

April 14, 2023

Mr. Robert Moriarty, Chair
Town of Topsfield Zoning Board of Appeals
c/o Ms. Lynne Bermudez
Town of Topsfield
Town Hall
8 West Common Street
Topsfield, MA 01983

Via: Email to lbermudez@topsfield-ma.gov

Reference: Independent Peer Review for *Emerson Homes*
Chapter 40B Comprehensive Permit Application
10 High Street
Topsfield, Massachusetts
B+T Project No. 3425.00

Dear Chair Moriarty and Members of the Board:

Beals and Thomas, Inc. (B+T) is pleased to assist the Town of Topsfield Zoning Board of Appeals (the Board) with the third independent Supplemental Peer Review of the Chapter 40B Comprehensive Permit Application Filing for “Emerson Homes” at 10 High Street in Topsfield, Massachusetts (the Site). We understand that Emerson Homes, LP (the Applicant), proposes to develop a Chapter 40B housing project consisting of 44 apartment units (43 designated as affordable and one market-rate), with associated site improvements (the Project).

B+T issued a letter to the Board dated February 3, 2023, which presented the results of our site visit and our initial review of the original documentation submitted by the Applicant. As a result of our initial comments, the Applicant submitted supplemental documentation. B+T issued a letter to the Board dated February 27, 2023, which presented the results of our supplemental review of the revised documents submitted by the Applicant. B+T appeared at the February 28th virtual public hearing to review our comments of February 27th. We also had the opportunity to participate in a virtual working session on March 14, 2023 with representatives of Town staff and the Applicant to review outstanding comments from our February 27th letter. In response to our supplemental comments and discussion on March 14th, the Applicant submitted additional supplemental documentation. B+T issued a letter to the Board dated March 23, 2023 which presented the results of our second supplemental review of the revised documents submitted by the Applicant. B+T appeared at the March 28th virtual public hearing to review our comments of March 23rd.

Civil Engineering ▪ Land Surveying ▪ Landscape Architecture ▪ Land Use Permitting ▪ Environmental Planning ▪ Wetland Science

Corporate Office
144 Turnpike Road
Southborough, MA 01772

T 508.366.0560 | www.bealsandthomas.com | F 508.366.4391

Regional Office
32 Court Street
Plymouth, MA 02360

As a result of March 23, 2023 comments, the Applicant has submitted the following additional supplemental documentation as listed herein. Specifically, B+T received the following documentation on March 28, 2023, which served as the basis for our current supplemental review:

- *M.G.L. c. 40B Comprehensive Permit Application; Applicant: Emerson Homes, LP; Property Location: 10 High Street, Topsfield, MA; Response to Beals + Thomas February 2, 2023 Peer Review Report, dated March 28, 2023, prepared by Regnante Sterio LLP (2 pages)*
- *Emerson Homes, LP (Chapter 40B Comprehensive Permit Application), 10 High Street, Topsfield, MA, Update to peer review comments received, dated March 24, 2023, prepared by DeVellis Zrein Inc. (2 pages)*
- *Emerson Homes, 10 High Street, Topsfield MA – List of Requested Waivers, dated September 22, 2022, revised through March 27, 2023, prepared by Regnante Sterio LLP (20 pages)*
- *Sheet C-2A – Grading and Utility Plan w/ Local Buffers Emerson Homes, 10 High Street, Topsfield, MA, dated September 16, 2022, revised through March 24, 2023, prepared by DeVellis Zrein Inc. (1 sheet)*

By-Law/Regulation Waiver Requests

Through the ongoing ZBA review process, the Applicant has now submitted a revised waiver list including multiple procedural waivers and various requests from wetland and stormwater requirements. We understand the Board's Chapter 40B Comprehensive Permit consultant will provide a full inventory and summary of the waivers being requested. Below is discussion relative to new or revised waivers before the ZBA that B+T believes warrants potential review and analysis by the Board prior to granting the waivers and/or ultimately may result in potential conditions of approval. Waivers that B+T did not take exception to as of our March 23, 2023 correspondence and the associated discussion have not been included herein to reduce redundancy.

Topsfield Zoning Bylaw

Article IV § 4.12 Subsections: (C)(4) (C)(6) (C)(9)	Parking	Regulations applicable to off-street parking requirements for the following uses: office, place of assembly, and uses accessory to residential uses.	A waiver is sought for these subsections solely to the extent they are applicable to the Project's proposed common spaces (including office spaces, common areas that may be used for assembly, laundry, parcel/mail room, and/or such other accessory uses as shown on Project plans.
B+T Comment: B+T does not take exception to the waiver being requested in the context of the Project as proposed. We defer to the Board on the potential granting of this waiver.			

Topsfield Stormwater Management & Erosion Control Bylaw (Topsfield Town Code Ch. 220)

Chapter 220 § 220-5	Administration of Stormwater Bylaw	Designating the Topsfield Planning Board as the reviewing authority under this bylaw and establishing procedures for such review.	<p>Pursuant to M.G.L. c. 40B and 760 CMR 56.00, the Zoning Board of Appeals shall be the permit-granting authority under this bylaw, and any/all activities subject to this bylaw will be reviewed and approved as part of the Comprehensive Permit under M.G.L. c. 40B and 760 CMR 56.00 and any/all applicable state, federal, and unwaived local laws and regulations, including, without limitation, the State Stormwater Management Standards.</p> <p>Waiver sought for all administrative and procedural provisions of this section to the extent they differ from M.G.L. c. 40B and 760 CMR 56.00.</p>
B+T Comment: B+T takes no exception to this waiver of the administrative and procedural items as the requirements of Chapter 220 are being handled through the Comprehensive Permit process.			

Chapter 220 § 220-6(A)	Permit requirements of Stormwater Bylaw	Requiring permits under this bylaw for specified activities.	<p>Pursuant to M.G.L. c. 40B and 760 CMR 56.00, the Zoning Board of Appeals shall be the permit-granting authority under this bylaw, and any/all activities subject to this bylaw will be reviewed and approved as part of the Comprehensive Permit under M.G.L. c. 40B and 760 CMR 56.00 and any/all applicable state, federal, and unwaived local laws and regulations.</p> <p>Waiver sought for all administrative and procedural provisions of this section to the extent they differ from M.G.L. c. 40B and 760 CMR 56.00.</p>
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B+T Comment: B+T takes no exception to this waiver of the administrative and procedural items as the requirements of Chapter 220 are being handled through the Comprehensive Permit process.

Chapter 220 § 220-7	Procedures under Stormwater Bylaw	Establishing procedures for review under this bylaw.	Waiver sought for all procedural provisions of this section to the extent they differ from M.G.L. c. 40B and 760 CMR 56.00.
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B+T Comment: B+T takes no exception to this waiver of the administrative and procedural items as the requirements of Chapter 220 are being handled through the Comprehensive Permit process.

Chapter 220 § 220-8	Enforcement	Enforcement	Waiver sought solely with respect to enforcement of provisions of this bylaw (or its implementing regulations) that are subject to waiver.
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B+T Comment: We question whether a waiver is required to Chapter 220 § 220-8. This section establishes an enforcement process and fee schedule for violations of Chapter 220, which speaks to the enforceability of permit conditions pursuant stormwater management and erosion control. We recommend coordination with Town Counsel to determine if waiving this section during the permitting process would prohibit future enforcement action under the Bylaw should it be deemed necessary by the issuing authority.

Topsfield Wetland Bylaw (Topsfield Town Code Ch. 250)

Chapter 250 § 250-2	Conservation Commission Jurisdiction	Establishing the Topsfield Conservation Commission as the permit- granting authority under local wetlands bylaw.	Pursuant to M.G.L. c. 40B and 760 CMR 56.00, the Zoning Board of Appeals shall be the permit-granting authority under this bylaw, and any/all activities subject to this bylaw will be reviewed and approved as part of the Comprehensive Permit under M.G.L. c. 40B and 760 CMR 56.00 and any/all applicable state, federal, and unwaived local laws and regulations – including, without limitation, the Wetlands Protection Act, 310 CMR 10.
B+T Comment: B+T takes no exception to this waiver request. We note for the record that Section A (9) establishes municipal jurisdiction of isolated wetlands which pertains to the governance of the WF-C Series feature. However, it does not appear that any work is proposed within this wetland, and only the proposed sediment control barrier appears to enter the 100-foot Buffer Zone applied to this wetland.			

Chapter 250 § 250-2	Definitions	Establishing definitions applicable to resource areas and regulated activities	A waiver is sought for this section to the extent these definitions would result in the creation of requirements that exceed or differs from the requirements of the Wetlands Protection Act, 310 CMR 10.
B+T Comment: We presume the above request is intended to refer to Chapter 250 § 250-3 and is a typographic error. With respect to these definitions, B+T takes no exception to the waiver request which would result in deferring to those codified in 310 CMR 10.04. However, we note for the record that this section of the Bylaw is where the local definition of ‘Stream’ is established wherein School Brook is recognized as a perennial stream rather than an intermittent stream. If this definition is not waived, then this stream would receive a 200-foot Riverfront Area under the Bylaw as depicted in the March 24, 2023 exhibit (Sheet C-2A) and would require additional documentation as part of the filing.			

Chapter 250 § 250-4	Filing Procedures	Filing requirements and procedures under local wetlands bylaw.	A waiver is sought for this section in its entirety to the extent necessary to deem the applicant's Comprehensive Permit application as a complete application under this bylaw.
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B+T Comment: B+T takes no exception to this waiver of a procedural item as the requirements of Chapter 250 are being handled through the Comprehensive Permit process.

Chapter 250 § 250-7	Public Hearing	Requirements and procedures for public hearings under local wetlands bylaw.	Pursuant to M.G.L. c. 40B and 760 CMR 56.00, the public hearing required by this section shall be consolidated within the public hearing of the Zoning Board of Appeals as the permit-granting authority under this bylaw.
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B+T Comment: B+T takes no exception to this waiver of a procedural item as the requirements of Chapter 250 are being handled through the Comprehensive Permit process. S

Chapter 250 § 250-9	Burden of Proof	Burden of proof under local wetlands bylaw. Study & consultant work.	A waiver is sought for this section to the extent it would obligate the applicant to meet a burden of proof with respect to substantive provisions of this bylaw that are subject to waiver. A waiver is sought with respect to the specified study and consultant provisions to the extent they exceed or differ from the requirements of the Wetlands Protection Act, 310 CMR 10.
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B+T Comment: B+T takes no exception to this waiver request. However, we note that the Applicant will continue to be subject to the Burden of Proof as established in 310 CMR 10.03(1), and the definition of Plans (310 CMR 10.04), which broadly provides discretion to the issuing authority (the Topsfield Conservation Commission) in terms of the type of documentation required for the filing.

Chapter 250 § 250-10	Permits	Issuance or denial of permits	<p>A waiver is sought for this section to the extent it would result in the creation of requirements that exceed or differ from the requirements of the Wetlands Protection Act, 310 CMR 10.</p> <p>Pursuant to M.G.L. c. 40B and 760 CMR 56.00, the Zoning Board of Appeals shall be the permit-granting authority under this bylaw, and any/all activities subject to this bylaw will be reviewed and approved as part of the Comprehensive Permit under M.G.L. c. 40B and 760 CMR 56.00 and any/all applicable state, federal, and unwaived local laws and regulations – including, without limitation, the Wetlands Protection Act, 310 CMR 10.</p>
B+T Comment: B+T takes no exception to this waiver request as review under the Bylaw is being undertaken through the Comprehensive Permit Process.			

Chapter 250 § 250-11	Amendment of Permits	Amendment of Permits	<p>A waiver is sought for this section to the extent it would result in the creation of requirements that exceed or differ from the requirements of M.G.L. c. 40B and 760 CMR 56.00, which shall govern amendments to the comprehensive permit for the Project.</p>
B+T Comment: B+T takes no exception to this waiver request as review under the Bylaw is being undertaken through the Comprehensive Permit process.			

Chapter 250 § 250-12	Appeals	Appeals	A waiver is sought for this section to the extent it would result in the creation of requirements that exceed or differ from the requirements of M.G.L. c. 40B and 760 CMR 56.00, which shall govern appeals pertaining to the comprehensive permit for the Project.
B+T Comment: B+T takes no exception to this waiver request. We understand that the appeals process for a Comprehensive Permit differs than that which is established by MGL c. 249, § 4.			

Chapter 250 § 250-17	Security	Security	A waiver is sought for this section to the extent it exceeds or differs from the requirements of the Wetlands Protection Act, 310 CMR 10.
B+T Comment: A waiver from Chapter 250 § 250-17 would remove the ability of the issuing authority to request security for permits issued pursuant to Section 250. We understand that no such provision exists under M.G.L. Ch. 131, Section 40 or 310 CMR 10.00. Therefore, we recommend coordination with Town Counsel to confirm that the Zoning Board of Appeals is still able to accept performance bonds or other forms of surety that are necessary through other permitting mechanisms.			

Chapter 250 § 250-18	Enforcement	Enforcement	Waiver sought solely with respect to enforcement of provisions of this bylaw (or its implementing regulations) that are subject to waiver.
B+T Comment: As this provision does not speak to design requirements or the establishment of jurisdictional resource areas differing from that of the Act, we question whether a waiver is required to Chapter 250 § 250-18. This section establishes an enforcement process and fee schedule for violations of Chapter 250, which speaks to the enforceability of permit conditions pursuant to this chapter or unpermitted impacts to wetland resource areas. We recommend coordination with Town Counsel to determine if waiving this section during the permitting process would prohibit future enforcement action under the Bylaw should it be deemed necessary by the issuing authority.			

Topsfield Stormwater & Erosion Control Regulations (Topsfield Town Code Ch. 364)

Chapter 364 § 364-4	Administration of Stormwater Management and Erosion Control Regulations	Designating the Topsfield Planning Board as the reviewing authority under these regulations.	<p>Pursuant to M.G.L. c. 40B and 760 CMR 56.00, the Zoning Board of Appeals shall be the permit-granting authority under this bylaw, and any/all activities subject to this bylaw will be reviewed and approved as part of the Comprehensive Permit under M.G.L. c. 40B and 760 CMR 56.00 and any/all applicable state, federal, and unwaived local laws and regulations, including, without limitation, the State Stormwater Management Standards.</p> <p>Waiver sought for all administrative and procedural provisions of this section to the extent they differ from M.G.L. c. 40B and 760 CMR 56.00.</p>
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B+T Comment: B+T takes no exception to this waiver of the administrative and procedural items as the requirements of Chapter 364 are being handled through the Comprehensive Permit process.

Chapter 364 § 364-5	Applicability of Stormwater Management and Erosion Control Regulations	Requiring permits under these regulations for specified activities.	<p>Pursuant to M.G.L. c. 40B and 760 CMR 56.00, the Zoning Board of Appeals shall be the permit-granting authority under this bylaw, and any/all activities subject to this bylaw will be reviewed and approved as part of the Comprehensive Permit under M.G.L. c. 40B and 760 CMR 56.00 and any/all applicable state, federal, and unwaived local laws and regulations, including, without limitation, the State Stormwater Management Standards.</p> <p>Waiver sought for all administrative and procedural provisions of this section to the extent they differ from M.G.L. c. 40B and 760 CMR 56.00.</p>
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B+T Comment: B+T takes no exception to this waiver of the administrative and procedural items as the requirements of Chapter 364 are being handled through the Comprehensive Permit process.

Chapter 364 § 364-6	Permits under Stormwater Management and Erosion Control Regulations	Requiring permits under these regulations for specified activities and specifying filing and review procedures.	<p>Pursuant to M.G.L. c. 40B and 760 CMR 56.00, the Zoning Board of Appeals shall be the permit-granting authority under this bylaw, and any/all activities subject to this bylaw will be reviewed and approved as part of the Comprehensive Permit under M.G.L. c. 40B and 760 CMR 56.00 and any/all applicable state, federal, and unwaived local laws and regulations, including, without limitation, the State Stormwater Management Standards.</p> <p>Waiver sought for all administrative and procedural provisions of this section to the extent they differ from or exceed the requirements of M.G.L. c. 40B and 760 CMR 56.00 including filing requirements (C), filing fees (E), public hearing and notice requirements (F), plan changes (I), appeals (J).</p> <p>A waiver is requested for subsection L (plan contents) to deem the Project plans, as filed, to be sufficient for review under these Regulations.</p> <p>A waiver is requested for subsection M (O&M plan). Instead, the Project shall comply with O&M requirements as specified in MSWMS and NPDES requirements.</p>
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B+T Comment: B+T takes no exception to this waiver of the administrative and procedural items as the requirements of Chapter 364 are being handled through the Comprehensive Permit process.

Chapter 364 §§ 364-7(5)(i), 364-7(5)(ii), 364-7(7)(b)(i), 364-7(7)(b)(ii)	Post-development stormwater management criteria	Post-development stormwater management criteria	Waiver requested for subsection (5)(i) to authorize the building rooftop with an area of 20,000sf +/- and length of 350' +/- to discharge to a single location.
B+T Comment: We presume the above requests are intended to refer to Chapter 364 § 364-7B(5)(a)[1], 364-7B(5)(a)[2], 364-7B(7)(b)[1] and 364-7B(7)(b)[2] and are typographic errors. It is unclear if these waiver requests are required. The referenced sections speak to possible credits or reductions of recharge or water quality volumes, which the Applicant does not appear to be seeking. We request that the Applicant clarify the need for the requested waivers.			

Chapter 364 § 364-8	Surety under Stormwater Management and Erosion Control Regulations	Designating the Topsfield Planning Board as the overseeing authority.	Pursuant to M.G.L. c. 40B and 760 CMR 56.00, the Zoning Board of Appeals shall be the reviewing authority for all matters under this bylaw, including any required surety. A waiver is requested for this section to the extent it exceeds MSWMS and NPDES requirements.
B+T Comment: A waiver from Chapter 2364 § 364-8 would remove the ability of the issuing authority to request security for permits issued pursuant to Section 364. We understand that no such provision exists under M.G.L. Ch. 131, Section 40 or 310 CMR 10.00. Therefore, we recommend coordination with Town Counsel to confirm that Zoning Board of Appeals is still able to accept performance bonds or other forms of surety that are necessary through other permitting mechanisms.			

Chapter 364 §§ 364-9, 364-10, 364-11	Inspections under Stormwater Management and Erosion Control Regulations	Designating the Topsfield Planning Board as the overseeing authority.	Pursuant to M.G.L. c. 40B and 760 CMR 56.00, the Zoning Board of Appeals shall be the reviewing authority for all matters under this bylaw, including any inspections. A waiver is requested for these sections to the extent they exceed MSWMS and NPDES requirements.
B+T Comment: We question whether this waiver is required. These sections establish inspection and enforcement processes and penalties for violations of Chapter 364, which speaks to the enforceability of permit conditions pursuant stormwater management and erosion control. We recommend coordination with Town Counsel to determine if waiving this section during the permitting process would prohibit future inspection or enforcement action under the Bylaw should it be deemed necessary by the issuing authority.			

Topsfield Wetlands Regulations (Topsfield Town Code Ch. 384)

Chapter 384, § 384-1	Conservation Commission Jurisdiction	Establishing the Topsfield Conservation Commission as the permit- granting authority under local wetlands bylaw.	Pursuant to M.G.L. c. 40B and 760 CMR 56.00, the Zoning Board of Appeals shall be the permit-granting authority under this bylaw, and any/all activities subject to this bylaw will be reviewed and approved as part of the Comprehensive Permit under M.G.L. c. 40B and 760 CMR 56.00 and any/all applicable state, federal, and unwaived local laws and regulations – including, without limitation, the Wetlands Protection Act, 310 CMR 10.
B+T Comment: B+T takes no exception to the granting of this waiver as it is procedural and relates to the establishment of the Conservation Commission as the permit-granting authority, whereas the Zoning Board of Appeals serves this function under the Comprehensive Permit Process.			

Chapter 384 § 384-2	Definitions under Wetlands Regulations	Establishing definitions applicable to resource areas and regulated activities	A waiver is sought for this section to the extent the application of these definitions would result in the creation of requirements that exceed or differs from the requirements of the Wetlands Protection Act, 310 CMR 10.
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B+T Comment: B+T takes no exception to this waiver request as it pertains to definitions.

Chapter 384 §§ 384-3(A), 384(B), 384- C, 384-D, 384-E, 384- G	Identification of Resource Areas	Regulations applicable to the identification of resource areas and regulated activities	A waiver is sought for this section to the extent the application of these identification procedures would result in the creation of requirements that exceed or differs from the requirements of the Wetlands Protection Act, 310 CMR 10, including, without limitation, identification of water bodies, land under same, banks associated with same, buffer zones associated with same, and riverfront areas – all of which shall be governed by said Act.
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B+T Comment: We understand that separate state and local resource area boundaries were confirmed through the ORAD (307-0776) process with the Conservation Commission. As the Applicant is not contesting the findings of the ORAD (only seeking a waiver to the jurisdictional status of the WF-E Series and the perennial status of the stream), waivers to 384-3 (A – E) may not be necessary as they relate delineation and defining the buffer zones thereunder.

Chapter 384 § 384-4	Performance Standards	Performance standards applicable to the identification of resource areas and regulated activities	A waiver is sought for subsections (C)(2) (wildlife habitat evaluation) and (E)(1) (buffer zones) to the extent they exceed or differ from the requirements of the Wetlands Protection Act, 310 CMR 10. Waiver of subsection (E)(2)(c) is requested to authorize activities in buffer zone setback areas.
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B+T Comment: With respect to § 384-4(C)(2), B+T does not see this as applicable as it relates to Bank and Land Under Waterbodies and Waterways Impacts, of which this Project has none.

With respect to § 384-4(E)(1) we recommend the Applicant consider whether the Project can overcome the presumption of significance for Buffer Zone impacts rather than seek a waiver. That said, we do not take exception to this waiver. Given the historically disturbed nature of the Buffer Zone, it appears that the some of the effort to allowing it to re-naturalize with some intervention may enhance the conditions of the Buffer Zone outside of the proposed Limits of Disturbance.

Chapter 384 § 384-4	Waiver of Performance Standards	Waivers	Pursuant to M.G.L. c. 40B and 760 CMR 56.00, the Zoning Board of Appeals shall be the permit-granting authority under these regulations, and any/all requests for waivers as specified herein will be reviewed and approved as part of the Comprehensive Permit under M.G.L. c. 40B and 760 CMR 56.00 and any/all applicable state, federal, and unwaived local laws and regulations – including, without limitation, the Wetlands Protection Act, 310 CMR 10.
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B+T Comment: B+T does not take exception to this waiver request from a procedural standpoint. It appears that if this component of the Bylaw was not waived, then the Project Proponent would be required to provide a separate analysis of project alternatives.

Chapter 384 § 384-4(K)(5)	Erosion Control	All soils stored at the construction site for greater than 24 hours shall be covered by a waterproof tarpaulin or equivalent rainwater protection.	A waiver is sought for this section to authorize Project erosion control measures per a SWPPP prepared in accordance with NPDES/MSWMS requirements without need for waterproof tarpaulin, as specified. Such measures will include specific stockpile locations, means and methods to address silt and erosion through approved methods such as additional erosion control lines, monitoring, reporting and temporary seeding if necessary to avoid large areas of plastic that will not effectively address the situation properly.
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B+T Comment: B+T takes no exception to the waiver request and concurs that the Applicant shall follow the requirements of the Project SWPPP. However, it appears a small portion of the access driveway will drain to High Street, contrary to the requirements of 384-4(K)(8). We request that the Applicant clarify the intent of stormwater management design west of proposed catch basin CB1.

Chapter 384 §§ 384-5, 384-6, 384- 7, 384-8, 384-9, 384- 10, 384-11, 384-14, 384-15, 384-16, 384-24, 384-25, 384-26, 384-27, 384-28, 384-29	Procedures	Administrative procedures under local wetlands regulations.	Pursuant to M.G.L. c. 40B and 760 CMR 56.00, the Zoning Board of Appeals shall be the permit-granting authority under this bylaw, and any/all activities subject to this bylaw will be reviewed and approved as part of the Comprehensive Permit under M.G.L. c. 40B and 760 CMR 56.00 and any/all applicable state, federal, and unwaived local laws and regulations – including, without limitation, the Wetlands Protection Act, 310 CMR 10. Waiver sought for all administrative and procedural provisions of these sections to the extent they differ from M.G.L. c. 40B and 760 CMR 56.00.
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B+T Comment: Apart from those noted below, B+T takes no exception to waiving the procedural requirements of Chapter 384 noted above.

With respect to Chapter 384 § 384-10 (Security) and -11 (Enforcement, violations and penalties), we recommend coordination with Town Counsel prior to granting waivers. It does not appear that these waivers are required in permitting the design of the Project but rather relate to financial surety or the enforcement powers of the municipality. Please refer to B+T's response to the waiver requests for Chapter 250 § 250-17 and -18.

Chapter 384 § 384-17	Freshwater wetlands boundary delineation methodology	Freshwater wetlands boundary delineation methodology	A waiver is sought for this section to the extent it exceeds or differs from the requirements of the Wetlands Protection Act, 310 CMR 10 with respect to wetlands delineation.
B+T Comment: Given that an ORAD has already been issued for the Property confirming state and local resource areas in accordance with these delineation methodologies, we question whether a waiver is needed from Chapter 384 § 384-17. However, B+T takes no exception to granting a waiver to this section.			

Chapter 384, § 384-21	Conservation Commission Jurisdiction	Establishing the Topsfield Conservation Commission as the reviewing authority for stormwater management under the local wetlands regulations.	Pursuant to M.G.L. c. 40B and 760 CMR 56.00, the Zoning Board of Appeals shall be the permit-granting authority under these regulations, and any/all activities subject thereto will be reviewed and approved as part of the Comprehensive Permit under M.G.L. c. 40B and 760 CMR 56.00 and any/all applicable state, federal, and unwaived local laws and regulations – including, without limitation, the Wetlands Protection Act, 310 CMR 10.
B+T Comment: B+T takes no exception to this request as the Zoning Board of Appeals assumes this responsibility under the Comprehensive Permit process. We note for the record that the Conservation Commission shall continue maintain its ability to review stormwater management within the jurisdiction of the Act pursuant to 310 CMR 10.05(6)(k.-q.).			

Chapter 384, § 384-23(B)	Infiltration of stormwater from buildings	Building structures shall have drip trenches or other means of infiltration.	Waiver of this Section is requested to authorize all roof area runoff to be collected via roof drains and piped to the detention basin as shown on Project plans and not allowed to drop at the foundation edge. Drip trenches are not necessary under this proposal.
B+T Response: B+T does not take exception to the waiver being requested in the context of the Project as proposed as roof runoff is being addressed by the Applicant in the proposed design.			

Chapter 384, § 384-23(H)	Mitigation of work	Work performed, including any structure such as a roadway, driveway or any other structure, in a buffer zone or riverfront area shall be mitigated, at a ratio of at least 1:1, with implementation of low-impact development techniques outside of these resource areas on the property.	A waiver is sought for this section to the extent it exceeds or differs from the requirements of the Wetlands Protection Act, 310 CMR 10.
B+T Comment: Prior to granting a waiver, we recommend the Applicant explore mitigation opportunities to demonstrate whether the 1:1 ratio of mitigation is achievable for this Project. Specifically, portions of the historically disturbed Buffer Zone outside of the proposed Limit of Disturbance may provide opportunities for mitigation.			

Chapter 384, § 384-23(K)	Recharge to groundwater	Loss of annual recharge to groundwater shall be eliminated or minimized through the use of infiltration measures, including environmentally sensitive site design, low-impact development techniques, stormwater best management practices and good operation and maintenance. At a minimum, the annual recharge from the post- development site shall approximate the annual recharge from the pre- development conditions based on soil type. This standard is met when the stormwater management system is designed to infiltrate the required recharge volume as determined in accordance with the current Massachusetts Stormwater Handbook.	A waiver is sought for this section to the extent it exceeds or differs from the requirements of the Wetlands Protection Act, 310 CMR 10.
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B+T Response: As designed, the Project is meeting the requirements for recharge in accordance with MassDEP Stormwater Handbook. We request that the Applicant clarify the need for the requested waiver.

Other Local Rules & Regulations

Topsfield Conservation Commission Policy 2017-1	Tree Removal	Policy requirements pertaining to removal of trees, replacement of new native trees, and statement of "No Net Loss of Trees" local policy	Waiver requested to authorize the removal of trees within the Project's limit of work and the planting of new trees all as shown on Project plans.
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B+T Comment: B+T takes no exception to this waiver but recommends that the Applicant quantify the proposed trees to be removed in comparison to those to be planted as part of the landscaping plan of the Project. It appears that some tree removal is necessary for the site entrance and off-grading, but the Applicant should note whether or not the landscaping plan will adhere to this policy without the need for a waiver.

Topsfield Historical Commission Guidelines	Topsfield Historical Commission Guidelines	Prohibiting aluminum and synthetic siding or materials (p.1). Requiring front steps to be granite or wood (p.2). Prohibiting aluminum and synthetic fencing (p.3). Prohibiting chain link, stockade, and wire fencing (p. 3). Provisions relating to solar panels (p. 6). Prohibiting aluminum and vinyl clad windows (p.7).	Waiver requested to authorize synthetic exterior siding and materials. Waiver requested to authorize front steps to be concrete. Waiver requested to authorize aluminum and vinyl fencing. Waiver requested to authorize chain link fencing. Waiver requested to authorize solar panels as shown on Project plans. Waiver requested to authorize aluminum and vinyl clad windows.
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B+T Response: B+T does not take exception to the waiver being requested in the context of the Project as proposed, but we note that these elements are outside the scope of our civil engineering and wetlands review and pertain more to architectural considerations. We note that is unclear where solar panels are proposed on the Project plans. We request that the Applicant clarify where solar panels will be installed. We recommend the Board seek input from the Historical Commission as applicable prior to the potential granting of the requested waiver relative to proposed building materials.

Outstanding March 23, 2023 Review Comments

Below is discussion relative to the remaining outstanding comments from our March 23, 2023 review correspondence. Comments that were resolved as of our March 23rd correspondence have been omitted to reduce redundancy; however, the numbering convention has been maintained for consistency.

5. We acknowledge the test pit information provided by the Applicant. Only one test pit was conducted within the footprint of the stormwater basin to determine the in-situ soil conditions and the estimated seasonal high groundwater elevation. Portions of the work associated with the basin appear to lie within areas mapped as hydric soil and locally jurisdictional wetland on the existing conditions plan. We request that this information be included on the design sheets. Additionally, we recommend the Applicant conduct two more test pits in accordance with Table 1B.1, Volume 2, Chapter 2 of the Handbook. Furthermore, the assumed estimated seasonal high groundwater elevation of 62-ft is not consistent with TP-9. We request that the Applicant clarify the matter and revise the modeling as necessary.

Applicant's Response: Eight test pits were performed for the septic system and five borings were performed within the building area in addition to the detention basin test pit. All testing indicates identical conditions. Understanding that one more test pit is required for the basin, we respectfully request that this test pit be a condition of approval and performed prior to construction with the results provided to the town.

B+T Current Response: This comment has been adequately addressed by the Applicant. B+T recommends that the completion of one additional test pit within the limits of the proposed detention basin prior to construction be considered as a condition of approval. B+T further recommends that a log of the test pit be provided to the Board for the Administrative Record.

9. The Applicant does not appear to include off-site areas in their stormwater analysis. We request that the Applicant include a comprehensive analysis of the watershed area in their drainage analysis.

Applicant's Previous Response: There are two offsite areas that are tributary to the site. Area 1 is the side yards of the neighboring homes, located to the north of the site. This area drains to the site and is tributary to existing drainage area EX-1 and EX-2 and is tributary to DP-1 and DP-2 respectively. The proposed conditions maintain an existing ridge that splits the runoff from this off-site area and directs it to DP-1 and DP-2, similar to the existing conditions. The net impact of this off-site area is considered to be neutral, as it relates to the site stormwater design and therefore it is not included in the calculations. Area 2 is located to the southwest of the site. The runoff from this area enters the site via a small swale and terminates at an existing headwall that is located within the proposed site entry drive and enters the High Street drainage system. The proposed conditions collect the runoff from the existing swale via a flared end and carries it to High Street drainage system, similar to the existing conditions and therefore this off-site area has a neutral impact on the site drainage system.

B+T Previous Response: B+T acknowledges the Applicant's response regarding minimal offsite tributary runoff; however, notes that there appears to be an inconsistency between the total area used in the existing conditions hydrologic analysis and that of the proposed conditions analysis. B+T requests that the Applicant clarify the overall drainage areas utilized in both analyses and confirm that there are no new untreated discharges in accordance with Standard 1 of the Handbook.

Applicant's Current Response: There is no inconsistency as the Area EX-1A is part of the area EX-1. DZI had prepared a separate calculation as requested for that area in the model just show how much water was going to the potential vernal pool in order to show that there is not too much or too little runoff to the potential vernal pool. There are no new untreated discharges which is stated on page 17 (description of each Standard) and page 22 (Checklist of each standard) of the drainage report.

B+T Current Response: This comment has been adequately addressed by the Applicant. No further action is required.

16. The Applicant does not appear to have provided a Stormwater Pollution Prevention Plan (SWPPP) or draft SWPPP in accordance with Standard 8 of the Stormwater Handbook; however, they note that one will be prepared prior to the commencement of construction. B+T recommends that the Board consider requiring the submission of a SWPPP for the Board's review prior to construction as a potential condition of approval.

Applicant's Current Response: The Applicant concurs. The project will require a NPDES / SWPPP under federal law and the contractor can provide the plans and permit to the town.

B+T Current Response: B+T acknowledges the Applicant's response and recommends that the submission of a SWPPP to the Board for review and comment prior to the start of construction be considered as a condition of approval.

25. We note that the Planting Plan has been stamped by a Professional Engineer. We recommend that the Planting Plan be reviewed and stamped by a Registered Landscape Architect.

Applicant's Previous Response: An RLA stamp will be provided on the plan in addition to a PE stamp.

B+T Previous Response: We acknowledge the incorporation of the RLA Stamp. However, the license for the stamping RLA appears to have expired. Accordingly, we reiterate the intent of our previous comment.

Applicant's Current Response: We have contacted the state board to update the status. It is only a registration fee issue and it will be rectified.

B+T Current Response: This comment has been adequately addressed by the Applicant. No further action is required.

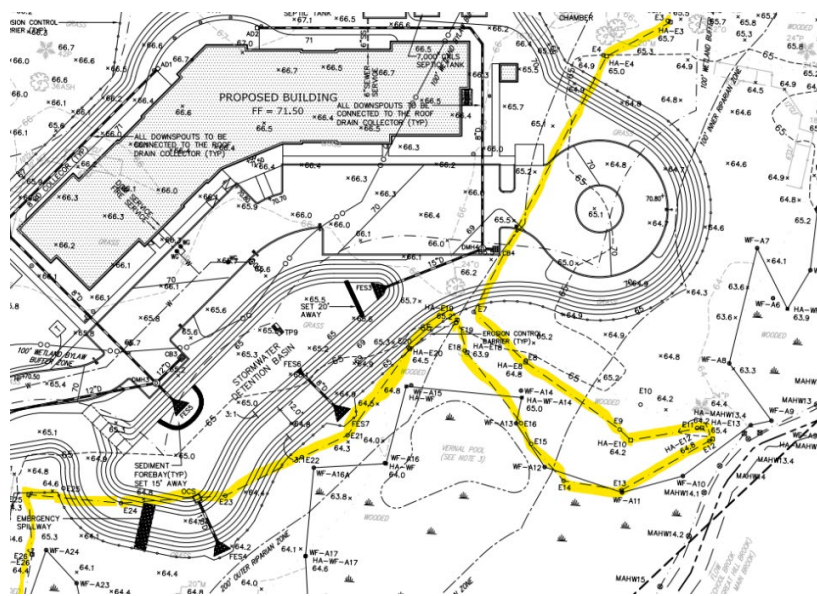
31. The WF-E Series wetland and its Buffer Zone are not depicted in the Plan except for the Existing Conditions sheet. Although we understand that it is the Applicant's intent to request a waiver from the local jurisdictional status of this resource area, we request that it be depicted on the Plan for review purposes. Given that it is referenced as a 'By-Law Hydric Soil Wetland' on the plan, we also request that the Applicant address how filling areas of hydric soil may affect the connected state jurisdictional wetlands, particularly the adjacent vernal pool.

Applicant's Previous Response: For clarity, a second plan has been provided (Plan C-2A) that shows the requested resource lines and local jurisdictional buffers in context to the design for reference. The hydric soil/topsoil within construction areas will be removed. These areas are at the edge of the buffers and will not impact the resource areas.

B+T Previous Response: The Local 200-foot Riverfront Area has been added to Plan C-2A but not the E Series Hydric Soil wetland as requested. As the Applicant indicates that 'hydric soil/topsoil' will be removed from the construction area, we further request that the Applicant provide the Board with information as to how potential weeping of groundwater will be addressed as hydric soils are removed from the proposed limits of disturbance.

Applicant's Response: Plan C-2A has been updated to add the delineation. The only areas of construction atop the hydric soils are the edges of the detention basin where we there is proposed filling for the berm (no cutting into the soil). The water table is 5 feet below this grade so weeping of groundwater is not an issue.

B+T Current Response: We note that the provided Plan C-2A also shows the cul-de-sac and its associated off-grading almost entirely within the footprint of hydric soils. Please clarify how it was determined that the water table is 5 feet below grade (or if the sentence is intended to imply below proposed grade). We recommend that the Zoning Board of Appeals consider conditioning further geotechnical evaluation and recommendations prior to construction with regard to potential settlement issues due to the known hydric soils within the development footprint.



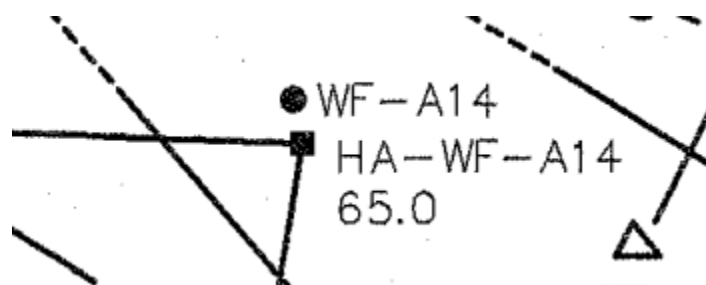
Screenshot of Plan C-2A with Hydric Soil Line Highlighted

32. We request that the Applicant include the 100- and 200-foot Riverfront Area (RFA) boundaries pursuant to the By-Law. Although we understand that it is the Applicant's intent to seek a waiver from the locally-designated perennial status of this stream, it is difficult to understand how much of the limits of work fall within this local RFA in order to appropriately assess the waiver request.

Applicant's Response: For clarity, a second plan has been provided (Plan C-2A) that shows the requested lines and buffers in context to the design for reference.

B+T Current Response: The 100- and 200-foot Riverfront Areas have been added to the plan. Although we take no exception to the granting of this waiver, we strongly recommend that the Applicant consider re-naturalizing the portions of the existing disturbed local Riverfront Area outside the limit of disturbance.

33. There appears to be some discrepancy between wetland flag locations from the various base plans referenced in the Existing Conditions plan. Some of the flags are labeled 'WETFLAG LOCATED BY HANCOCK' and others are labeled 'WETFLAG FROM BEALS PLAN' in the plan legend. The referenced 'BEALS PLAN' (Revision Date April 4, 2021) appears to contain both wetland flags located by GPS Instrumentation (by Beals Associates, Inc.) and field survey conducted by Morin-Cameron Group, Inc. Discrepancies were noted among wetland flags even where the Beals and Hancock plans both indicate the use of survey instruments. For example, WF-A14 was reported on the Beals plan to be located by field survey by the Morin-Cameron Group, Inc., and that of Hancock Associates. We request that the Applicant address the discrepancies as they relate to conflicting instrument surveys of resource area boundaries.



Extract from Existing Conditions Plan

Applicant's Response: Hancock Associates was asked to respond to the question above and this response was provided for consideration: "With the field surveys being 1-2 years apart from each other, there could be many reasons why there are discrepancies in the locations of the flags. A few reasons why they could differ being: site conditions possibly made some of them more difficult to see; they've moved over the years due to weather or tree growth; maybe someone found a flag on the ground and re-tied it to a tree. It's hard to say exactly why there is a difference between them. Many of the flags we located are reasonably close to the locations by Morin-Cameron. In the end, what we portrayed for the Bordering Vegetated Wetland (BVW) and associated buffer lines was from wetland flags locations from the prior plan and anywhere we located a flag in-common, we held our location of the flag to control."

B+T Current Response: Acknowledged. However, we note for the record that these locations may differ though incrementally from those approved through the below-referenced ORAD. However, given the minor differences, and because flag locations do not encroach into the limit of work, we consider this comment adequately addressed, but note that resetting flags may be necessary prior to the start of construction.

34. A finding of the Order of Resource Area Delineation (ORAD; MassDEP File No. 307-0776) for this Site establishes that *the A-Series and C-Series wetlands contain Vernal Pools which likely meet the MA NHESP criteria, appropriate evidence is to be gathered and submitted to NHESP for Certification.* Based on available mapping, it does not appear that the work to undertake the certification of these vernal pools has been completed. We request that the Applicant comment on the status of the vernal pool certification, and whether the Project will be subject to Standard 6 (Discharges to Critical Areas) of the MA Stormwater Handbook.

Applicant's Response: No survey of the two potential vernal pools has taken place to verify biological evidence. The applicant's wetland consultant will survey these two areas during the 2023 breeding season (between late March to late April) to determine if these areas meet the biological criteria for certification. It is currently unknown if these potential vernal pools will meet the criteria for certification and therefore unknown if the project will be subject to Standard 6.

B+T Current Response: Acknowledged.

39. Based on B+T's January 12, 2023 site visit, it appears that many of the wetland flags have fallen or were no longer legible to correlate with the plan. Once the survey discrepancy is resolved with respect to flag locations, we recommend that flags be re-established prior to the start of work.

Applicant's Response: No objection to the wetland flags being reestablished prior to construction.

B+T Current Response: We reiterate the intent of our previous commenting pending the re-establishment of the wetland flags as a potential condition of approval.

40. We request that the Applicant consider what mitigation opportunities are available for the Project, including restoration or enhancement of resource areas within the Site or in adjoining resource areas within commonly owned property.

Applicant's Previous Response: Substantial planting has been designed to screen the project from the abutters, but also screen and separate the wetlands from the project. Mitigation in these areas is not proposed as the areas outside of the limit of disturbance will be allowed to continue to renaturalize as has been occurring since disuse of the baseball fields.

B+T Previous Response: We request that the Applicant consider seeding the historically disturbed recreational areas with native species appropriate for this landscape to help prevent invasive species from establishing.

Applicant's Current Response: The project proposed to remove all fencing, structures, footings (3 baseball field backstops) and pavement (tennis court) and then loam and seed these disturbed areas with native seed mix. The remaining fields will be allowed to re-naturalize which has already begun.

B+T Current Response: Acknowledged. Please refer to our recommendations to the Topsfield Conservation Commission (Comment No. 4) regarding managing invasive species within the portion of the Buffer Zone to be allowed to re-naturalize:

[...]We recommend that the Applicant consider more intervention in naturalizing this area given the extent to which invasive species have established in the surrounding areas and portions of the field itself. Transitions from meadow, to shrub, to forested land can provide more meaningful habitat than direct transitions from meadow to forest. Invasive plants observed during the March 26, 2023 site visit include multiflora rose (*Rosa multiflora*), Japanese barberry (*Berberis thunbergii*), Japanese knotweed (*Fallopia japonica*), winged euonymus (*Euonymus alatus*), and Asiatic bittersweet (*Celastrus orbiculatus*).

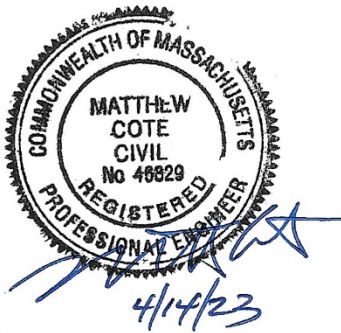
Mr. Robert Moriarty, Chair
Topsfield Zoning Board of Appeals
April 14, 2023
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B+T is available to attend the ZBA virtual public hearing on April 25, 2023, upon request, to present the results of our review and be available for discussion regarding the comments listed herein.

We thank you for the opportunity to assist the Town of Topsfield with the review of this Project. Should you have any questions, please do not hesitate to contact our office.

Very truly yours,

BEALS AND THOMAS, INC.



Matthew Cote, PE, SITES AP, ENV SP
Senior Civil Engineer

A handwritten signature in blue ink that reads "Andrew Gorman".

Andrew Gorman, CESSWI
Senior Environmental Planning Specialist

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