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September 22, 2022

Via Hand Delivery

Town of Topsfield
Zoning Board of Appeals
Attn: Robert Moriarty, Chair
Topsfield Town Hall
8 West Common Street
Topsfield, MA 01983

Re: M.G.L. c. 40B Comprehensive Permit Application
Applicant: Emerson Homes, LP
Property Location: 10 High Street, Topsfield, MA

Dear Board Members:

This office is legal counsel to Emerson Homes, LP (“Applicant”). This letter and the enclosed attachments comprise an application pursuant to M.G.L. c. 40B (“Act”) and the regulations of the Commonwealth of Massachusetts Department of Housing and Community Development (“DHCD”) thereunder (760 CMR 56.00) (“Regulations”), and the rules and regulations of the Topsfield Board of Appeals (“Board”), for a Comprehensive Permit (“Permit”) to authorize the construction of a 44-unit rental apartment development (“Project”) on the property known as and located at 10 High Street, MA (“Property”).

I. The Applicant

The Applicant is a Massachusetts limited partnership with a business address of 491 Humphrey Street, Swampscott, MA 01907. A copy of the Applicant's certificate of organization can be found under Tab 1. The Applicant's general partner is Emerson Homes GP, LLC, which is a subsidiary of The Caleb Foundation, Inc., a Maine nonprofit corporation. The Applicant has stipulated and agreed to a limitation on its return on total investment in the Project pursuant to the requirements of the Act. Accordingly, the Applicant qualifies as a limited dividend entity within the meaning of the Act. See 760 CMR 56.04(1)(a); 760 CMR 56.02.

The Applicant will be the developer of the Project. The Property is under a binding option to purchase to Caleb Development Corp., a Maine nonprofit corporation, the rights under which have been assigned to the Applicant. See Tab 2. As further evidence of site control of the Property within the meaning of the Act, see 760 CMR 56.04(1)(c), a copy of the current property owner's certificate of title and deed to the Property, as recorded in the Essex County Registry District, can also be found under Tab 2.

II. The Development Team

The Applicant's development team for the Project is as follows:

DEVELOPER
Emerson Homes, LP
c/o The Caleb Group
Suzanne Decavèle,
Real Estate Development Manager

LEGAL/PERMITTING
Regnante Sterio LLP
Jesse D. Schomer, Esq.

ARCHITECTURE

DMS design, llc
Daniel M. Skolski, AIA

DEVELOPMENT/FISCAL

Community Square Associates LLC
David Levy

CIVIL ENGINEERING & LANDSCAPE

DeVellis Zrein, Inc.
Imad A. Zrein, P.E.

TRAFFIC/SAFETY

Vanasse & Associates, Inc.
Jeffrey S. Dirk, P.E., PTOE, FITE

Contact information and biographical information for the Development Team can be found under Tab 3.

III. Project Eligibility

The Applicant has received a project eligibility/site approval letter for the Project from the Massachusetts Department of Housing and Community Development (“DHCD”). A copy of this letter, which is dated September 15, 2022, (“PEL”) is hereby submitted in compliance with 760 CMR 56.05(2)(g). See Tab 4. Obtaining the PEL satisfies the jurisdictional requirements of 760 CMR 56.04(1). DHCD has given all required notices of the Project and the issuance of the PEL to the Town of Topsfield Select Board (“Select Board”).

The PEL confirms the Project’s general eligibility under the Low Income Housing Tax Credit (LIHTC) program, pursuant to which funding for the Project will be sought. The LIHTC program is a qualifying subsidy program designed to facilitate the development of affordable housing. Among other things, the PEL further contains the following findings:

- The Property “is an appropriate location for the Project”;
- “The proposed housing design is appropriate for the site”;

- The proposed building will “fit in with adjacent buildings in terms of height and massing”;
- The Project “appears financially feasible in the context of the Topsfield housing market” and is “consistent with the requirements for cost examination and limitations on profits”; and,
- The Applicant will be “subject to limited dividend requirements and meets the general eligibility standards of the [LIHTC] program”.

IV. The Existing Condition of the Property and Surrounding Area

The following summary of the existing condition of the Property and the surrounding site area is submitted in compliance with 760 CMR 56.05(2)(b).¹

The Property is located at 10 High Street, in Town Center Topsfield in the Central Residence (CR) zoning district. The Property is located near the corner of High Street and Main Street, and a short distance easterly from the intersection of High Street and Massachusetts Route 1. It is in close proximity to numerous local amenities in the Village and Highway Business zoning districts, including shops, parks and recreational areas, Topsfield Town Hall and other Town offices (including the Topsfield Fire Department), schools, public library, Post Office, and multiple places of worship. The remainder of the surrounding area consists primarily of single-family homes interspersed among these various mixed uses. In sum, the Property location is a true mixed-use suburban area and

¹ 760 CMR 56.05(2)(b) requires “a report on existing site conditions and a summary of conditions in the surrounding areas, showing the location and nature of existing buildings, existing street elevations, traffic patterns and character of open areas, if any, in the neighborhood. This submission may be combined with that required in 760 CMR 56.05(2)(a).”

an optimal location for multifamily housing. Enclosed under Tab 5 are a series of maps and aerial plans showing the location of the Property and surrounding site.

The Property is an irregularly shaped lot with over 106 feet of frontage on High Street. The Property has a total land area of 12.4 acres. It is presently undeveloped, although the site is previously disturbed, containing several disused baseball fields associated with the Topsfield Congregational Church, which has owned the property since 1959. The remainder of the Property is wooded, with various wetland resources around the site. The property, being undeveloped, currently has no driveway, but access is available via High Street, a public way. Photos of the Property and surrounding properties are enclosed under Tab 6.

The existing condition of the Property is shown on the enclosed preliminary civil engineering plans filed herewith under Tab 7 (“Engineering Plans”), which were prepared by DeVellis Zrein, Inc. These Engineering Plans fully comply with and fulfill all requirements of 760 CMR 56.05(2)(a) with respect to the submission of preliminary site development plans and engineering plans.² The aerial plans and site context photographs (see Tabs 5 and 6), together with the above-noted existing condition plans (see Tab 7)

² The engineering and site plans required by 760 CMR 56.05(2)(a) are as follows: “preliminary site development plans showing the locations and outlines of proposed buildings; the proposed locations, general dimensions and materials for streets, drives, parking areas, walks and paved areas; and proposed landscaping improvements and open areas within the site. . . . All Projects of five or more units must have site development plans prepared by a registered architect or engineer.”

and the within existing condition narrative, fulfil the requirement of 760 CMR 56.05(2)(b) for an existing conditions summary for the Project.

Existing public utilities servicing the Property include underground public water, public storm sewer, and natural gas, as well as overhead electrical and communication lines. See Tab 7, Sheet C-2.

As shown on the enclosed civil layout plan (Sheet C-1), the Property contains various wetland resources primarily to the east, southeast, and south of the proposed development area, including portions of School Brook, which flows north to south through the rear of the Property, as well as several associated bordering vegetative wetlands. Because a portion of the Project site's limit of work is within jurisdictional buffer zones to these wetland resources, the Applicant must file a Notice of Intent with the Topsfield Conservation Commission with respect to this work; this application will be filed later in the permitting process. See Tab 8.

A review of the Federal Emergency Management Agency Flood Insurance Rate Maps shows that the Property is located entirely within a Zone X (Area of Minimal Flood Hazard). See Tab 9. A review of the Massachusetts Division of Fisheries and Wildlife, Natural Heritage & Endangered Species Program (NHESP) maps indicates that the Property does not contain (and is not within 100 feet of) any certified vernal pools. See

Tab 10.³ In addition, no portion of the Property is within any protected Priority Habitat or Estimated Habitat for species protected by the NHESP. See Tab 11.

The Property's frontage on High Street is located within the Topsfield Common Historic District, although the proposed building is located outside of this district. See Tab 12. However, as noted above, the Property is currently undeveloped and does not contain any historic structures or archeological features.

V. Description of the Project

A. *Project Design Overview*

The proposed site conditions of the Project are shown on Sheets C-1 through C-5 of the Engineering Plans. See Tab 7. Proposed design features, floorplans, elevations, sections, and renderings for the Project are shown on the architectural plans prepared by DMS design, llc ("Architectural Plans"), which can be found at Tab 13. The Architectural Plans fulfil the requirement of 760 CMR 56.05(2)(c) to submit preliminary, scaled architectural plans.⁴ Under the Act, plans filed with a Comprehensive Permit application may be preliminary plans, and the Applicant reserves the right to revise said plans prior to final approval of the Project. A tabular analysis of the proposed condition of the Property

³ As noted on the existing condition survey plan, a previous site survey and wetlands assessment of the site indicated the presence of two potential unmapped vernal pools. The delineation of these wetlands resources will be reviewed as part of the Conservation Commission's review of the notice of intent for the Project under the Wetlands Protection Act.

⁴ 760 CMR 56.05(2)(c) requires "preliminary, scaled, architectural drawings. For each building the drawings shall be prepared by a registered architect, and shall include typical floor plans, typical elevations, and sections, and shall identify construction type and exterior finishes".

is enclosed under Tab 14 in compliance with 760 CMR 56.05(2)(d).⁵ No subdivision of the Property within the meaning of the Subdivision Control Law, M.G.L. c. 41, § 81L is proposed, so no subdivision plan is required pursuant to 760 CMR 56.05(2)(e).

The Project will consist of a single two story, elevator-fed building with 44 residential units accessed by a double-loaded interior access corridor. The building will contain a central common area with two residential wings extending outward from the common area to the east and west. The building's main entrance is at a central location on the ground floor, which accesses the building's common amenity spaces, including gathering spaces, parcel/mail room, offices, housekeeping, public restrooms, and storage. A common laundry facility is also provided on the ground floor, east wing. The ground floor will contain a total of 20 residential units, while the second floor will contain 24 units.

The intent of the Project design is to harmonize a new, age-restricted affordable housing community with the location's transitional, mixed-use nature and to integrate higher density, multifamily development with the nearby single-family neighborhoods. To the extent possible, existing vegetation will be preserved in order to maintain the existing screening to adjacent properties. Additional landscaping around the building and proposed driveway and parking area is proposed as shown on the planting plan enclosed

⁵ 760 CMR 56.05(2)(d) requires "a tabulation of proposed buildings by type, size (number of bedrooms, floor area) and ground coverage, and a summary showing the percentage of the tract to be occupied by buildings, by parking and other paved vehicular areas, and by open areas".

under Tab 15. Additionally, the site driveway has been laid out so as to hide the parking areas on site from view from High Street.

The exterior building design will consist of local New England vernacular and design elements and will synchronize with the adjacent buildings in terms of height, building exterior colors, roof, facade treatment, and overall massing. Building materials will include cementitious siding, vinyl trim, asphalt shingles, stone veneer (building entrance wall base), and windows with a similar glazing configuration (six-over-six and six-over-one) to the adjacent buildings, with low-E double glazing. The building, as noted, will be a modest two-stories high (32.0') with traditional gabled roofs and dormers to complement the style of nearby single-family residences at a larger, multifamily scale.

This use of traditional design elements with high quality modern building materials and informed detailing will create a harmonious, appropriately scaled design in keeping with the surrounding architectural fabric of the existing neighborhood. This design approach is in keeping with the recommendations of the *Handbook: Approach to Chapter 40B Design Reviews*, promulgated by DHCD, MassHousing, MassDevelopment, and MHP, which specifically contemplates multifamily development in proximity to existing single-family neighborhoods where the building typology has been designed to relate to the existing neighborhood and to reduce the visual impact of massing, height, and scale.

The unit mix of the Project is 2 studios, 38 one-bedroom units, and 4 two-bedroom units.⁶ The Project will be fully Massachusetts Architectural Access Board (MAAB) compliant and 5% of the units are designated ADA units and 2 are CBH units. The units range in size from 475-485sf for studio units, 598-736sf for one bedroom units, and 743-805sf for two-bedroom units, offering a variety of housing options. The homes will feature flexible floor plan layouts with high quality finishes. Each unit will have access to the common amenities spaces described above, as well as a common patio at the rear of the building.

In terms of environmental sustainability, the Project has been designed to be Energy Star complaint and to comply with the Enterprise Green Communities certification requirements. The building's energy performance target has been set and will utilize all electric building systems for heating, cooling, and domestic hot water systems. EV charging stations as well as the utilization of solar energy are also under consideration. Other elements of reduced carbon embodied building materials as well as enhanced accessibility have also been considered in the development of the Project design. The Project will also include bicycle accommodations to promote alternative forms of transportation in order to further reduce the residents' carbon footprint.

⁶ It should be noted that because the Project is proposed as age-restricted, it is not subject to the requirement to provide a unit mix containing at least 10% of the units as three-bedroom units, as is typically required for non-age-restricted 40B projects in accordance with an Interagency Agreement dated January 17, 2014 between DHCD, MassHousing, the Massachusetts Housing Partnership Fund Board ("MHP"), the Massachusetts Development Finance Agency ("MassDevelopment"), and the Community Economic Development Assistance Corporation ("CEDAC").

In sum, the Project will provide a desirable affordable housing community in a sought-after location with comfortable apartments and attractive amenities designed to serve the interests of residents in today's market. Moreover, given its proximity to local Town center amenities, the Project is expected to contribute to the Town center's revitalization by introducing new foot traffic to the area.

B. *Project Civil Engineering and Site Design*

As noted above, the Project site today consists largely of undeveloped wooded areas, which will remain undisturbed to the maximum extent that is feasible in order to preserve as much as a vegetated buffer to nearby residential abutters, the closest of which will be located over 200' away from the proposed building, preserving the residential feel of the area. As noted, landscaping is proposed around the building and surface parking area to further buffer the Project from neighbors. See Tab 15. Proposed landscaping will include a wide variety of native trees, shrubs, and ground cover to enhance the overall appearance of the Project and provide screening.

The total number of proposed parking spaces is 48. Two of the parking spaces will be ADA accessible spaces, which fully complies with state and federal requirements. See 521 CMR 23.2.1. Additionally, two spaces will be equipped with EV charging stations.

As shown on the Engineering Plans, the site has been designed with a primary access driveway on High Street. The site driveway will be a two-way, 22'-wide fire access road with a cul-de-sac style turnaround, enabling all emergency vehicles and other large vehicles (delivery trucks, garbage trucks, snowplows, etc.) to enter and exit the site

without having to reverse or turn around. The driveway aisle will allow emergency vehicles ample access to the building and will fully comply with State Fire Code.

Loading arrangements, including resident move-ins and move-outs will be handled by means of an operations and maintenance plan for the Project, which will be prepared following construction and prior to the Project opening to residents. Garbage and recyclables will be handled in a dumpster location to the east of the Project building as shown on the Project civil plans. The Project operations and maintenance plan will also address all aspects of site maintenance, including maintenance of landscaping, snow clearing and storage, etc.

Fire sprinkler systems will be provided in the units as required by law, and fire hydrant location/placement will be coordinated with the Topsfield Fire Department's Authority Having Jurisdiction (AHJ).

To minimize site disturbance, the Project's stormwater management system has been designed with a focus on Low-Impact Design (LID) techniques. Specifically, the site's primary stormwater management Best Management Practice will consist of an open, vegetated surface detention basin/pond located south of the main parking area. This pond will be located entirely outside of the wetlands buffer zones on the Project site. An additional stormwater management structure for the site driveway will consist of a vegetated rain garden at the front of the site.

This system is outlined in the Applicant's Stormwater Management Report and on Sheets C-2, C-4, and C-5 of the Engineering Plans. An executive summary of the

Stormwater Management Report can be found at Tab 16 of the within binder, and the full report is also separately enclosed. This system has been designed to comply all 10 of Massachusetts Department of Environmental Protection (MassDEP) Stormwater Management Standards (MSWMS), as outlined in MassDEP's Stormwater Handbook, to the extent they are applicable. By complying with the MSWMS, there is a presumption that the Project will adequately protect public and private water supply, groundwater supplies, provide for appropriate flood control and storm damage prevention, prevent pollution, protect fisheries, and protect wildlife habitat.

Sheet C-2 of the Engineering Plans shows all proposed utilities for the Project and is submitted in compliance with 760 CMR 56.05(2)(f).⁷ The Project will be serviced by public water from the Town of Topsfield via existing lines in High Street, with domestic and fire service connections in the building's west wing, adjacent to the first floor Mechanical Electrical & Plumbing (MEP) room. The Project will be designed in accordance with the reasonable recommendations of the Topsfield Engineering Department so as not to have any material adverse impact on the public water systems.

Although natural gas service is available via existing lines in High Street, the Project does not propose to connect to it, but instead will utilize electric service for heating, hot water, and cooking needs.

⁷ 760 CMR 56.05(2)(f) requires "a preliminary utilities plan showing the proposed location and types of sewage, drainage, and water facilities, including hydrants".

The Project will also connect to existing overhead utility poles running along High Street, which will be utilized to provide electricity and telecommunications (cable, telephone, and internet) to the Project. An electrical backup generator is proposed adjacent to the building's west wing. As noted, rooftop solar/photovoltaic panels are intended to further enhance and promote energy efficiency and sustainability.

Because the Project site is not served by public sanitary sewer service, sewage will be treated on site via a traditional Title 5 septic system located to the rear of the project building. This septic system will be subject to review and approval by the Topsfield Board of Health under Title 5 of the State Sanitary Code.

In sum, the Project will have no adverse impact relative to public services or utilities to abutting properties or to the Town in general.

C. *Project Traffic Impacts and Impact Mitigation*

Site access has been designed in order to ensure no adverse impacts to public safety. As noted, all traffic, including public safety vehicles, will have access to and from the Property via High Street, a public way, and the site driveway has been designed with a turnaround to enable emergency vehicles to navigate the site.

With respect to traffic and safety, the Applicant has conducted a Traffic Impact Assessment (TIA) dated September 15, 2022, prepared by Jeffrey S. Dirk, P.E., PTOE, FITE of Vanasse & Associates, Inc. The executive summary of the TIA can be found under Tab 17, and the full TIA is also enclosed separately.

The TIA was performed in accordance with MassDOT's Transportation Impact Assessment (TIA) Guidelines and the standards of the Traffic Engineering and Transportation Planning professions. In accordance therewith, the TIA included an assessment of existing traffic conditions at three intersections near the Project site: Main Street/High Street/High Street Extension, High Street/East Common Street, and High Street/South Common Street. These included observation and measurement of traffic volume, speeds, and sight distances.

Based on this data, the TIA projected two future traffic scenarios based seven years in the future (2029), i.e., a "No Build" condition (which projects future traffic conditions if the Project were not to be built) and a "Build" condition (which projects future traffic conditions plus projected Project traffic). In this way, the TIA provides an "apples to apples" comparison of future traffic conditions with or without the Project in order to ascertain the traffic impact of the Project itself.

The TIA concluded, among other things, as follows:

- "The Project is expected to generate approximately 144 vehicle trips on an average weekday (two-way, 24-hour volume), with 9 vehicle trips expected during the weekday morning peak-hour and 11 vehicle trips expected during the weekday evening peak-hour."
- "The Project will not result in a significant impact (increase) on motorist delays or vehicle queuing over Existing or anticipated future conditions without the Project."
- "Lines of sight at the Project site driveway intersection with High Street were found to exceed or can be made to exceed the recommended minimum distance for the intersection to operate in a safe manner based on the appropriate approach speed."

It should be noted that the TIA acknowledges that – independently of the Project – existing traffic conditions in the vicinity of the Property the Main Street/High Street/High Street Extension intersection has been found to have a motor vehicle crash rate that is above MassDOT average. As such, the TIA recommends certain safety-related improvements. Specifically:

- Recommended driveway width and configuration to facilitate emergency vehicles and parking maneuvers.
- Installation of a stop sign (with a stop line) at the Project entrance.
- Installation of an ADA-compliance sidewalk, ramps, and pedestrian crossing with a pedestrian actuated flashing beacon.
- Signs, landscaping, and snow to be maintained so as not to obstruct sight line triangles.
- Secure on-site bicycle parking.
- Completion of a Road Safety Audit (RSA) to support state grant applications for offsite infrastructure improvements.
- Implementation of a Transportation Demand Management (TDM) plan to reduce automobile dependency by Project residents and encourage the use of alternative forms of transportation.

With these recommended improvements, the TIA concludes that “the Project can be accommodated within the confines of the existing transportation infrastructure in a safe and efficient manner with the implementation of the recommendations defined herein. As such, the Project will have no adverse impact on public safety, nor any significant traffic impacts to the surrounding roadway system.

D. *Project Construction Impacts and Impact Mitigation*

The Project will be constructed in a single phase, with construction to commence as soon as possible after approval of the Project. Anticipated impacts of the Project associated with the construction process include erosion and sedimentation, noise, dust, and debris control. Measures to mitigate these impacts are outlined in the Stormwater Management Report, Tab 16. Although these impacts will be temporary in nature, mitigation controls will be in place, and best management practices will at all times be observed. Such procedures include the following:

1. Construction sequencing, best management practices for erosion control, equipment and vehicle management, materials storage and use, waste disposal, and spill prevention and response.
2. Routine inspections of Property conditions, as needed, to control dust during construction and to provide watering, as and to the extent required.
3. A more in-depth construction sequencing plan with “Best Management Practices” to assist in control of sedimentation, dust and debris control entitled “Erosion & Sedimentation Control Plan” can be found Tab 16.

E. *Other Project Impacts and Impact Mitigation*

Additionally, as noted, the Project site contains no notable historic or archeological features of the Property, nor any mapped protected species habitat, and therefore the Project will not have any impact as regards these issues. With respect to wetlands, as noted, the Project will require a Notice of Intent under the Wetlands Protection Act for

work within jurisdictional proximity to wetlands resources. The Project has been designed to comply with all MassDEP regulations applicable to such work.

In terms of environmental sustainability and energy efficiency, the Project has been designed with these goals in mind, as illustrated by the proposed solar panels, the use of electric heat pumps for heating, and the installation of EV charging stations. Moreover, increased residential density – particularly in an optimal location near the Town center – promotes a more optimal use of land and discourages the residential sprawl that is created by widespread single-family zoning.

VI. Requested Waivers of Local Bylaws

In accordance with 760 CMR 56.05(2)(h), the Applicant hereby notifies the Board that waivers are sought from any/all applicable requirements of the Topsfield Zoning Bylaw and all other local bylaws, including, without limitation, each and every of the provisions/bylaws outlined in the chart contained in Tab 18. Pursuant to the Act and 760 CMR 56.05(7), all provisions of the Topsfield Zoning Bylaw and all other local bylaws shall be waived to the extent “required to permit the construction and operation of the Project.”⁸ In accordance with 760 CMR 56.05(7), the within waiver list may be revised and/or updated during the course of the Public Hearing process.

⁸ 760 CMR 56.05(7) specifically provides that “[t]he Applicant may request Waivers, as listed in its application or as may subsequently arise during the hearing, and the Board shall grant such Waivers as are Consistent with Local Needs and are required to permit the construction and operation of the Project. Zoning waivers are required solely from the “as-of-right” requirements of the zoning district where the project site is located; there shall be no requirement to obtain waivers from the special permit requirements of the district.

In addition to the specific waivers outlined in Tab 18, the Applicant hereby notifies the Board that waivers are sought *in full* from each and every of the following local rules and regulations:

1. Any/all rules and regulations of the Topsfield Board of Appeals, inclusive of any/all local filing fees and/or filing requirements to the extent they exceed the requirements of the Act and Regulations thereunder;
2. Any/all other rules and regulations of any other Town of Topsfield board, commission, or department, except for fees specifically relating to Comprehensive Permit applications under the Act and Regulations thereunder, and only to the extent permitted thereby; and,
3. Any/all other applicable zoning or related municipal ordinances, codes, bylaws, rules, or regulations to the extent that the same may be necessary to enable the construction and operation of the Project.

Finally, any/all local permit, authorization, or other approval from any board or commission of the Town of Topsfield pursuant to any local bylaw, rule, regulation, or guideline, this Board shall “stand in the shoes” of such other permit granting authority and shall issue such approval as part of the Comprehensive Permit for the Project. Specific instances where such other local permits or approvals will be included as part of the Comprehensive Permit for the Project are enumerated in the enclosed waiver list. Notable examples include, without limitation, the Topsfield Wetlands Bylaw, Stormwater Management Bylaw, and Sign Bylaw.

VII. Chapter 40B and Local Housing Needs

Massachusetts General Laws Chapter 40B, §§ 20-23 provides in relevant part that all communities must have a minimum of 10% of their housing stock dedicated to low-to-moderate-income housing within the meaning of the Act and the Regulations promulgated pursuant thereto. See M.G.L. c. 40B, § 20 and 760 CMR 56.03(3)(a). Based on the most recent Subsidized Housing Inventory (“SHI”), as promulgated by DHCD, the stock of housing currently utilized in Topsfield for low to moderate income purposes totals 187 units. Based on 2,157 total year-round housing units, this represents 8.7%, approximately 29 units below the required 10%. See Tab 19. It should be noted that the SHI is expected to be updated by DHCD in the spring of 2023 to reflect updated 2020 Census data regarding total year-round housing units, at which point it is projected that Topsfield’s affordability percentage will decrease.

Under these circumstances, there exists a strong legal presumption that the regional housing need in the Town of Topsfield outweighs all matters of Local Concern, including density, massing, design, “neighborhood character”, and the like. In such cases, the municipality generally must approve the Comprehensive Permit and grant the waivers requested by the Applicant. The only permissible conditions that the Board may impose are those that promote local interests relating to health, safety, environmental concerns, or design concerns, and even in these limited circumstances the Board must prove that such concerns outweigh the regional housing need.

In typical Chapter 40B developments, 25% of the total number of units in a project are dedicated as affordable units for rent only to qualified applicants, defined as families or individuals with incomes at not more than 80% of the annual Area Median Income (AMI) for the region and family size, as determined by DHCD. The Project, by contrast, proposes a much deeper level of affordability: 43 of the 44 units (97.7%) will be dedicated as affordable units for rent to qualified applicants under three income levels: 11 units for qualified applicants below 30% AMI, 2 units for qualified applicants below 50% AMI, and 30 units for qualified applicants below 60% AMI. Only one of the apartments is proposed to be a market-rate unit.

Pursuant to DHCD regulations, because the units are rental apartments, all 44 units in the Project will be eligible for inclusion in the Town's SHI following the approval of the Project. As required by law, these affordable units will be subject to a regulatory agreement between the Applicant and DHCD, which will ensure that these units remain affordable in perpetuity (or for the maximum period permitted by law). In accordance with DHCD guidelines, the affordable units will be dispersed proportionally throughout the Project and will be indistinguishable from the outside from market-rate units. In accordance with a marketing plan that must be approved by DHCD, the affordable units will be marketed and made available to prospective qualified applicants on a lottery basis.⁹ To the extent allowed by DHCD, the Applicant is willing to agree that local

⁹ Qualified applicants are defined as families or individuals with incomes at not more than 80% of the annual median income for the region, as determined by DHCD.

Topsfield residents will be given a local preference in the lottery for the affordable units during the initial rent-up of the Project.

VIII. Other Local Board Permitting

As its name implies, the Board's issuance of a Comprehensive Permit will constitute a "comprehensive" approval under all local bylaws, rules, and regulations. As such, the only other local board approvals required under Chapter 40B are those required by other provisions of state law that are administered locally. In this instance, the only other local filing required for the Project is to file a Notice of Intent with the Topsfield Conservation Commission for proposed work in areas regulated by the Wetlands Protection Act, as well as an application for approval by the Topsfield Board of Health under Title 5 of the State Sanitary Code. The Applicant intends to file these separate permit applications in parallel to the Comprehensive Permit public hearing process before this Board.

IX. Additional Information

The applicant reserves the right to provide – and anticipates providing – additional information to the Board during the hearing process. To the extent the Board wishes to request information during that process, the Board should be guided by the submission requirements of the Regulations.

X. Abutters and Notice

Enclosed under Tab 20 is a certified list of abutters from the Town of Topsfield Tax Assessor, which indicates, as of the date indicated thereon, the current owners of all land entitled to written notice of the public hearing with respect to this matter.

Pursuant to the Act and the Regulations thereunder, notice of the public hearing on this Application must be provided by the Board in accordance with M.G.L. c. 40A, § 11.¹⁰ In accordance with M.G.L. c. 40A, § 11, notice by mail of the public hearing on this Application is required to the following parties:

- The Applicant;
- All direct abutters to the Property;

¹⁰ M.G.L. c. 40A, § 11 provides, in relevant part, as follows:

In all cases where notice of a public hearing is required notice shall be given by publication in a newspaper of general circulation in the city or town once in each of two successive weeks, the first publication to be not less than fourteen days before the day of the hearing and by posting such notice in a conspicuous place in the city or town hall for a period of not less than fourteen days before the day of such hearing. In all cases where notice to individuals or specific boards or other agencies is required, notice shall be sent by mail, postage prepaid. "Parties in interest" as used in this chapter shall mean the petitioner, abutters, owners of land directly opposite on any public or private street or way, and abutters to the abutters within three hundred feet of the property line of the petitioner as they appear on the most recent applicable tax list, notwithstanding that the land of any such owner is located in another city or town, the planning board of the city or town, and the planning board of every abutting city or town. The assessors maintaining any applicable tax list shall certify to the permit granting authority or special permit granting authority the names and addresses of parties in interest and such certification shall be conclusive for all purposes.

* * *

Publications and notices required by this section shall contain the name of the petitioner, a description of the area or premises, street address, if any, or other adequate identification of the location, of the area or premises which is the subject of the petition, the date, time and place of the public hearing, the subject matter of the hearing, and the nature of action or relief requested if any. No such hearing shall be held on any day on which a state or municipal election, caucus or primary is held in such city or town

- All owners of land directly opposite the Property on any public or private street or way;
- All abutters to the direct abutters to the Property whose properties are located within 300 feet of the Property; and,
- The Planning Boards of the Towns of Ipswich, Hamilton, Wenham, Danvers, Middleton, and Boxford.

It should be noted that the task of issuing such notice shall be undertaken by the Board and cannot be delegated to the Applicant. *Planning Bd. of Peabody v. Bd. of Appeals of Peabody*, 358 Mass. 81, 83 (1970).

XI. Filing Fees

The Board's Rules and Regulations imposes filing fees of \$600.00 (i.e., \$500 plus \$100 per lot). Although the Board's local rules are subject to waiver under Chapter 40B, enclosed herewith is a check for this filing fee. The Applicant hereby reserves all rights to object to the payment of such fee, or future fees that may be imposed, at the appropriate time and before the appropriate venue, including to the Housing Appeals Committee on the basis of reasonableness. See 760 CMR 56.05(2) (limiting local fees to "a reasonable filing fee . . . to defray the direct costs of processing applications, and taking into consideration the statutory goal of [Chapter 40B] to encourage affordable housing development.").

XII. Conclusion

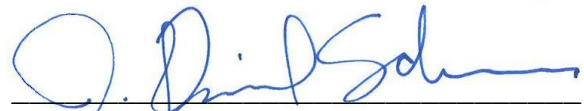
The Project, as proposed by the Applicant, will be an attractive, well-designed, affordable housing development that will address a shortage of such rental housing in the

Town of Topsfield. The site design and existing conditions afford ample area to accommodate the proposed Project and provide adequate open space. Moreover, the Project has been designed to minimize and mitigate potential impacts to municipal systems and services. The Applicant respectfully submits that the Project will meet a regional and local need for affordable housing will also addressing the health, safety, and environmental concerns of Topsfield residents.

Based on the foregoing, the Applicant respectfully requests that the Board open a Public Hearing on the within Application within thirty (30) days of the filing of this Application, as required by 760 CMR 56.05(3). Pursuant to that section, the Board “shall thereafter pursue the hearing diligently”, which hearing “shall not extend beyond 180 days from the date of opening the hearing”. Pursuant to 760 CMR 56.05(8)(a), the Board’s final Decision on this Application must thereafter be rendered within forty (40) days after the close of the Public Hearing.

Respectfully Submitted,

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