet screens/aerators. While doing so, run the tap to eliminate debris.

Aquarion offers more detailed information on lead in drinking water and how to minimize exposure on our website at www.aquarionwater.com/learnaboutlead. You also can call the Safe Drinking Water Hotline at 800-426-4791 or go to www.epa.gov/safewater/lead.

Water Protection and Conservation

How Aquarion Protects Your Drinking Water

Aquarion Water Company is committed to providing the highest quality water to our customers. Toward that end, we conducted 7,609 water quality tests in 2023 across all our Massachusetts systems, and we regularly inspect businesses, farms, homes and other sites that could affect our water supply.

Here are some examples of pollutants that may wash into surface water or seep into groundwater:

- Microbial contaminants from septic systems
- Inorganic contaminants such as road salt or metals
- Pesticides and herbicides from residential uses
- Organic chemical contaminants, including synthetic and volatile organic chemicals

Conservation



You Can Protect Water Too:

- Ensure that your septic system works correctly
- Use chemicals and pesticides sparingly
- Dispose of waste chemicals and used motor oil properly
- Report illegal dumping, chemical spills, or other polluting activities to the MassDEP Emergency Response Section at 888-304-1133; Aquarion Water, 508-865-3998; or your local police

By reducing water consumption, Aquarion customers have made outstanding progress in ensuring that our area has enough water, no matter what the skies deliver. Many thanks to all the customers who cut back on outdoor sprinkler irrigation and other uses, helping to save approximately 5 billion gallons of water across our systems over the last six years. There's still more to do, though. Here are some easy tips on what everyone can do to conserve the supply of this irreplaceable resource:

Reduce excessive irrigation

Use a WaterSense labeled smart irrigation controller that adjust watering schedules based on weather conditions, soil moisture levels, and plant requirements.

Rely more on the sky
Put a rain barrel under a down-spout to capture rainwater for your garden.



Apply mulch

Adding a layer of mulch around your plants helps retain moisture, reducing the need to water as often.

Remedy a leaky toilet

Watch our step-by-step video at www.aquarionwater.com about finding and fixing leaks. Better yet, upgrade to a new, WaterSense labeled model to save three or more gallons with every flush.

For more tips, visit www.aquarionwater.com/conserv.

Forget fertilizing

Many use salts that make your lawn less drought-resistant.

through back-pressure or back-siphonage, to create a health hazard to the public water supply and the water system within the premises."

Our Cross-Connection Control Program helps ensure that your drinking water is protected from possible contamination. Across-connection, as defined by the MassDEP, "is any actual or potential connection between a distribution pipe of potable water from a public water system and any waste pipe, sewer, drain, or other unapproved source that has the potential,

facilities for regulatory compliance. If they find unprotected cross-connections, they will require installation of backflow prevention devices to protect the water distribution system.

Aquarion's MassDEP-certified cross-connection surveyors and testers routinely conduct surveys and test backflow prevention devices at our customers'

of cross-connection contamination. At your home, you can protect your family and the distribution system from potential contaminants by installing a simple, inexpensive backflow device called a Hose-Bibb Vacuum Breaker (HBVB) that mounts directly to your spigot.

Glossary

These terms may appear in your report.

Definitions	<p>< - Less than</p> <p>> - Greater than</p> <p>90th Percentile - Out of every 10 homes sampled, 9 were at or below this level. This number is compared to the action level to determine lead and copper compliance.</p> <p>AL - Action Level: The concentration of a contaminant which, if exceeded, triggers treatment or other requirements which a water system must follow.</p> <p>gpg - Grains per gallon</p> <p>HA - Health Advisory</p> <p>MCL - Maximum Contaminant Level: The highest level of a contaminant that is allowed in drinking water. MCLs are set as close to the MCLGs as feasible using the best available treatment technology.</p>				
MCLG - Maximum Contaminant Level Goal:	ND - Not Detected	NTU - Nephelometric Turbidity Units	OSRG - Office of Research and Standards Guideline.	TT - Treatment Technique:	NA - Not Applicable
The level of a contaminant in drinking water below which there is no known or expected risk to health. MCLGs allow for a margin of safety.	NTU - Nephelometric Turbidity Units, a measure of the presence of particles. Low turbidity is an indicator of high-quality water.	This is the concentration of a chemical in drinking water at or below which adverse health effects are unlikely to occur after chronic (lifetime) exposure. If exceeded, it serves as an indicator of the potential need for further action.	This is the concentration of a disinfectant allowed in drinking water. There is convincing evidence that addition of a disinfectant is necessary for control of microbial contaminants.	A required process intended to reduce the level of a contaminant in drinking water.	nanograms per liter (ng/L)
MRDL - Maximum Residual Disinfectant Level: The highest level of a disinfectant allowed in drinking water.	ND - Not Detected	NTU - Nephelometric Turbidity Units	OSRG - Office of Research and Standards Guideline.	TT - Treatment Technique:	RAA - Running Annual Average. The average of four consecutive quarters of data.
The level of a drinking water disinfectant below which there is no known or expected risk to health. MRDLGs do not reflect the benefits of the use of disinfectants to control microbial contamination.	ppb - parts per billion, or micrograms per liter (ug/L)	ppm - parts per million, or milligrams per liter (mg/L)	Unregulated contaminants are those for which EPA has not established drinking water standards. The purpose of unregulated monitoring is to assist EPA in determining their occurrence in drinking water and whether future regulation is warranted.	SMCL - Secondary Maximum Contaminant Level	ppt - parts per trillion, or nanograms per liter (ng/L)

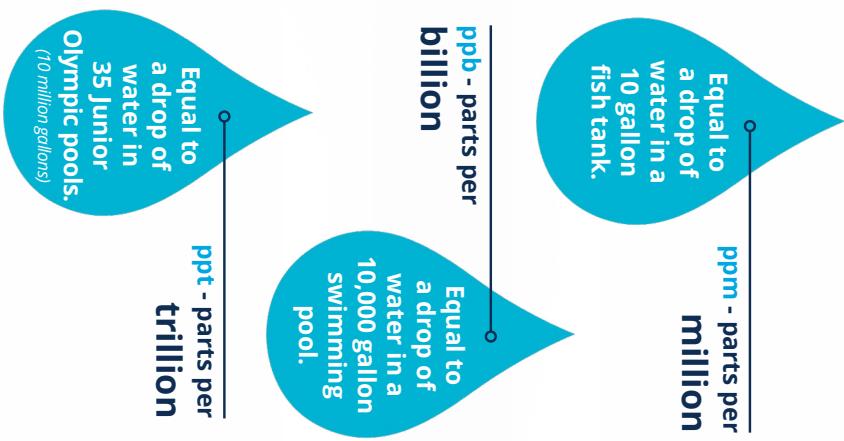


EXHIBIT D



203.445.7310 phone
800.732.9678 (toll free)

May 2, 2023

Paul McGovern
Red Robin, LLC
10 Springdale Ave
Dover, MA 02030

Re: Request for Water Service – 81/85 Tisdale Ave, Dover, Massachusetts
Tisdale Drive Apartments

Dear Mr. McGovern,

This letter confirms that Aquarion Water Company of Massachusetts (Aquarion) has sufficient water supply to meet the following estimated residential water demand for the proposed development at the above referenced property.

- Average Day Demand: 8,800 gallons per day
- Maximum Day Demand: 17,600 gallons per day

This commitment does not include irrigation demands because no demand projections for irrigation were included in the application submitted to Aquarion. If you wish to include irrigation in your project, you will need to update your application and resubmit your Will Serve Letter request.

Aquarion cannot meet the requested 600 gallons per minute at 65 psi sprinkler demand. The applicant is responsible for providing fire suppression for the property.

Please note that future water service connections for this proposed project are contingent upon the completion and fulfillment of Aquarion's project requirements, including, but not limited to the following:

- Final utility plans that meet all Aquarion's requirements for water service.
- Acceptance of an Application for New Domestic Water Service for each new service connection.
- The Owner is responsible for all costs associated with furnishing and installing all necessary infrastructure required to connect to the Aquarion water system and deliver water service to the property.
- All water utility infrastructure must meet the requirements of Aquarion standards and specifications.

This service commitment is valid for 12 months from the date of issuance. If your proposed project is not ready for water service (intended usage) within 12 months of this letter, then Aquarion's ability to serve your project will have to be re-evaluated.

Aquarion Water Company

WILL SERVE LETTER APPLICATION FOR MASSACHUSETTS

APPLICATION DATE: 3/7/2023

PROJECT / SITE INFORMATION

Project Name: Tisdale Drive Apartments
Location / Address: 81/85 Tisdale Ave, Dover, MA

Proposed Use: Commercial / Industrial Building Size (s.f.): _____
 Residential Building Size (s.f.): 45,000sf

Site Elevations: High: 296 ft. Low: 272 ft.

Datum Elevation (USGS): _____

Length / Size (Dia.) of Proposed Service: To be confirmed

Site Plan Attached: (Must show Elevation Contours)

WATER DEMAND INFORMATION (Determined by the applicant's project plumbing consultant)

Commercial / Industrial Use	Residential Use
<u>Commercial / Industrial Demand</u> Projected Facility Usage _____ gal/day (310 CMR 15.203)	<u>Domestic Demand</u> No. Units <u>40</u> No. Bedrooms/Unit <u>varies</u> Total No. Bedrooms <u>80</u>
Projected Irrigation Usage _____ gal/day	Projected Residential Usage <u>8,800</u> gal/day (110 gpd/bedroom, 310 CMR 15.203)
<u>Fire Flow Requirements</u> Hydrant _____ gal/min. Building Sprinklers: Yes <input type="checkbox"/> No <input type="checkbox"/> Required Sprinkler Flow: _____ gal/min. Residual Pressure: _____ psi	<u>Fire Flow Requirements</u> Hydrant _____ gal/min. Building Sprinklers: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Required Sprinkler Flow: <u>600</u> gal/min. Residual Pressure: <u>65</u> psi

Residential projects greater than 3 bedrooms and commercial/industrial projects greater than 100,000 gallons per year (274 gallons per day) are subject to the Water Balance Program.

CONTACT INFORMATION

Applicant (or Agent) Name: Red Robin Pastures, LLC
Address: 10 Springdale Ave, Dover, MA 02030
Tel. No.: 978.377.1705
Email.: paul@pgcminc.com

SIGNATURE: Paul McGovern PRINT NAME & TITLE: Paul McGovern, Manager

Instructions: Will Serve Letter applications to be completed and delivered to:
Mr. Paul Lawson, Manager of Operations, Millbury/Oxford
Aquarion Water Company, 24 Providence Street, Millbury, MA 01527
Phone No.: (508) 865-3998

EXHIBIT E

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 2081CV01447

LISE REVERS & others¹

vs.

DEPARTMENT OF ENVIRONMENTAL PROTECTION & others²

MEMORANDUM OF DECISION AND ORDER ON DEFENDANT
518 SOUTH AVE, LLC'S MOTION TO DISMISS

Plaintiffs, certain residents of the Town of Weston, commenced this action against the Department of Environmental Protection (“DEP”), the Weston Conservation Commission (“Commission”), and a developer, 518 South Ave, LLC (“Developer”). The Developer seeks to construct an affordable housing complex adjacent to a wetland in Weston. The matter is presently before the court on the Developer’s motion to dismiss certain counts of Plaintiffs’ amended complaint pursuant to Mass. R. Civ. P. 12(b)(6). After a hearing on January 11, 2021, and consideration of the submitted materials, the motion is ALLOWED in part and DENIED in part.

BACKGROUND

The amended complaint, and certain attachments to the original complaint, set forth the following facts.

The Developer seeks to build a 200-unit apartment building on property located at 518 South Avenue in Weston (the “Site”). The Site contains a bordering vegetated wetland, through which an unnamed stream flows. Pursuant to the Wetlands Protection Act, G.L. c. 131, § 40

¹ Louis Mercuri, Rebecca Mercuri, Richard Gilman, Barbara Gilman, Fernanda Bourlot, Martin Bourlot, Warren Heilbronner, Joan Heilbronner, John Gifford, Victoria Gifford, and Julie Hyde.

² Weston Conservation Commission and 518 South Ave, LLC.

(“Act”), the Northeast Regional Office of the DEP issued to the Developer a Superseding Order of Resource Area Delineation (“SORAD”), classifying the unnamed stream as “intermittent” as opposed to “perennial.” Because this distinction implicates how restrictive the Developer’s construction must be in relation to the wetland, Plaintiffs appealed the issue to the DEP’s Office of Appeals and Dispute Resolution. It issued a Recommended Final Decision dated May 8, 2020, (“DEP Decision”), affirming the stream’s identification as intermittent, which the DEP commissioner adopted on May 11, 2020. On June 22, 2020, Plaintiffs filed their complaint in this action, appealing the DEP Decision under G.L. c. 30A, § 14, and seeking declaratory relief.

During the pendency of Plaintiffs’ appeal of the stream determination, the Developer applied to the Weston Zoning Board of Appeals for a comprehensive permit for the project under G.L. c. 40B, §§ 20-23. Before having received a decision on its c. 40B application, the Developer also filed a Notice of Intent (“NOI”) with the Commission seeking an Order of Conditions, which is a requirement for construction under the Act. On August 18, 2020, the Commission held a public hearing on the NOI.

On September 2, 2020, Plaintiffs filed their amended complaint. Therein, in addition to appealing the stream determination, Plaintiffs seek enforcement of a procedural regulation that they allege prohibits the Developer from filing its NOI before the Zoning Board of Appeals has rendered its decision on the Developer’s c. 40B application. The amended complaint thus adds claims for declaratory relief and mandamus on the enforcement issue (Counts III and IV), and an action to prevent damage to the environment under G.L. c. 214, § 7A (Count V). The Developer moves to dismiss these three additional counts.

STANDARD OF REVIEW

To withstand a motion to dismiss pursuant to Mass. R. Civ. P. 12(b)(6), the factual allegations in the complaint must be sufficient, as a matter of law, to state a recognized cause of action or claim, and plausibly suggest an entitlement to relief. *Iannacchino v. Ford Motor Co.*, 451 Mass. 623, 636 (2008). When considering a claim, the court accepts as true the allegations set forth in the complaint and draws any reasonable inferences in the plaintiff's favor. *Sisson v. Howe*, 460 Mass. 705, 707 (2011).

DISCUSSION

I. Enforcement of Regulations Concerning Notice of Intent (Counts III and IV)

Plaintiffs allege that, under the Act and its associated regulations, the Developer prematurely filed its NOI because it had not yet received a decision on its c. 40B application. Where the resolution of this question involves statutory and regulatory interpretation, the court begins by setting forth the relevant legal framework.

General Laws c. 131, § 40 provides, in relevant part:

No such notice [of intent] shall be sent before all permits, variances, and approvals required by local by-law with respect to the proposed activity, which are obtainable at the time of such notice, have been obtained, except that such notice may be sent, at the option of the applicant, after the filing of an application or applications for said permits, variances, and approvals; provided, that such notice shall include any information submitted in connection with such permits, variances, and approvals which is necessary to describe the effect of the proposed activity on the environment.

The associated agency regulation, 310 Mass. Code Regs. 10.05(4)(e), expounds on this language, providing:

The requirement under M.G.L. c.131, § 40 to obtain or apply for all obtainable permits, variances and approvals required by local by-law with respect to the proposed activity shall mean only those which are feasible to obtain at the time the Notice of Intent is filed. Permits, variances, and approvals required by local by-law may include, among others, zoning variances, permits from boards of appeals, permits required under floodplain or wetland zoning by-laws and gravel removal permits. They do not include, among others,

building permits under the State Building Code, M.G.L. c. 23B, § 16, or subdivision control approvals under the State Subdivision Control Law, M.G.L. c. 41, §§ 81K through 81GG, which are issued by local authorities. When an applicant for a comprehensive permit (under M.G.L. c. 40B, §§ 20 through 23) from a board of appeals has received a determination from the board granting or denying the permit and, in the case of a denial, has appealed to the Housing Appeals Committee (established under M.G.L. c. 23B, § 5A), said applicant shall be deemed to have applied for all permits obtainable at the time of filing.

In answering the legal question at issue, the court applies the usual principles of statutory interpretation. When construing a statute, the court looks “first and foremost to the language of the statute as a whole. . . . [A] statute must be interpreted according to the intent of the Legislature ascertained from all its words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished, to the end that the purpose of its framers may be effectuated.” *Commonwealth v. B & M Fitzgerald Builders, Inc.*, 71 Mass. App. Ct. 486, 491-492 (2008) (citations and quotation marks omitted). The same principles apply to the interpretation of regulations, which have the force of law. *Commonwealth v. Aldana*, 477 Mass. 790, 801 n.22 (2017).

Upon review of the language, *supra*, the court agrees with Plaintiffs that the Developer filed its NOI too soon. The plain language of G.L. c. 131. § 40 provides an exception to the general rule that all permits must be obtained before filing an NOI (specifically that, “at the option of the applicant,” it may file its NOI “after the filing of” its permit applications). The regulation affirms that an NOI applicant must first “obtain *or apply*” for all feasible permits. 310 Mass. Code Regs. 10.05(4)(e) (emphasis supplied). Thus, in some instances permit approval and NOI processes may be simultaneous. However, the regulation also expressly defines and limits the “applied” status of c. 40B applicants to mean those that have “received a determination from the board granting or denying the permit and, in the case of a denial, ha[ve] appealed to the

Housing Appeals Committee.” *Id.* In other words, a c. 40B comprehensive permit applicant must wait until a determination is received from the local zoning board of appeals before it can proceed with its NOI.

Looking more closely at c. 40B, this limitation is logical. The § 40 exception requires NOI applicants “to include any information submitted in connection with such permits, variances, and approvals which is necessary to describe the effect of the proposed activity on the environment.” G.L. c. 131. § 40. Meeting this requirement with an associated c. 40B application may not be possible. The purpose of c. 40B is to encourage the expedited construction of affordable housing. *See Healy, Massachusetts Zoning Manual* § 5.5.3, at 5-21 (MCLE, 2019). The statute and its associated regulations accordingly provide for streamlined hearings, procedures, and timelines. *Id.* Under c. 40B, rather than proceed before multiple local boards, an applicant files a single application before the local zoning authority, which is authorized to place restrictions on the project, and override local ordinances, bylaws, and regulations that impede the development of affordable housing. *Id.* at §§ 5.5.4-5.5.5, at 5-22-5-24; *Zoning Bd. of Appeals of Holliston v. Housing Appeals Comm.*, 80 Mass. App. Ct. 406, 413 (2011). Under these circumstances, where the projects are large, complex, and highly-regulated, and subject to significant change during the permitting phase, the extent of any environmental impacts may not be ascertainable at the time of the application. That c. 40B approval timelines are tightly controlled also may erode any efficiencies gained by a simultaneous review process. Requiring sequential c. 40B and NOI applications is reasonable and logical.

The amended complaint alleges (and it is undisputed) that the Developer has yet to receive a decision on its c. 40B application from the Zoning Board of Appeals. Thus, under the regulation, its NOI was premature. Where the Developer does not challenge the regulation’s

validity or otherwise question its force of law in relation to the statute, *Molly A. v. Comm'r of Dep't of Mental Retardation*, 69 Mass. App. Ct. 267, 277 n.17 (2007), its motion to dismiss Counts III and IV must be **DENIED**.³

II. Action to Prevent Damage to the Environment (Count V)

Count V of the amended complaint alleges a claim under G.L. c. 214, § 7A, to prevent damage to the environment (Count V). To state a claim under this section, Plaintiffs must allege: 1) that damage to the environment “is occurring or is about to occur”; and 2) that such damage is in violation of a statute or regulation, the major purpose of which is to prevent or minimize damage to the environment.⁴ *Boston v. Massachusetts Port Auth.*, 364 Mass. 639, 645-646 (1974) (quoting former G.L. c. 214, § 10A, now at G.L. c. 214, §7A); *Nantucket Land Council, Inc. v. Planning Bd. of Nantucket*, 5 Mass. App. Ct. 206, 215 (1977). Plaintiffs may state a claim under § 7A for procedural violations of relevant environmental laws, as well as substantive violations. *Ten Persons of Com. v. Fellsway Dev. LLC*, 460 Mass. 366, 378 (2011).

The amended complaint here states simply that “Plaintiffs are aggrieved by the Commission’s failure to comply with 310 CMR 10.05(4)(e), and have standing to enforce the procedural requirements of laws that are intended to protect the environment.” Thus, Plaintiffs’ claim boils down to an assertion that premature public hearings on the NOI are going to cause

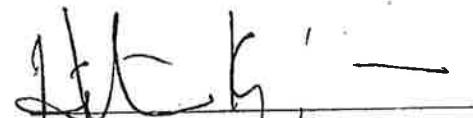
³ The court disagrees with the Developer that Plaintiffs have failed to exhaust their administrative remedies. The issue here is the early acceptance of an NOI and a premature public hearing — not a decision on a substantive matter, or the failure to hold a hearing or issue a timely decision, for which the DEP regulations provide an appeals process. See 310 Code Mass. Regs. 10.05(7). Thus, Plaintiffs’ appeal in this instance to the Superior Court is appropriate. See *Ellis v. Comm'r Of Dep't Of Indus. Accidents*, 61 Mass. App. Ct. 902, 903 (2004) (declaratory relief and mandamus action in Superior Court appropriate where no administrative remedy available).

⁴ General Laws c. 214, § 7A provides, in relevant part: “The superior court for the county in which damage to the environment is occurring or is about to occur may, upon a civil action in which equitable or declaratory relief is sought in which not less than ten persons domiciled within the commonwealth are joined as plaintiffs, . . . determine whether such damage is occurring or is about to occur and may, before the final determination of the action, restrain the person causing or about to cause such damage; provided, however, that the damage caused or about to be caused by such person constitutes a violation of a statute, ordinance, by-law or regulation the major purpose of which is to prevent or minimize damage to the environment.”

imminent damage to the environment. Although, as noted, plaintiffs may state a claim under § 7A for procedural violations, the link to damage to the environment here is too remote on the facts alleged to state a claim. The Developer's c. 40B project is still in its planning stages as no permits have issued, and any construction, at this point, appears to be well in the future. Moreover, Plaintiffs' appeal on the stream classification is still pending, as are their claims in Counts III and IV. Therefore, because no damage to the environment presently "is occurring or is about to occur," the Developer's motion to dismiss Count V is ALLOWED, without prejudice.⁵ *See Town of Walpole v. Secretary of the Exec. Off. of Env't Affs.*, 405 Mass. 67, 71 (1989) (affirming dismissal of § 7A claim where complaint failed to sufficiently allege damage to environment was occurring or was about to occur). If the situation changes, Plaintiffs may seek to further amend their complaint at that time.

ORDER

For the reasons stated, the Developer's motion to dismiss Counts III and IV is DENIED. Its motion to dismiss Count V is ALLOWED, without prejudice.



Hélène Kazanjian
Justice of the Superior Court

Dated: 3/11/2021

⁵ For this reason, the court need not address the notice issue.