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April 21, 2023

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**  
**Responses to Beals + Thomas April 14, 2023 Peer Review Letter**

Dear Board Members:

I am legal counsel to Emerson Homes, LP, the Applicant with respect to the above-referenced proposed Chapter 40B development. On behalf of the Applicant, I write in response to the April 14, 2023 peer review feedback letter from Beals + Thomas (B+T) to the Board with respect to this Project.

The responses in this letter will be limited to matters pertaining to the Applicant's revised waiver list dated March 27, 2023 and B+T's review and feedback regarding the same. Comments where B+T (1) have indicated that there are no remaining issues, (2) have deferred to the Board regarding the granting of waivers or the necessity of doing so, and/or (3) have recommended conferral with town counsel or other Town officials regarding the advisability of granting waivers and/or the language of said waivers are treated as resolved and will not be addressed specifically below. As to the general question regarding whether or not to grant a particular waiver request, please see my previous letter dated February 21 for discussion of the applicable legal standard under 760 CMR 56.07(2)(b)(3) and applicable Housing Appeals Committee case law.

As noted below, additional responses to B+T's letter are provided in the accompanying letter by Project civil engineers of record, DeVellis Zrein, Inc. (DZI),

enclosed herewith Also enclosed is a memorandum prepared by Project architects of record, DMS Design LLC (DMS) addressing an Architectural Review memorandum issued on or about April 11, 2023.

With these preliminary comments noted, B+T's remaining comments are reproduced below, followed by the Applicant's responses:

***Topsfield General Bylaws, Chapter 250, Section 250-18***

**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.

**Response:** As explained in the request, this requested waiver seeks relief only in conjunction with the provisions of this bylaw as to which the Applicant has requested substantive waivers. The purpose of this request is merely to confirm that these substantive bylaw requirements that are waived will not be enforced as against the Project.

***Topsfield General Bylaws, Chapter 364, Sections 364-7(B)(5)(a)(1), 364-7(B)(5)(a)(2), 364-7(B)(7)(b)(1) and 364-7(B)(7)(b)(2)***

**B+T Comment:** 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.

**Response:** See accompanying letter of DZI. As indicated there, this waiver request will be withdrawn in the final waiver list.

***Topsfield General Bylaws, Chapter 384, Section 384-4(E)(1)***

**B+T Comment:** 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.

**Response:** See accompanying letter of DZI. As indicated there, this waiver request will be modified as follows: (1) the Applicant will request a waiver from this section only insofar as it applies to buffer zones to wetlands resources that are jurisdictional under the Topsfield Wetlands Bylaw but not the Wetlands Protection Act; and, (2) with respect to buffer zones to wetlands resources that are jurisdictional under both the local bylaw and the Act, the Applicant will request a finding by the Board that the presumption of adverse impact has been rebutted by the Project application materials as filed, as recommended by B+T.

Regarding B+T's recommendation about re-naturalization of areas of the Site beyond the Project's scope of work, the Applicant anticipates that the Topsfield Conservation Commission's order of conditions for the Project will include a condition requiring an invasive plant management program, per B+T's recommendation to the Commission.

However, as has been previously noted in DZI's previous response letters, the Applicant does not propose to re-naturalize areas of the site beyond the Project's limit of work. Whereas the cost of this work might be something that a for-profit developer could offset with anticipated profits from market-rate units, it is simply cost-prohibitive for the Applicant. As the Board is aware, the Applicant is a not-for-profit organization, and the Project is proposed at a much deeper level of affordability (and therefore much tighter budgetary margins) as compared to most Chapter 40B projects. As such, agreeing to conduct this work would entail unjustifiable Project tradeoffs. Respectfully, therefore, the Applicant cannot commit to undertaking this re-naturalization at this time.

Notwithstanding, the Applicant does not disagree that the re-naturalization efforts recommended by B+T would be of some aesthetic and environmental benefit. Therefore, the Applicant is willing to re-assess the financial feasibility of conducting some re-naturalization of the referenced areas after such time as the Project receives financing commitment under the LIHTC program, as well as whether public or private funding may be available to support this work.

***Topsfield General Bylaws, Chapter 384, Section 384-4(K)(5)***

**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.

**Response:** See accompanying letter of DZI and enclosed revised civil plan sheet C-2.

***Topsfield General Bylaws, Chapter 384, Section 384-23(H)***

**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.

**Response:** See above response regarding Ch. 384, Sec. 384-4(K)(5).

***Topsfield General Bylaws, Chapter 384, Section 384-23(K)***

**B+T Comment:** 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.

**Response:** The Applicant concurs. This waiver request will be withdrawn.

***Topsfield Conservation Commission Policy 2017-1***

**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.

**Response:** The Applicant is agreeable to a condition requiring that the number of trees to be removed be quantified and for this information to be

provided to the Board prior to the removal of these trees, together with a final Project planting schedule.

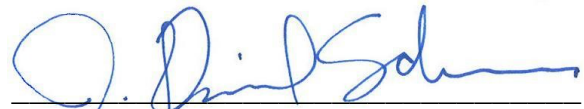
***Topsfield Historical Commission Guidelines***

**B+T Comment:** 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.

**Response:** See accompanying letter of DMS.

Respectfully Submitted,

EMERSON HOMES, LP  
By its Attorney,



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JESSE D. SCHOMER, ESQ.