



December 24, 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: Application for Comprehensive Permit for 81 and 85 Tisdale Drive, Dover, Massachusetts—Ownership rights in Tisdale Drive

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

On behalf of our client, Tisdale Land, LLC (the “Applicant”), this correspondence serves to remind the Zoning Board of Appeals (the “Board”) of the limits of its jurisdiction under G.L. c. 40B, i.e., the Comprehensive Permit Act. The Applicant is compelled to bring this issue to the Board’s attention because of concerns over: 1) the tenor of the most recent hearing of the Board, on December 12, 2024 (the “December 12th Hearing”); and 2) the Board’s extensive discussions regarding the Applicant’s right to use Tisdale Drive for all purposes for which roads and ways are commonly used in the Town of Dover (the “Town”).

As the Board is aware, the County Court Condominium Trust (the “Condominium Trust”) claims that Tisdale Drive is a private way which is owned by the Condominium Trust and contests the Applicant’s right, granted by a deeded easement, to use Tisdale Drive to access the proposed residential apartment building at 81 and 85 Tisdale Drive (the “Property”). The Board has allowed the Condominium Trust to voice its concerns regarding ownership of Tisdale Drive on repeated occasions over the past several hearings of the Board. However, the Board lacks any authority to make a determination as to ownership rights in Tisdale Drive.

If the Condominium Trust continues to contest the Applicant’s right to use Tisdale Drive, it must be addressed outside of the 40B hearing process, as it constitutes a private dispute between

Office Locations

Main Office – Use for all correspondence
2 Batterymarch Park, Suite 202
Quincy, MA 02169
Tel. (508) 510-5727 ■ Fax (508) 857-0751

New Hampshire:
108 Mammoth Road
Londonderry, NH 03053
Tel. (603) 404-6200

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the Condominium Trust and the Applicant. *See Billerica Development Company, Inc., Appellant Billerica Board of Appeals Appellee*, 1992 MA. HAC. 87-23, 18, 1992 WL 12562140, at *7.

Concerns over property rights “do not form the basis for the denial of a comprehensive grant.” *Lexington Woods, LLC Appellant Waltham Zoning Board of Appeals Appellee*, 2005 MA. HAC. 02-36, 27, 2005 WL 4930783, at *20. A lack of permission to use Tisdale Drive “is no basis to deny a comprehensive permit. . . . [A] condition requiring obtaining necessary property rights or approvals” could be included in a decision granting the comprehensive permit here. *Id.*

Accordingly, at this juncture the Board should not entertain any further discussion regarding the property rights associated with Tisdale Drive and instead should focus on the issues over which it has jurisdiction under G.L. c. 40B, that is, removing locally imposed barriers to affordable housing, including but not limited to the Town’s rules, regulations, and zoning bylaws. *See Bd. of Appeals of Hanover v. Hous. Appeals Comm. in Dep’t of Cmty. Affs.*, 363 Mass. 339, 355 (1973).

Thank you for your time and kind attention to this correspondence.

Sincerely,

MIRRIONE, SHAUGHNESSY
& UTTI, LLC

Tanya D. Trevisan

Tanya D. Trevisan, Esq.

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