Correspondence Received by the Zoning Board of Appeals Office *

As of May 1st – 9:00 AM

Sender	
Attorney Daniel C. Hill	On behalf of Heather Ensworth, 4 Villa Road, Hamilton & the Watershed Protection Alliance
Kate Girard	6 Patridgeberry Lane, Hamilton
Nancy Littlehale	16 Walnut Road, Wenham
Silas Nary	8 Villa Road, Hamilton
Kristina Lea	4 Villa Road, Hamilton
Linda Sarkisian	307 Essex Street, Hamilton
John Buono	260 Chebacco Road
The Board of Directors of Save Chebacco Trails Watershed	Kenneth F. Whittaker, John Cole, Hillary Cole, Ron Segar
Al DeGroot	193 Chebacco Road, Hamilton
Heather Ensworth	4 Villa Road, Hamilton
Lina Lewis Sylvester	2 Villa Road, Hamilton
Kenneth F. Whittaker	7 Enon Road, Wenham
Katie Vandi-Kology	Meadowbrook Farm
Ani M. Sarkisian	Address Unknown

*This list does not include emails/letters received by the Selectboard and the Office of the Town Manager; that correspondence may be viewed by contacting the Office of the Town Manager.

External Email Warning 133 Essex development: DELAY and deny

Ani M Sarkisian <anisarkisian@gmail.com>

Tue 4/30/2024 8:09 AM

To:Mary Ellen Feener <permitting@hamiltonma.gov>;Joe Domelowicz <jdomelowicz@hamiltonma.gov>;SelectBoard <selectboard@hamiltonma.gov>

1 attachments (592 KB)

A travesty in Manchester by the Sea - CommonWealth Beacon.pdf;

Good morning Chair Gingrich,

The developers who want to put a 40b development at 133 Essex are asking you to look at their project before you should have to. Their previous project, a comprehensive permit for senior luxury housing, was denied by the Hamilton Planning Board after their extensive review and for excellent reasons. The developer is appealing the Planning Board's decision in court, and there is supposed to be ONE YEAR after that appeal is dropped before they can submit another project. Please ask for this one year delay, and DENY this destructive project when it comes time.

We need to fight this, full stop. And we can. The tides are turning through precedent and case law, there are bills in the State House fighting the way that a 40b can be exempt from environmental laws that are there for our safety.

I've been working for Manchester Essex Conservation Trust for 2 years now (I am not speaking to you as their representative but as a citizen of Hamilton), and the organization has been fighting a 40b development proposed for Shingle Place Hill. The developer, SLV, promised the town of Manchester a new fire truck, transportation to and from the development for its residents, and $250,000 to Manchester Essex Conservation Trust, among other things. These are bribes, there's no two ways about it; the developer's conditions, even the conditions that the developers themselves offer, can be appealed and removed by the Housing Appeals Committee. Please don't think of this as a pre-nup to hedge your bets, a pre-nup is binding; any deal you make with a developer is not. They can and will claim that their financial situation has changed ("uneconomic conditions"), or that they need to add 50 more units ("insubstantial changes"), or that they need to ask for more waivers, and the HAC will allow them to do so. Remember: the owner of 133 Essex claimed Ronnie Vandi of Meadowbrook Farm was like a brother to them and they would never do anything to harm his business; when he asked for more information about the easement they wanted, Meadowbrook Farm was kicked off of the fields they had farmed for 50 years.

When the 40b at Shingle Place Hill was first submitted to the Manchester Select Board, it too was "friendly." Their town counsel advised them to approve it with conditions, but the Select Board thought that nineteen waivers to their wetlands protection bylaw was unacceptable. They stayed tough, and considered the town's needs, submitting stringent conditions on the development, so stringent that the developer withdrew his LIP or Local Initiative Program application. Their zoning board denied the 40b. Since then, their town counsel is firmly on their side and is working in collaboration with Attorney Dan Hill, representing Manchester Essex Conservation Trust, who has made it his business to fight 40b policy at the State level. Manchester's town counsel is Attorney George Pucci. He works at KP Law. He is a colleague of Hamilton's town counsel, Attorney Amy Kwessel. Ask that they meet to discuss

Hamilton's situation, and ask that Attorney Kwessel look at the situation in Manchester: their select board has approved the finances to defend their ZBA's denial.

Larry Smith is asking for 49 waivers. FORTY NINE WAIVERS. Think about that. 19 was unacceptable in Manchester, and Hamilton is prepared to accept 49? Approving this development with conditions will NOT be better for the town in the long run, as an "approval" is an approval, conditions or not. The HAC can remove any and all conditions in the appeal. Don't make the mistake the Hamilton Conservation Commission made: they thought that an approval with conditions was the only way they could protect their town, they did it with the very best of intentions. Go back and watch those meetings, see how reluctant they were to do it, they didn't want to. They were afraid that if they didn't, they couldn't do anything in the future, not knowing that any condition they place, the HAC can remove. And now, the developer waves that flag saying "The Conservation Commission said it's JUST FINE." **They were manipulated, they were threatened, they were bullied.**

Our Planning Board did an extraordinary job denying Larry Smith's comprehensive permit. They went above and beyond to understand it, to read the research, to listen to the citizens of Hamilton, to ask the hard questions and stand up to bullying. Their denial was wise and fair, and laid out their reasoning clearly: it was the stormwater management; it was the drinking water; it's that the limit of a title 5 septic system is 10,0000 gallons, and they very conveniently estimate they will only need 9,900. 20% of title 5 septic systems fail at some point, and when this one does not only would it be inaccessible, it will flood an untouched ecosystem that sits above an aquifer that could be our town's last source of drinking water, flowing into a system that also provides drinking water to Manchester and Essex. It was effluent and a leaching field that would threaten the irrigation pond of a family farm that has been in business for 50 years, helmed by a farmer who has worked that land for over 60 years.

The town is dealing with unprecedented change at the moment. Take the year the ZBA is allowed and do not rush into these hearings, there are too many other things going on. Please respect the work that hundreds of people put into getting this development denied the first time, when it was a comprehensive permit and smaller. I invite you to continue to read the results of the Stow case from 2015 (below), and a letter written by Patrice Murphy to the CommonWealth Beacon (attached pdf).

YES, it's difficult, but we believe success is on the horizon. We have a stellar team with multiple environmental lawyers, the involvement of several conservation groups, and years of research to back our concerns. Thank you for your time, we'll see you on May 1st!

Warmly,
Ani Sarkisian
16 Chebacco Road
978 810 7536

Appeals Court Revokes 40B Permit in Landmark Ruling

In an important victory for environmental protection and sustainability, the Appeals Court last week struck down a Chapter 40B "comprehensive permit" in the Town of Stow, MA for a 37-unit apartment building on a mere two acres of land in the town's Water Resource Protection District.
See, *Reynolds v. Stow Zoning Bd. of Appeals*, Appeals Court No. 14-P-663 (Sept. 15, 2015). The Project's single septic system would have been in close proximity to drinking water wells used by an

abutting affordable housing complex and other single-family residences. Like most suburban and rural communities, Stow has a set of local bylaws that are more restrictive than state laws governing septic systems. These laws are intended to protect not only water quality but wetlands, streams and other natural resources from the effects of wastewater and stormwater pollution. The Zoning Board ignored the advice of its own engineering consultant and waived these bylaws for the Project, despite scientific evidence presented by neighbors (from hydrologist Scott Horsley) that the septic system would contaminate abutting wells.

Under Chapter 40B, the state's affordable housing permitting statute, local bylaws and regulations are viewed as "barriers" to the construction of multi-family, affordable housing, and there is a strong legal presumption that any "local concerns" associated with the waiver of these bylaws are outweighed by the need for affordable housing. The precedent that has evolved over the last 40 years in our judicial system has made it nearly impossible for municipalities to deny Chapter 40B projects, or to deny requested waivers. Last week's Appeals Court ruling is the first appellate-level decision (precedent) that we are aware of revoking a comprehensive permit on substantive grounds, and sends a clear message that Chapter 40B does not override local protection of water resources. The decision will probably be cited to defend future municipal comprehensive permit decisions in which other public health, safety and environmental interests are at stake.

Hill Law represented the abutter/plaintiff in this case, from the initial Zoning Board hearings all the way to the Appeals Court. The developer was represented by the Boston firm Goulston & Storrs.

External Email Warning Letter from Meadowbrook Farm regarding 40B at 133 Essex st

Katherine Vandi <katv123@gmail.com>

Tue 4/30/2024 9:24 AM

To:Mary Ellen Feener <permitting@hamiltonma.gov>
Cc:Joe Domelowicz <jdomelowicz@hamiltonma.gov>;SelectBoard <selectboard@hamiltonma.gov>

6 attachments (1 MB)

Continued Septic Concerns March 9th 2022.pdf; Letter to planning board January 21st 2022.pdf; Meadowbrook Farm Statement_September 07.pdf; Meadowbrook Letter to Town Officials_PDF July 8th 2021.pdf; sewer_rules_housing_supply.pdf; Submitted septic flow rates (1).png;

Dear Town Officials and Board Members,

As owners of Meadowbrook Farm we are in a unique position as it relates to the proposed 40B development at 133 Essex St. We have been engaged with these discussions and deliberations since before formal proceedings began with the planning board in 2021 as we were renters of the farmland which is attached to this property and seen from Rt. 22. Our relationship to this property spans over 65 years if you count the years my father Ron Vandi worked for the previous owner of Meadowbrook. Attached are previously written letters which were submitted to the planning board that outline the events that transpired leading up to the termination of our land lease and specific information regarding how this development will not only destroy what little farmland we have left but how the destruction will continue downstream affecting the entire watershed area.

Our main concern is the septic leach field which will lie, if passed, approximately 120 feet upgradient from our irrigation pond. This pond is used to irrigate our crops which are organic, and have been organic since the late 1980s when our family was notified by the Massachusetts Department of Agriculture and the Department of Environmental Protection (MassDEP) that the parcel of land we rented was identified by the state to be associated with a high yield aquifer and are located close to Outstanding Resource Waters (ORWs) associated with public water supplies. The water from the pond continues to flow through a culvert, down a brook which runs along the growing fields, and lands in Beck pond which continues into the watershed. It's baffling to me that this development can even be considered given a small family farm was told not to use chemicals but now it's feasible that 10,000 plus gallons per day of effluent and all the water from the rejected stormwater management system can now flow directly into what we have diligently refrained from polluting. This will all result in contamination of our physical property, as well as a change in public perception of our business as no one wants to eat crops irrigated with potentially contaminated water. Our long standing business will be ruined and a watershed destroyed.

It was suggested during planning board deliberations that at the LEAST a hydrogeological study absolutely needs to be conducted to determine just how detrimental the impact of this development will be. I have also since learned that of the 10,000/day of allowable gallons per title V the developer has estimated they will use 9,900 gallons and that is using the "senior flow

rate" which is an underestimation. (See the attached documents and links I have provided). If you don't use the "senior flow rate" they are over 10,000gal/day. This is skirting the very edge of safety. The system failing is not a matter of if it's when. The system will eventually age and need repair. And when it does fail, it will fail in a big way as the developer has left very little room or safeguards for error.

Another glaring issue here is the future of the farm fields as seen from Rt. 22. The original plan included a lease for it to remain farm land. This is not present in the current proposal.

Lastly, this year marks 50 years Meadowbrook Farm has been owned by my family, the Vandi's. We have been a staple in this town and over the years provided geraniums for the families of Hamilton's veterans on Memorial day, pumpkins for the towns Halloween celebration, decorations for equestrian events, donations to the schools, fresh produce to local restaurants, and we have employed so many highschool students in the community that some former employees children are now employed here. We were named one of Hamilton's "Hometown Heroes" during the pandemic as we set up curbside service and continued to operate and help serve the residents of Hamilton. We generously donate fresh produce to Acord and other area food banks such as Gloucesters Open Door, and when we were farming the land on 133 Essex we were once able to grow enough winter squash to donate 2,215 pounds to the New England Haven for Hunger. If we end up losing our business as a result of this development all those resources to the community will be lost as well. Not to mention the fresh produce, flowers, and local goods we are known for.

There is still a bigger lesson here beside the obvious destruction of a precious and pristine forest. Besides the risks to our water supply which is already fragile. The impact this will have on the wildlife, some of which is rare and should be protected. The Turmoil that will be present in the community which will lead to a massive change for our neighborhood. As well as, the changes this has brought to our farm and will continue to bring in years to come. We've been promised safety by the developer and their representatives in the past describing the project as "low impact". Even going so far as to say they are "saving the woods". These words and promises are empty statements. Take it from one who knows having served the earth my whole life, you are no match for Mother Nature. The second a backhoe hits the ground there are no promises as to what could happen. The promises of safety are speculation only. Those on the Titanic were promised a "low impact" ride as well. What will happen, what is certain, is that you will never be able to put that property back the way it was. It will be gone forever and the destruction will never be able to be corrected. The question to ask yourselves is if you can live with that?

The bigger picture here is what you personally stand for. I have never regretted choices I have made from a place of integrity including the choice my family and I made that led to us losing the right to farm that land. I have no regrets. We may have lost the right to farm that land but we gained the respect of our community. That's worth more than any tax revenue. It would be well worth your time to discuss this as long as needed, to meet with your community members and

abutting affordable housing complex and other single-family residences. Like most suburban and rural communities, Stow has a set of local bylaws that are more restrictive than state laws governing septic systems. These laws are intended to protect not only water quality but wetlands, streams and other natural resources from the effects of wastewater and stormwater pollution. The Zoning Board ignored the advice of its own engineering consultant and waived these bylaws for the Project, despite scientific evidence presented by neighbors (from hydrologist Scott Horsley) that the septic system would contaminate abutting wells.

Under Chapter 40B, the state's affordable housing permitting statute, local bylaws and regulations are viewed as "barriers" to the construction of multi-family, affordable housing, and there is a strong legal presumption that any "local concerns" associated with the waiver of these bylaws are outweighed by the need for affordable housing. The precedent that has evolved over the last 40 years in our judicial system has made it nearly impossible for municipalities to deny Chapter 40B projects, or to deny requested waivers. Last week's Appeals Court ruling is the first appellate-level decision (precedent) that we are aware of revoking a comprehensive permit on substantive grounds, and sends a clear message that Chapter 40B does not override local protection of water resources. The decision will probably be cited to defend future municipal comprehensive permit decisions in which other public health, safety and environmental interests are at stake.

Hill Law represented the abutter/plaintiff in this case, from the initial Zoning Board hearings all the way to the Appeals Court. The developer was represented by the Boston firm Goulston & Storrs.

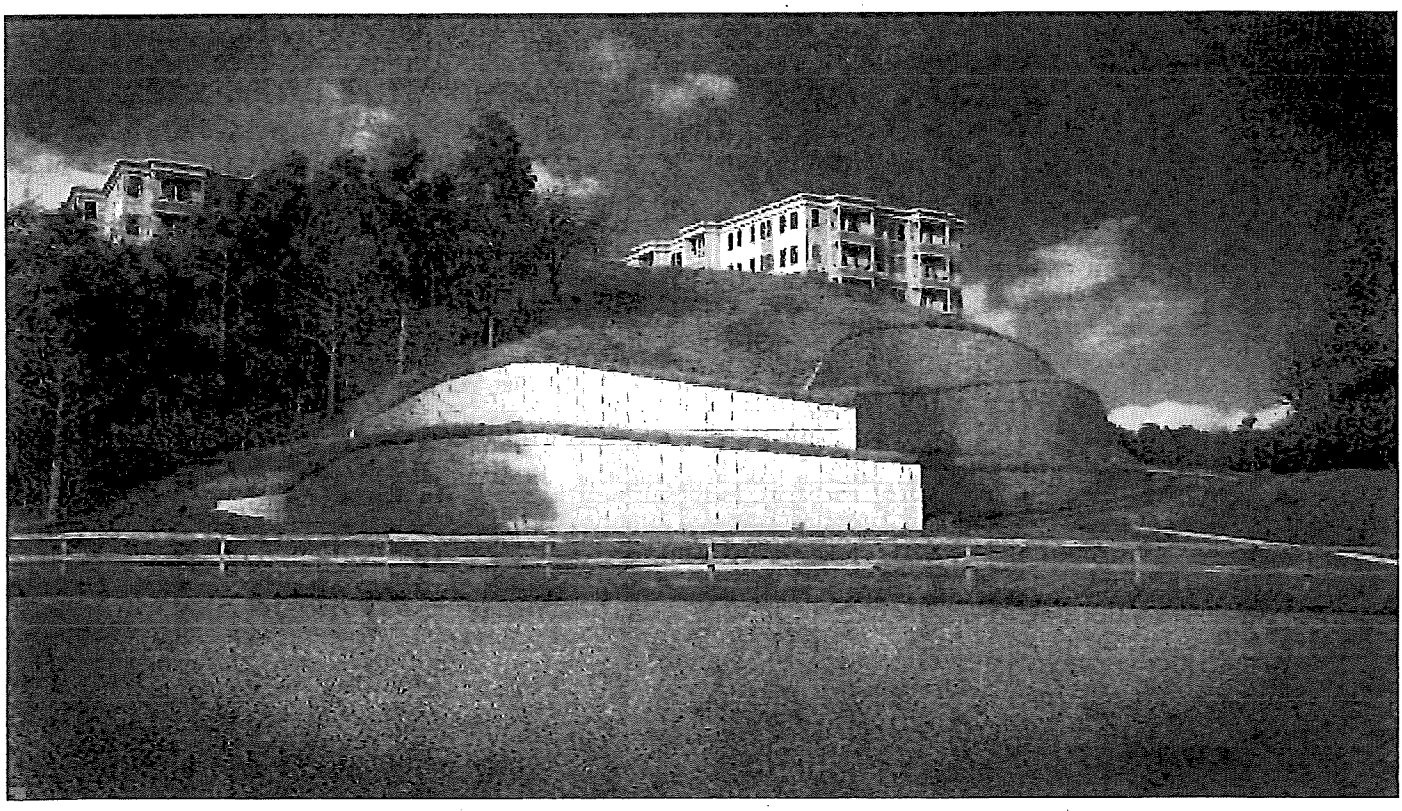
CommonWealth BEACON

OPINION

A travesty in Manchester by the Sea

The state is pitted against itself at Shingle Place Hill

by PATRICE MURPHY
March 16, 2024



Rendering of Shingle Place Hill following development. (Courtesy of Manchester Essex Conservation Trust)

IT'S ANOTHER David versus Goliath tale, a citizen's group taking aim at a developer shrouded in affordable housing practices. But the threat goes beyond one community, one conservation area, one tract of 136 apartments.

The battle brewing at Shingle Place Hill in Manchester by the Sea is a paradigm for what affects cities and towns across the Commonwealth. In nature, diverse species find a way to coexist, thriving side by side and fostering a wilderness and ecology intrinsic to a particular geography. But what happens when that delicate balance is upended by a species without competitors?

Developers wear the armor of Chapter 40B, a state statute designed to encourage affordable housing that can, if exploited, bypass local zoning laws and appeal adverse decisions to the state. Such laws, though established with good intentions, can be co-opted to push sensible boundaries and skirt or delay reviews designed to protect watersheds and wetland resources like vernal pools, and, in the case of Manchester, a cold-water fishery.

This conflict goes far beyond NIMBYism, beyond one group of citizens fighting to protect the woodlands and watershed that have value only to one community. Issues like this actually pit the state against itself.

As taxpayers, we spend millions of dollars to help preserve open space in dozens of communities while at the same time supporting affordable housing initiatives that threaten those very spaces. The state has awarded thousands of dollars in grants to rehabilitate the very same cold-water fishery downstream, and recently awarded more than a million dollars to conserve nearby land in Manchester, which protects the only other cold-water fishery north of Boston.

The state has invested in conservation and climate planning. There are departments whose sole purpose is to study the regional and statewide benefits of undeveloped or rehabilitated land as habitat for flora and fauna, and to rate the land for conservation benefits. There's the newly minted state Clean Energy and Climate Plan for 2025 and 2030, the state Office of Energy and Environmental Affairs, the Division of Fisheries and Wildlife, and the Natural Heritage and Endangered Species Program. And there are state and even federally stated goals to protect what little open space remains. Tracts of land, no matter the size, must have value to more than just one town. And the state has so many avenues to demonstrate that value.

For example, the state Clean Energy and Climate Plan states "Massachusetts' natural and working lands provide many benefits to the residents of the Commonwealth, including clean air and water, wildlife habitat, carbon sequestration, recreational opportunities, food and wood production, and many other functions on which society and life depend."

Is the threatened landscape in Manchester, abutting a large, nearly contiguous wildlife corridor,

considered natural and working lands? I'd bet it is, by the state's own definition in that plan — "forests, grasslands, freshwater and riparian systems, wetlands.... watersheds, wild lands or wildlife habitats."

Meanwhile, developers also compete under a veil of support from the state, touting their embrace of what they characterize as affordable housing—insisting their plan to include a handful of units priced at thousands of dollars per month meets the affordability standard.

In Manchester, the developer asked for, and expected to receive, 21 waivers from local bylaws. Nineteen of the waivers are from the "home rule," or local wetland bylaw, in Manchester. This bylaw has been on the books for 19 years. It was not just recently created to block development. The aim of local wetland bylaws across the state was to improve on and enforce the protections of the Wetlands Protection Act in areas important to towns for the protection of wetlands, marshes, and vernal pools. By design, part of the Wetlands Protection Act enforcement is through conservation commissioners and local wetland bylaws.

In 2021, the initial permit process took 13 meetings before the Select Board in a so-called "friendly" local initiative permit process before the developer withdrew his application. The developer then applied for a comprehensive permit in a streamlined process of review that involved 17 more hearings before the Manchester Zoning Board of Appeals.

The zoning board denied the comprehensive permit and the developer appealed the decision to the state's Housing Appeals Committee. And what is that? It is not a court in the state judicial system. By state definition, it is an impartial forum to resolve conflicts arising from the siting of new affordable housing —but it is really a "court" of developers, for developers, by developers.

This is an old state entity created to keep the housing developments moving, now housed under the Healey administration's newly christened Executive Office of Housing and Livable Communities. Have they ever met a housing development they don't like? Do the decision makers in the "committee" even attend the proceedings? How many decision makers are there? Is there oversight for this "impartial" committee?

This is a state versus state fistfight, involving two cabinet-level offices working for competing interests over a limited resource, with small groups caught in the crossfire. How many hours and dollars are spent studying and promoting conservation and protection of the environment by one department, while the other is given practically free rein to cut down large tracts of land in the name of affordable housing? On this particular seven-acre clearcut, 25 percent of the units (34) are labeled "affordable," a term used loosely here. Compute 80 percent of area median income for the North Shore and see if you believe that

is "affordable" housing.

There are many small groups of interested citizens repeating nearly the same fight all across the state—in Weston, Milton, Hamilton, Duxbury, Nantucket, just to name a few. They are all busy fighting their own battles with limited resources. And although there are many government employees and departments whose job it is to advocate for the preservation of open space habitat for wildlife on these little tracts of land, the state doesn't often join in the fight on the environmental and conservation side – yet does its own review under the housing office.

Manchester residents have raised funds and bought existing housing units to place under non-profit affordable housing ownership. But housing rules are again stacked in developers' favor, and it's an uphill battle to get these existing tracts onto the state's approved housing index.

Encouraging and streamlining rehabilitation of existing buildings would reduce the environmental impact rather than clear cutting pristine forested land for new housing. It's time for change. The whole system needs to be revamped to put essential dollars and resources at the forefront of problem solving instead of in developers' bank accounts and tied up in legal appeals and proceedings.

Imagine how many beautiful, truly affordable, and environmentally sustainable homes a local non-profit could build or retrofit from existing building stock with the dollars that are going into these David versus Goliath fights. And, in the process, imagine the precious biodiversity—from cathedral pines to sea-run brook trout to critical watersheds—we could honor and preserve for future generations.

Patrice Murphy is executive director of the Manchester Essex Conservation Trust.

April 29, 2024

Mr. Bruce Gingrich, Chair
Zoning Board of Appeals
Town of Hamilton
577 Bay Road
Hamilton, MA 01936

RE: Public Comments Supporting Denial of Chebacco Hills Capital Partners, LLC 's (CHCP) Application a Comprehensive Permit for he Site at 133 Essex St., Hamilton, MA

Dear Mr. Gingrich and members of the Zoning Board;

I join with a very large number of Hamilton residents and as President of Save Chebacco Trails and Watershed, Inc. (SCT&W) in opposing the slightly revised but previously rejected project which CHCP is proposing at 133 Essex Street. As you are well aware, a Special Permit for an essentially identical project on the same site has already been strongly and unanimously denied by the Hamilton Planning Board. The PB's scathing denial referenced a myriad of project deficiencies and dangers which should be of equal if not greater concern to the ZBA. We encourage your thoughtful consideration of the multiplicity of flaws of this misguided and misplaced project.

This letter provides additional information as to how and why the ZBA should immediately deny CHCP 's Comprehensive Permit Application. In doing so, we begin with a brief presentation of the relevant sections of the 40B regulations and how we at SCT&W believe they should be applied in this case.

Procedures for the Board's conduct of its permit deliberations (i.e. the Local Hearings section of the 40B regulations) can be found at 760 CMR 56.05(4). This provision states "Consistency with Local Needs is the central issue in all Comprehensive Permit applications before the Board", i.e. the ZBA. Consistency with Local Needs is specifically defined in the 40B regulations (in section 56.02) to mean, in summary,

1. Application of one or more of the grounds set forth in 760 CMR 56.03(1), so-called statutory provisions." *(It is this provision that we wish to highlight in this letter and which we will discuss in detail immediately below).*

2.Application of "Local Requirements and Regulations" when it is reasonable to do so in view of the need for low to moderate income housing in relation to

a. the number of potential affordable housing candidates in the community;

b. when reasonable in light of Local Concerns including; 1) health and safety of occupants in the proposed projects or other residents of the municipality, 2) protection of the natural environment and/or 3) promotion of site and building design; and

3. When Local Rules and Regulations are applied equally as possible to both subsidized and unsubsidized housing.

(We note that this latter provision suggests that CHCP's extensive list of requested waivers from Hamilton's General and Zoning By-Laws may be suspect, excessive and inconsistent with applicable regulations.)

We call the Board's attention to item Number 1 above, the regulatory section on statutory provisions, Section 56.03(1), also identified as Methods to Measure Progress Toward Local Affordable Housing Goals. This section provides certain Safe Harbor provisions which afford a municipality the tools and ability to oppose and deny an unwanted or unacceptable Comprehensive Permit application. Specifically, we reference Section 56.03(1) which states "A decision by a Board to deny a Comprehensive Permit.....shall be upheld if one or more of the following grounds has been met as of the date of the Project's application." This statement is followed by Section 56.03(1)(c) which completes the sentence to state; one of those grounds as when;

"(c) a related application has previously been received as set forth in 760 CMR 56.03(7)."

The previous Special Permit application submitted by CHCP to the Hamilton Planning Board, for 133 Essex, so rigorously viewed and denied, clearly qualifies as such a "related application" subject to section 56.03(7) (which we encourage Board members to read in its entirety). Section 56.03(7) in association with subsection s(a) and (c) states that the denial of any such 40B application will be upheld for a minimum of twelve months if there was a previous related application (similar project on same parcel) for a which contained less than 10% SHI affordable housing units. Furthermore, the twelve-month suspension period does not begin until final disposition of ALL APPEALS associated with the original permit application. There can be no question that CHCP has filed the requisite related application to trigger this denial opportunity. And we note that when the ZBA rightly decides to deny the 40B application on these grounds the Board's decision must be issued within 15 days of the start of the hearing on May 1.

The proposed CHCP 40B application meets all of these related application criteria and has not one but two ongoing appeals in the courts. The ZBA should therefore without hesitation deny this project permit under these provisions and allow the Town of Hamilton to address its affordable housing needs in a more healthful, social, and environmentally responsible manner.

Consideration of the Safe Harbor described in detail above is certainly not the only grounds to support outright denial of the project. The previous decision of the Planning Board provides ample ammunition to support final denial, although reaching that result through the regular hearing process would likely take many months of detailed review, multiple hearings of excruciating detail, likely result in substantial costs to the Town and probably energize public opposition. We fail to see why the ZBA would subject themselves to this ordeal when a more equitable and efficacious alternative is available for the seeable future.

As a final note, we wish to point out that several surrounding towns have found themselves in a place similar to Hamilton. Facing economic and legal pressure to accede to demands of aggressive developers seeking to destroy pristine natural areas via unwelcome 40B housing developments, these Towns 'ZBAs acted. In several of these cases, the issues at hand were very similar to those proposed for the 133 Essex Street Development. We reference the Daniels Street Project in Rowley and the SLV School Street LLC Project in Manchester By The Sea. (We note here that there is also continuing concern that Manchester-By-The-Sea's along with Hamilton's residents 'water supply may be adversely affected if the 133 Essex Street project is allowed to proceed). Issues and concerns which supported these 40B Permit denials included 1) concern about the effects of extensive blasting on hydrology and downstream surface water; 2) substantial health and safety risks in areas associated with a steeply graded, narrow and single means of access and egress to the proposed development; 3) concerns about adequate stormwater controls; 4) numerous concerns about occupant health and safety; and 5) overall negative impacts to surrounding neighborhoods.

We encourage and trust the Hamilton ZBA will be as forceful and wise as the ZBAs in these towns in finding similar deficiencies in the current proposed version of the 133 Essex development , and therefore expeditiously deny the needed permit for this destructive and unneeded project.

On behalf of Save Chebacco Trails and Watershed, I thank you for the opportunity to respond.

Respectfully;

Kenneth F. Whittaker Ph.D., J.D.

President, Save Chebacco Trails and Watershed, LLC.

April 2024

Dear Members of the Select Board,

I would like to add my name to the concerned residents opposed to the proposed development at 133 Essex Street. My grandparents purchased the house at 2 Villa Road in 1956 and I have had the honor of being part of this area my whole life. Granted development and changes occur, yet, they ought to be sensitive to the surrounding environment and complement, if not enhance; this development project is anathema to the present land uses. In 1956 there were about seven houses around Beck Pond and throughout the subsequent years, houses have been built. When one drives down Chebacco Road, it is evident spacing and housing have been designed with eyes conscious to habitat and domain.

The proposed development flies in the face of any sensitivity to this criteria with regard to habitat, natural and human, with regard to the present characteristics of the rural neighborhood, with regard to promoting forestation for benefit of human and animal survival, with protecting the wells and water supply of the residents and the surrounding lakes and ponds.

I shudder to think about the amount of trees felled, the blasting which is planned, the disruption to the water supply, the chemicals which the new residents of fifty homes would use on their lawns and their run-off, ultimately landing in Meadowbrook Farm, our water supply, and the ponds and lakes. As I drive on Essex Street during these months, when the trees have shed their leaves, I look at the hillside of the proposed site of fifty homes and am saddened at the prospect of buildings and their impact.

Please, please consider the legacy of keeping and protecting the woodland environment for those who will come after us; it is such a worthy and noble cause. Please decline the developer's request.

Respectfully,

Linda Lewis Sylvester
2 Villa Road South Hamilton

External Email Warning re: proposed development at 133 Essex St.

Heather Ensworth <hensw@comcast.net>

Thu 4/25/2024 3:16 PM

To:Mary Ellen Feener <permitting@hamiltonma.gov>
Cc:SelectBoard <selectboard@hamiltonma.gov>;Joe Domelowicz <jdomelowicz@hamiltonma.gov>

Dear Chair Gingrich and members of the Hamilton ZBA,

I am writing to express my serious concerns about the proposed Chapter 40B development at 133 Essex St. by Larry Smith and the Chebacco Hill Capital Partners, LLC. This project was originally presented in 2021 to the Hamilton Planning Board as a request for permitting through the Senior Housing bylaws. After an almost 2 year thorough and detailed analysis by the Hamilton Planning board, the senior housing permit as well as the stormwater management permit were unanimously denied due to the level of destruction that the project would entail and the danger to this environmentally sensitive area.

Now, the proposed 40B development is even larger and more damaging and includes a request for 49 waivers to the Storm Management bylaws! These requested waivers demonstrate that the developer is letting go of the former illusion that this project would be safe for this area which is in a critical location next to the water supply for Meadowbrook Farm and adjacent to Beck Pond, which is part of **Hamilton's only remaining water resource.** Why would we put such a dangerous development in a location where it risks destroying our local farm and a critical source of water supply for Hamilton, Essex and Manchester residents? Beck Pond is a part of the Chebacco Lake watershed. To contaminate any part of it is to contaminate the whole. This would create not only a crisis for those of us who are Hamilton residents and rely on this water table for our drinking water, but it would also impact Gravelly and Round Ponds which provide water to Manchester and Essex residents.

I fully support our need for affordable housing and for further town revenue, but I am not supportive of doing this at the expense of critical town resources and this critical water resource in particular. Why aren't we as a town looking at the bigger picture and locating an area in town where this development could be done without risking contamination of this critical watershed area?

In addition, the original proposal by Larry Smith and Chebacco Hill Capital Partners, LLC is still involved in an ongoing legal appeal of the Planning Board decision. It is my understanding the the ZBA regulations require for that process to be completed followed by a year long waiting period before a new proposal can be considered. We hope that the ZBA will honor this due process. Those of us who are also concerned about protecting this critical watershed area are also seeking to engage the DEP to further assess the risks of any development at this site. Again, this project puts at risk an important local farm as well as a critical water supply for the residents of Hamilton, Essex and Manchester. Please do not approve this project.

Thank you for your consideration of these serious concerns,
Heather Ensworth (4 Villa Road, Hamilton)

Heather Ensworth, Ph.D.
978-468-2021
hensw@comcast.net
risingmoonhealingcenter.com
transformingtraumatofreedom.com

External Email Warning 133 Essex Street please delay!

Al <aldg63@gmail.com>
Fri 4/26/2024 11:43 AM
To:Mary Ellen Feener <permitting@hamiltonma.gov>
Cc:SelectBoard <selectboard@hamiltonma.gov>;Joe Domelowicz <jdomelowicz@hamiltonma.gov>

Dear Chair Gingrich and members of the Hamilton ZBA,

I have opposed this proposed development of 133 Essex Street for many years, because of the devastating environmental impact that I believe is a clear and present danger of this project. At risk are; the watershed, the master plan for the town of Hamilton, a local organic farm and the neighborhood. We have taken action to help defeat the development through the special permit process, and now, the developer is trying an end run around our Planning Board's denial with a 40B proposal. They are proposing to add 9 more dwellings and 15 affordable units. This only increases the risk of environmental damage.

Certainly, the Rich family has the right to sell the 133 Essex St. property that they have owned for many decades. They own approximately 66 acres of farmland and buffer forest to Chebacco Woods Conservation Land, yet because of **boundaries** of; steep slopes, wetland and grounds that won't perk, they are limited to a 16 acre parcel of the 56 acres that they own that can actually be developed. It is a limitation of the land, and, although the land would have much greater value if they could develop the whole plot, they cannot. So, at work in this situation are issues around **property lines, town borders and boundaries.**

Of that 16 acres, there are other deterrents to build what they would like to build on the land; steep slopes, wetlands and limited access. These are all things they could control if permitted; blast away, explain away or manage away, if only they could get a special permit. As we all know, they applied for a special permit, and after an exhaustive, contentious and financially very costly two years, that permit was denied by the Planning Board with cause. Three major concerns were; 1) the volume of 40 foot slopes of granite that would need to be blasted, processed on site into gravel and hauled away by massive heavy trucks entering and exiting the neighborhood every 10 minutes for YEARS!, 2) a septic system for 50 (now 59) dwellings and its impact on the farm and potential risk to the watershed; 3) designing and building a stormwater management system that could be designed to mitigate damage to the adjacent connected watershed. There were many other reasons based on local bylaws that the Planning Board rejected the special permit, but I will focus on these three.

I will address the potential impact to the watershed first. When walking through Chebacco Woods it is so apparent that all the waters are connected; Coy Pond in Wenham, Round Pond in Hamilton, Gravelly Pond in Hamilton/Manchester, Chebacco Lake in Hamilton/Essex, Alewife Brook flowing into the Essex River, and a series of marshlands and vernal pools in the 3,657 acre Chebacco Lake Watershed. This is where the idea of **town borders** comes into play. The ZBA discussion about the viability and appropriateness of this development does not stop at the **town borders** of Hamilton, but natural flows impact the water supplies of our neighbors in Manchester and Essex. None of these decisions are in a vacuum because of how the water will flow from The proposed 'Village of Chebacco Hill' development directly into this vital watershed.

The proposed control of damage to the watershed is the strategically placed rain gardens. This solution in this environmentally sensitive area is completely inadequate. By the way I am using the term environmentally sensitive area * not because this area is classified by the state as that, but because any map you look at with open eyes, shows that where this development is being proposed DIRECTLY flows into the watershed. Water knows no town **boundaries.** Common sense and scientific research make this clear.

Rain garden stormwater mitigation for 59 dwelling units nestled in 2:1 slopes needs extensive ongoing maintenance multiple times a year. and this is expensive. If the system holds up and is effective in its early life, the cost and long term unreliability will impact the watershed. Assurances that a condo association five years from now will spend the money and have the knowledge and labor to keep these shallow rain gardens effectively filtering the flow of stormwater and potentially waste water from the aforementioned problematic septic system from this development is a huge risk to the watershed. In addition, the presence of large amounts of crushed stone utilized in the development (following the blasting) create another hazard for rainwater seeping into the water table without being contained or controlled.

The blasting of approximately 1.5 MILLION cubic feet of granite and clear cutting 27,000 trees will in fact alter the stormwater runoff path, making the plans for stormwater mitigation a guess at best. The septic plans cross the wetlands to a leaching field ,which is a stone's throw from the irrigation pond for Meadowbrook Farms, a neighbor and business of character for 50 YEARS, They are threatened to be put out of business, and their irrigation pond polluted. I have background research information for all of these concerns, but my letter is too long already.

The Rich family has the right to sell their private property, but the destructive impact to sell for this project is a **BOUNDARY** the ZBA should not accept. Unfortunately the natural **boundaries** of limited buildable space of the 56 acres forces them to limit the proposal to shoehorn 59 dwellings on 16 acres. Unfortunately for them, the **Town Borders** do not account for the natural flow of water into municipal water supplies. Meaning that the destruction of steep slopes, changing the character of our town and blasting for years is a **boundary** that should not be allowed to be crossed in an effort to enrich a developer.

If this is denied, I believe the owner could still be made financially compensated (at full market value for the land) by conserving this land. The land could be purchased by local conservation groups, and maybe help to heal the wounds that this costly and inflammatory project has opened in this town. Maintaining open space as the Master Plan has determined is a core desire of its citizens. Maybe the trails could be named after the Rich family, a lasting legacy for the enjoyment of the entire region.

All of the above possibilities are influenced by the decisions of the Rich family and what they choose to do with their land. But the permission to permit this destructive project is a **boundary** that the town should hold as unbendable and not cross.

I apologize for the length of my letter, but I believe the stakes are very high.

Sincerely,

Al DeGroot
193 Chebacco Road

November 19, 2023

Katherine Miller
Planning and Program Specialist
MassHousing
One Beacon Street
Boston, MA 02108

Bruce Gingrich
Chair, Hamilton Zoning Board of Appeals
Hamilton Town Hall
577 Bay Road
Hamilton, MA 01982

Re: Comments on Project Eligibility Letter for 133 Essex Street – *via regular and email at kmiller@masshoiusing.com* and *bgingrich@hamiltonma.gov.*

Dear Ms. Miller and Mr. Gingrich;

We, the Board of Directors of Save Chebacco Trails Watershed ("SCT&W), write this letter on behalf of our 1000+ members, contributors, neighbors and direct abutters to the proposed Chapter 40B development project at 133 Essex Street in Hamilton, MA (hereinafter the "Site"). Many of our members have enjoyed public access to the Ste for many years (although recently "closed off" by the current owner) and have developed extensive knowledge of site conditions including hydrology, geology, development potential and others. Employing technical and legal experts SCT&W actively participated in and provided testimony in the yearlong hearing process which resulted in the Hamilton Planning Board (the "HPB") unanimous written decision to deny a Comprehensive Permit for a 50-unit luxury housing development at the Site. The plan presented in the Project Eligibility Letter (PEL) recently sent to MassHousing on behalf of Chebacco Hills Capital Partners (CHCP) for a 40B-based project which was built upon the highly-flawed denied submittal.

The purpose of this letter is to document the many ways that this new (yet larger) project described in the PEL fails to meet the standards for funding eligibility

pursuant to 760 CMR 56.00(3) and (4). On this basis we ask you to reject this project for 40B status and deny associated approval.

We trust you will recognize that the previous clustered development plan for the Site, strongly rejected by the HPB, was essentially identical to the current plan offered in the PEL. The two site plans differ only in minor ways such as in the type (duplexes vs. triplets, etc.) and number (58 vs. 50) residential units. Within the newly proposed 58 units, CHCP includes twelve "affordables" in the hope of reexamination and possible permitting under the less rigorous 40B regulations. Yet in all material aspects and in areas of construction, design, environmental health and safety, and neighborhood compatibility and impact, areas where the HPB identified glaring deficiencies in the original design and project placement, there is little if any difference.[1] The multitude of these deficiencies embodied in the "new" project, as in the old, are articulated later in this letter.

Project Eligibility Criteria

We offer this letter pursuant to CMR 56.04(3) which invites comments from the public regarding PEL applications for proposed 40B projects. We take particular note of section 760 CMR 56.04(4)(c) which, notwithstanding other deficiencies in the proposed project, provides a method of documenting the multiple aspects in which this 133 Essex Street fails to meet the standards for 40B eligibility. To confirm eligibility MHP must determine if the design is generally appropriate considering factors such as;

- Proposed use
- Conceptual site plan and building massing
- Topography
- Environmental resources, and
- Integration into existing development patterns.

Yet, all of these factors were carefully considered during HPB review and found to be grossly deficient for the proposed project. These glaring deficiencies provide the basis, but certainly not the entire reasoning, behind the HPB's extremely well-documented denial. The following conclusions offered here are taken directly from HPB's 28-page DENIAL of the project and are specifically referenced to the page number of the DENIAL on which they appear. We believe these are compelling arguments to deny eligibility to the PEL submittal.[2]

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[1] We note that with the increase in the number of units local authorities must determine if the new project will require upgrades to the sewage disposal system and if wetland delineations may also be required.

[2] Direct quotes are referenced Back to the Page number of the DRNIAL on which they are found. We presume MassHousing Housing has a copy of this document but if not we will be happy to supply one.

Deficiencies in the Appropriateness of Proposed Use.

- The Planning Board determined that the adverse effects of the proposed use outweighed its beneficial impacts in view of the particular characteristics of the site, and of the proposal in relation to that site, particularly in consideration of the "[s]ocial, economic, or community needs which are served by the proposal." (page 8)

- "The Planning Board determined that the adverse effects of the proposed use outweighed its beneficial impacts to the town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site, particularly in consideration of the "neighborhood character and social structures.: (page 11)

  It is also worth noting here that this site *in its entirety* has been consistently listed as a prime town potential open space resource (see Town of Hamilton Open Space Plan) and target for preservation.

Deficiencies of the Proposed Site Plan

- "The proposed development is a monoculture, lacking in variety, as well as amenities, and does not serve the needs of Hamilton's senior residents." (page 6)

- "The applicant's site design, however, provides for open space at the rear of units and that open space is *mostly inaccessible* except at the entrance or by traversing rip rap on steep slopes in two places." (emphasis added, page 11)

- "[the proposal] did not address what individuals who experience those or any other conditions associated with aging will do to overcome the challenges of the steep slopes that riddle the property, even between the front and backyards of some units." (page 19)

- "Utilizing the development model, it successfully employed elsewhere, [the site plan] imposed its development on the upland portion of the site, instead of attempting to integrate it into the landscape. (page 26)

Deficiencies in Working With Existing Topography

- "While the applicant intended to preserve 42 acres in part of wetlands and buffer areas (regulated conservation areas), as well as farmland in lot 2, those circumstances are not a license to entirely destroy the topography of the 16-acre portion of the site. (page 9)

- "The project is enormously over-engineered and will change the character and topography of the land." and .... "[The project} would alter terrain in ways no one could imagine ..... does not use low impact development techniques except as afterthoughts. The whole neighborhood would be changed, not for the better, but for the worse." (page 14)

- "The by-laws, however, do not grant an applicant a license to delineate just protected resource areas, and then do whatever it wants with the site" but "is rather directed to respond to the topography and to areas that can be preserved .....to produce something more than a dense subdivision on a foundation of crushed granite." (page 26).

Deficiencies in Preserving Environmental Resources

- "....the applicant [does] not propose to protect natural resources and environmental values in the development of the site. There [is] no attempt to integrate units into the site and no showing that design plans, other than the one proposed, were considered and rejected." (page 9)

- "The addition of 50 condominium units, coupled with denuding of forest land" and other site development factors "would alter the landscape in ways incompatible with the neighborhood. An urban form would be imposed on a rural neighborhood. (page 14)

- "Uncaptured stormwater should hit the ledge and move in any direction the ledge is pitched toward and potentially into wetlands in unpredictable concentration, this posing a risk to natural resources that could not be mitigated." (page 15).

Deficiencies in Integration into Existing Development Patterns

- "The applicant's proposal for a 16-acre development portion of the site would not utilize the land in a way that protects natural features and that would be in harmony with neighboring properties. Indeed, *the failure to protect natural resources would change the character of the area forever.*" (emphasis page 8)
-

Numerous other deficiencies in areas of concern to the MassHousing, such as access to existing community areas and nature trails, visual incompatibility with the area in question, health safety issued associated with the proposed populace, abound. SCT&W asks, with the myriad and serious deficiencies of this proposed project so clearly in evidence here, is this a project that MassHousing should be supporting? Does this project even remotely approach MassHousing standards for large scale subsidization/approval?

Unaddressed Issues in the Project Eligibility Letter

There are a number of instances where CHCP's PEL fails to provide sufficient information or fails to address relevant questions as to whether this particular Site warrants financial support or is consistent with MassHousing project approval criteria. Much of the story is not being told via the PEL, for example, in the paucity of photographic information that was provided with the original submittal. Photographs included were primarily of off-site areas with limited applicability of the site; they offered no information on the dense, rocky, steep and sometimes dangerous on-site conditions indicating the massive, costly and disruptive Herculean effort that will be needed to access, clear and contour this Site for development. Properly included photographs of on-site and site boundary areas would have provided MassHousing MHP a far better and more realistic understanding of the *immense* difficulties associated with developing this site and a better appreciation of the validity of CHCP's Site clearing dollar estimates. This cost and level of this effort is essential to understanding the massive disruption and community impact that this project will cause. Is it clear to MassHousing that access road construction may involve blasting through a granite down to a depth of 40 feet or more? Has MassHousing looked at the area where perhaps dozens of toxic fume emitting construction vehicles will wait at idle along Chebacco Road, or observe the sheer rocky cliffs that will nudge up to the rear of many of the housing units? Is MassHousing fully aware that almost *200,000 cubic yards* of

rock are to blasted and processed on site with approximately half trucked off site to a neighboring town for disposal? [3]

Because of the massive effort involved in site preparation here, SCT&W fears the developer may have underpriced his site development costs and under-reported his expected difficulties in an effort to obtain 40B "status". We ask if the true financial stability of the project is sufficiently clear to support an MassHousing involvement

CHCP's description of the proposed final product extolls the open space and easy trail access that it promises. Here again refer MassHousing to the findings of the Hamilton Planning Board which expressed serious concern about the viability, safety and accessibility of these so-called open space resources to determine if their design lives up to its CHCP's claims.

SCT&W also notes CHCP's thinly-veiled attempt to exclude children from the affordable units. Rather, CHCP proposes to hold their presence hostage to unit ownership or control by a 55+ year old senior? CHCP should not claim credit for providing potentially affordable homes for "young families" when the deck is so clearly stacked against their presence.

We also must ask why MassHousing would seek to support a project which seems so contrary to current state policy for locating affordable housing resources. As amply shown in recently proposed MBTA guidelines (which the Town of Hamilton is currently considering) efforts are being made to promote affordable construction with .5 miles of public transportation and facilities by establishing "by right" zoning. By this standard and indeed by common standards of affordable units, the proposed CHCP project will be woefully misplaced. The site is banished to the far reaches of the Town of, Hamilton, totally dependent on automobile-based transportation, and not remotely within walking distance, especially for seniors, to public transportation or commercial /government services. We question why MassHousing would want to support a project that is so clearly antithetical to Massachusetts' goals in providing safe, affordable and accessible affordable housing, especially for seniors.

Concerns Related to Economic Factors.

We have overall questions of its attractiveness of the affordable units to the "senior" population for which it is nominally targeted. With current very high

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interest rates, high and ever-increasing town taxes from Hamilton and condominium fees rapidly approaching $600 per month, we question what the true affordability will be. Rather, with these lofty prices and costs it appears that MassHousing will be contributing to a misplaced and destructive development which will function effectively as an isolated enclave for the very rich. The Planning Board has already spoken in its determination that "[a]ccordingly, absent significant savings, medium income seniors would not be able to purchase the proposed units" even under conditions where condo fees may not have been included in the analysis. ´ (See Denial page 7). The Planning Board also noted concern about the overall lack of facilities to accommodate seniors with varying disabilities. Combined with the other hazards of the proposed plan and the steep slopes on which this entire "island in the sky" is to be built, the overall appropriateness of the entire complex for the senior community, from Hamilton or elsewhere, affordable or not, is egregiously absent.

Hamilton's Current Affordable Housing Status

We note that although Hamilton has not achieved its 10% affordable housing inventory, it has made substantial progress in recent years. Currently, we understand that the Town has a total of 55 units permitted and/or awaiting construction. We furthermore understand that the Town has had discussions with several property developers who may be interested in 40B developments at sites which are far more favorably located and conducive to significant multi-affordable unit housing development. These projects could advance progress within the Town and allow Hamilton to achieve its 10% goal in the near future. The case for allowing the CHCP project at 133 Essex St., under extremely difficult and expensive circumstances and conditions, lacking in amenities, remote from facilities and environmentally devastating, all for the delivery of a mere 15 units that would do little to advance Hamilton's progress towards its SHI goal is very weak indeed! The Town of Hamilton does not want this project 9for a host of reasons entirely separate from the Towns continuing progress in developing smart, attractive and safe affordable units), does not need this project, and in multiple ways will not benefit from this project. We ask MassHousing to deny the PRL and refuse funding for this project while Hamilton pursues more effective and beneficial ways to supply quality affordable housing.

Very truly yours,

SCT&W Board of Directors

Kenneth F. Whittaker Ph.D., J.D, Pres.

John Cole, Treasurer

HIlary Cole, Secretary

Ron Segar, Member

cc: allselectmen@hamilton.ma.gov

External Email Warning 40B @133 Essex St. Hamilton Ma 01982

John Buono <jsjbuono@gmail.com>

Mon 4/29/2024 4:17 PM

To:Mary Ellen Feener <permitting@hamiltonma.gov>
Cc:SelectBoard <selectboard@hamiltonma.gov>;Joe Domelowicz <jdomelowicz@hamiltonma.gov>

Administration assistant Mary Ellen Feener
Chair of ZBA Bruce Gingrich
Chair of Selectmen Caroline Beaulieu
Town Manager Joe Domelowicz
Esteemed Board Members:
I am thoroughly opposed to the proposed development @133 Essex St.
My address is 260 Chebacco Rd., S. Hamilton MA 01982. I've been a resident here for 12 years with my wife Susan Trevejo. After being dedicated participants to the 2years of planning board decision to oppose this project, I would think all angles of investigative efforts to prove this is a foolhardy development were explored and unanimously voted down. There are so many aspects that threaten our peaceful way of life ie. watershed being compromised for not only Hamilton, but Essex and Manchester. Thousands of trucks spewing diesel fumes to cart away millions of pounds of granite plus the huge earth moving machines spewing more harmful silica dust at decibels that far exceed the Massachusetts noise code for residential areas of 55db. daytime and 45 db. for night. This noise level will affect home businesses that will ultimately shut dow. What about use of explosives and blasting material for no less than 5 to 7 years. Since they've been paving Chebacco Road with a minimum amount of heavy equipment, we are already seeing instances that are causing inconveniences to the day to day traffic of going to and from the doctors, shopping etc. Can you possibly imagine a massive intrusion on a scale so large that it will cripple our bucolic lifestyle. All this noise, danger to wells, drinking water, forcibly making our neighborhood farm having to rely on bringing in potable water because of fear of septic leakage into their water supply. One more issue. Can you also imagine the service trucks that provide chemicals to keep the new development residents lawns ferilized, mosquito free pesticides that will leach into Becks, Gravelly and Round Ponds. Please use your ability to keep in lockstep with our esteemed governors policies on conservation and environmental protection to put this aberration to rest and keep what nature has taken eons to perfect.
With all due respect, John Buono

External Email Warning Hamilton zoning permit 133 Essex Street

Linda Sarkisian <linsarkisian@gmail.com>

Tue 4/30/2024 1:09 PM

To:Mary Ellen Feener <permitting@hamiltonma.gov>

Dear Hamilton Zoning Board

I have lived in this town since 1978 and love the small town atmosphere and the woods and ponds in the vacinity. It has saddened me to see, once beautiful woodlands destroyed by land developers. We have only to look at the new construction on Bridge street by land developers who did not think things through. Huge walls have now been built along property lines to prevent soil erosion onto Bridge Street. Truly ugly. Not very smart planning.

Re: 133 Essex Street
What will be the end result of blasting tons of rock, flirting with drastic changes to a delicate watershed, and the results of chemicals from building supplies and landscape materials on our water supply. This is not a quick project. It involves YEARS of noise pollution, air pollution, water pollution, traffic disruption, and we're TRUSTING everything to work out perfectly per the plan. The town has a ban on watering every year and now we're supposed to supply water to 55 plus homes with, no doubt 3-4 bathrooms, and lawns that MUST be green and weed free. We all know that homeowners do NOT follow the rules when it comes to water usage and chemicals to make properties beautiful. How can we trust that this project will turn out perfectly.
The water supply and watershed MUST BE PROTECTED!

The Hamilton Zoning board MUST consider the neighbors and the whole town when reviewing this project. Please delay hearing the new proposal for this project.

Sincerely
Linda Sarkisian
307 Essex Street
Hamilton

Sent from my iPad

External Email Warning 133 Essex Street - 40B proposed development

Kristina Lea <kristina@truefreedom.blue>

Tue 4/30/2024 10:15 AM

To:Mary Ellen Feener <permitting@hamiltonma.gov>;SelectBoard <selectboard@hamiltonma.gov>;Joe Domelowicz <jdomelowicz@hamiltonma.gov>

Dear members of the ZBA,

Please follow the due process and delay formal review of Larry Smith and Chebacco Hill Capital Partners' proposed 40B development for 133 Essex Street until the appeals on their original proposal to the town Planning Board has been resolved, and they have been required to wait the year waiting period before submitting a new proposal. This is critical, particularly in the case of this proposed development, because of the risk that it involves for a critical water resource for residents of three towns — Hamilton, Manchester and Essex. The Planning Board denied the original proposed development due to the level of blasting that would be involved and the high risk to this important watershed area. Now, this 40B proposal involves more units, more blasting and includes 49 waivers to town bylaws including additional requested waivers for the storm management bylaws. When it is clear that this development will be destructive to this neighborhood, the adjacent local organic farm (Meadowbrook Farm) and this crucial water supply area, it does not make sense to allow this to go forward without allowing time for the town to negotiate another location for affordable housing that would not come at such a great risk to Hamilton and the towns of Manchester and Essex. Please support the town's efforts to pursue affordable housing in locations that are not so destructive to the environment and critical water resources and help us protect these resources for the generations to come.

Thank you,

Kristina Lea

(4 Villa Road, South Hamilton)

External Email Warning Neighbor opposition to 133 Essex St Hamilton project

silas.nary@gmail.com <silas.nary@gmail.com>

Tue 4/30/2024 12:00 PM

To:Mary Ellen Feener <permitting@hamiltonma.gov>;Bruce Gingrich <bgingrich@hamiltonma.gov>

Hello Hamilton ZBA,

I'm forwarding my email sent in November to the state opposing the 133 Essex 40B application (you were also copied) which lays out several considerations and outright problems related to the proposed use of the 133 Essex St site. While I acknowledge the state has a narrow scope in the case of approving/denying the 40B, the town, including and particularly the ZBA, must take a more comprehensive view in the best interests of the town and it's people. You should plainly reject their applications for this site/project based on everything we know. There are no valid reasons to even consider this project. Just the fact that the town/planning board is being sued by the developer (and still are yet tabled that suit to resolve the 40B which is entirely backwards) for effectively the same project should tell you all you need to know.

Please at least table/defer anything related to the developer's current applications. Or better yet, tell them they're denied and that they should move on. The owners should accept the offer from the Greenbelt/town/etc to preserve the land. Let's not let their greed continue to cause a myriad of forever problems.

Thank you,

Silas Nary
8 Villa Road

From: silas.nary@gmail.com <silas.nary@gmail.com>
Sent: Monday, November 20, 2023 10:02 AM
To: kmiller@masshousing.com; bgingrich@hamiltonma.gov
Cc: jdomelowicz@hamiltonma.gov; allselectmen@hamiltonma.gov; allplanningboard@hamiltonma.gov
Subject: Neighbor opposition to 133 Essex St Hamilton project

Hello,

I write to express our intense opposition to the proposed project at 133 Essex Street in Hamilton. I'm one of the neighbors who will be directly affected by any construction project and implications on the watershed. I have some thinking that I need to express for all to consider as laid out below.

Obviously the Hamilton planning board's decision to reject the application was a big win for the community to avoid the destruction of the immaculate woods, conserve the character of the neighborhood and protect the fragile ecosystem of the area that contributes so much to the community including the water supply and many other functionalities. However none of us are surprised that the developer is trying an end around by going to the 40B scenario. This is a very obvious way to try to get what they want through exploiting a program that is meant to help the community rather than hurt it.

How can a project that is in active land court litigation with the town of Hamilton on the permit denial at the same time and in good faith go back to the town to effectively propose the same project under slightly different auspices? Even if these are meant to be separate applications, there is massive taint to the former by the latter. I'm not sure how the town and its officials can consider this new application in good faith while at the same time fighting to defend the thorough and proper decision that was made previously. I cannot imagine a judge would look kindly on this tactic. It's obviously a risk the Developer is willing to take but we all should see through it and chalk it up as yet another negative against their intentions to harm the community at all costs.

These are just some of my immediate thoughts. I'm happy to discuss further with anyone that would like to engage.

Thank you,

Silas Nary
8 Villa Road
South Hamilton

External Email Warning Delay & Deny

Nancy Corns <ncornsl2015@gmail.com>
Tue 4/30/2024 3:39 PM
To:Mary Ellen Feener <permitting@hamiltonma.gov>

Dear The Hamilton Zoning Board —

PLEASE DELAY AND DENY this destructive development that is proposed next to our cherished Chebacco Woods.
The planning board already denied it. PLEASE keep in mind how destructive this would be to every creature and neighbor near and far.

We can't risk our land and precious aquifer that so many communities depend on.

Please make the right call.

Concerned neighbor,

Nancy Littlehale
16 Walnut Road
Wenham

External Email Warning Proposed 40b-Chebbaco

Kate Girard <katefalcon@gmail.com>

Wed 5/1/2024 7:23 AM

To:Mary Ellen Feener <permitting@hamiltonma.gov>

Hello- I am writing to express my concern about the proposed 59 units and associated 49 waivers requested to build those units on the property abutting Chebacco woods. I followed this project through the first proposal that was examined in depth and at length and soundly rejected by the planning board. It is alarming that the developers persist in looking for more ways around the established protective town bylaws.
Please deny this application or delay this hearing on the destructive project.

Thank you,
Kate Girard
6 Partridgeberry Lane
Hamilton

HILL LAW

April 30, 2024

BY ELECTRONIC MAIL: permitting@hamiltonma.gov
AND BY FIRST CLASS MAIL

Hamilton Zoning Board of Appeals
Hamilton Town Hall
577 Bay Road
Hamilton, MA 01936

Re: Application for Comprehensive Permit – 133 Essex Street, Hamilton

Dear Members of the Board:

This firm represents Hamilton resident Heather Ensworth and the Watershed Protection Alliance, comprised of residents of Hamilton, Manchester and Essex, and I am writing to request that the Board exercise its right under Chapter 40B regulations to invoke a "safe harbor" with respect to the above-referenced Chapter 40B application, which would shift the burdens and presumptions governing this application in the Town of Hamilton's favor.

A. The "Related Application" Safe Harbor Regulation

Under the Chapter 40B regulations, there are several categories of "safe harbors" that, if applicable to a new Chapter 40B application, may be invoked by the local zoning board of appeals, resulting in any decision made by the board being immune from appeal by the applicant. One of these safe harbors is the "related application" safe harbor, under 760 CMR 5.03(7). This safe harbor applies when there was a prior "related application" concerning the same project site, which was pending within the last 12 months. Specifically, the regulation, when properly invoked, makes any zoning board decision on a comprehensive permit application "consistent with local needs," which effectively shifts the statutory presumption and the burden away from the board, and onto the applicant to demonstrate that the Board's decision was illegal.

This unique provision of the 40B regulations was adopted by the state Executive Office of Housing and Livable Communities ("EOHLC," formerly known as "DHCD"), as a means to control what was then a recurring problem of real estate developers weaponizing Chapter 40B as tool for retaliation or intimidation when the developer did not get its way with an application under conventional zoning. In a 2006 ruling, the state Housing Appeals Committee commented that the regulation was intended to "prevent developers from using the Chapter 40B process to coerce or intimidate local zoning boards and communities with respect to traditional zoning applications." Grandview Realty, Inc. v. Lexington ZBA, HAC No. 05-11 (July 10, 2006), 2006 MA Housing App. LEXIS 7, *14 (copy attached as Exhibit A). Notably, the Housing Appeals

Committee in Grandview was called upon to adjudicate an ambiguity in the regulation, and specifically resolved that ambiguity in a way that was consistent with this overriding purpose to prevent coercion.

B. The "Related Application" Regulation Applies to the Chebecco Hill 40B Application.

Here, the Chapter 40B application before you concerns the same property (133 Essex Street) on which there is a pending application for a similar real estate development project (50 housing units – 44 duplexes and 6 single-family homes) under the Town's Senior Housing zoning bylaw. That application for a special permit, which was filed on July 2, 2021, was denied by the Planning Board on October 19, 2022, which denial was appealed by the applicant, Chebacco Hill Capital Partners, LLC (the "Applicant"), to the Land Court (Case No. 22 MISC 000591). The Land Court case is still open. See, Docket attached as Exhibit B.

Under the "related application" safe harbor regulation, the safe harbor applies whenever there is a related application concerning construction on the same land as the 40B application, and there has not been a "final disposition [of that related application] including all appeals" within 12 months of the filing of the 40B application. There has been no "final disposition" of the 2021 special permit application, because the Applicant's appeal is still pending in Land Court.

The "related application" safe harbor does not apply when the prior application proposed a development that "include[d] at least 10% SHI Eligible Housing units." 760 CMR 56.03(7)(a). The Applicant may argue that this safe harbor is inapplicable here, where the Applicant in its 2021 special permit application proposed to donate $2,174,000 to Hamilton's Affordable Housing Trust to fulfil its obligations under Hamilton's inclusionary zoning bylaw, § 8.3. Under that section, all new residential development projects in town must either contain a minimum number of deed-restricted affordable units, or the applicant must make a payment "in lieu" of providing those units, to the Town's affordable housing trust. However, it is undisputed that the 2021 application was for a project that did not include any SHI Eligible Housing units, which was the Applicant's choice.

The regulation is very specific, requiring that the related project "include" affordable units within the project. Making a monetary donation is not the same as providing affordable housing units in a project. Notably, the Planning Board agreed, stating in its 2022 decision that with this donation, "there is a potential that low- and moderate-income seniors could benefit at some uncertain time in the future from the applicant's proposal, if an affordable housing project were to be approved." There is no ambiguity in this regulation, and therefore its plain language must be enforced. Warcewicz v. Department of Envtl. Protection, 410 Mass. 548, 550-551 (1991) (agencies are not free to interpret their own regulations in ways that "arbitrary, unreasonable, or inconsistent with the plain terms of the regulation itself."); Theophilopoulos v. Board of Health of Salem, 85 Mass. App. Ct. 90, 100 (2014). It requires actual affordable units to be proposed as part of the prior application, not monetary donations. If the EOHLC wanted to

include "payment in lieu" proposals within this exception, it could have easily written the regulation as such.

C. The Board Should Invoke Safe Harbor

If a safe harbor is available to be invoked against a pending Chapter 40B application, it must be invoked within 15 days of the opening of the zoning board's public hearing, or else the board waives it. 760 CMR 56.03(8). To invoke the safe harbor, the board must take a vote, and then put the applicant on written notice (with a copy sent to EOHLC). The applicant has the right to appeal the applicability of the safe harbor to EOHLC, but must file the appeal within 15 days of the board's notice. This process tolls the 180-day deadline that the board has to close the public hearing after opening it under §56.05(3). Any party may appeal EOHLC's determination to the state Housing Appeals Committee.

The Board has the discretion to invoke the "related application" safe harbor, and there is really no reason not to. Invoking the safe harbor before the 15-day deadline does not obligate the Board to deny the comprehensive permit application. Rather, it merely shifts the burden of proof in the event of an appeal.[1] In short, the Board could reasonably condition its approval on design changes to bring the project into closer conformity with Town's dimensional requirements and design review performance standards, without the threat of an appeal. The Board would also be free to request changes during the permitting process that it may not otherwise be able to do without the safe harbor.

Importantly, the Applicant's Chapter 40B proposal raises many of the same environmental and planning concerns that caused the Planning Board to reject the 2021 special permit application. In an unusual 28-page, single-spaced written decision, the Planning Board explicated its concerns, tied directly to the criteria in the Senior Housing zoning bylaw, Section 8.2. As is evident from its decision, the Planning Board invested considerable time and attention to reviewing every detail of the 2021 application. Among other findings, the Planning Board concluded:

- "the Applicant did not propose to protect natural features and environmental values in the development portion of the site." Decision, p. 9
- "a village feel would have been more achievable through protection of at least some of the mature forests and other unprotected conservation resources." p. 11
- "The project, as designed, imposes itself on the site, undermining both the unprotected natural features and landscapes that make the neighborhood unique in Hamilton." p. 13.
- "the existing proposed entrance... is completely antithetical to the character of the neighborhood and completely inconsistent with adjacent land uses that fit unobtrusively within the landscape." p. 14

[1] The developer would have the option of challenging the Board's invocation of the safe harbor, by filing an appeal with the EOHLC within 15 days. 760 CMR 56.03(8). After the Department makes a decision, either party may appeal that decision to the Housing Appeals Committee. Id.

- "87,748 cubic yards of rock is to be exported in Phase I and hauled off for 93 days in Phase A," resulting in 8,648 18-wheel truck trips to export the crushed rock. p. 18.

With invocation of the safe harbor, the Zoning Board will have greater leeway to require the Applicant to make positive changes to the design of the Chapter 40B project, and perhaps make it less environmentally-impactful. In contrast, not invoking the safe harbor would leave the Board with considerably less leverage.

Thank you for your consideration.

Very truly yours,

/s/ *Daniel C. Hill*

Daniel C. Hill

Encs.
cc: Clients
Amy Kwesell, Esq.

EXHIBIT A

2006 MA Housing App. LEXIS 7

July 10, 2006

No. 05-11

MA Housing Appeals Committee

Reporter
2006 MA Housing App. LEXIS 7 *

GRANDVIEW REALTY, INC, AppellantÂ ; v.Â ; LEXINGTON ZONING BOARD OF APPEALS, Appellee

Core Terms

was, has, statutory minimum, attain, permit application, interested person, local permit, slip opinion, memorandum, cooling, parcel, affordable housing, prior application, zoning board, local needs, intervene, realty, burn, site

Panel: Werner Lohe, Chairman; Joseph P. Henefield; Marion V. McEttrick; Christine Snow Samuelson; James G. Stockard, Jr.; Shelagh A. Ellman-Pearl, Presiding Officer

Opinion

DECISION

Appellant Grandview Realty, Inc. (Grandview) has appealed, pursuant to G.L. c. 40B, Â§ 22, and 760 CMR 30.00 and 31.00, the decision of Appellee Lexington Zoning Board of Appeals (Board) denying a comprehensive permit with respect to property in Lexington, Massachusetts. For the reasons set forth below, the decision of the Board is upheld.

I. PROCEDURAL HISTORY

On August 17, 2004, Grandview submitted an application for a comprehensive permit for a multifamily rental project to be developed on three undeveloped parcels on Grandview Avenue, Lexington, Massachusetts. Exh. A., Burns Affidavit, P5. The proposed development would include 12 units consisting of 9 market rate units and 3 units affordable for tenants with incomes no greater than 50 percent of the area median income.

The Board's decision indicates that the public hearing began on September 9, 2004 and continued on September 21, November 18, and December 16, 2004 and on February 10, and March **[*2]** 10, 2005. A site visit was conducted on October 16, 2004. The Board deliberated on the application on March 24, April 7 and April 14, 2005. Exhs. H, 20, p. 2. The Board voted on the comprehensive permit on April 7, 2005, voting alternative decisions depending on whether the Town of Lexington reached the 10 percent statutory minimum for affordable housing provided in G.L. c. 40B, Â§ 20, by April 19, 2005, the date its decision was due. Exhs. H, 20, p. 3. On April 14, 2005, the Board voted by roll call to deny the comprehensive permit. The Board issued a decision denying Grandview's application for comprehensive permit on April 19, 2005, giving as a reason that the Subsidized Housing Inventory (SHI) maintained by the Massachusetts Department of Housing and Community Development

listed Lexington's affordable housing stock at 10.78%. According to Grandview, this decision was filed with the Town Clerk on April 19, 2005.

On May 3, 2005, Grandview filed its appeal with the Housing Appeals Committee. The Committee held a Conference of Counsel on May 20, 2005. On September 21, 2005, Grandview filed a motion for summary decision. Through counsel, several **[*3]** individuals filed a motion to intervene on November 2, 2005. The presiding officer conducted a conference with counsel for Grandview, the Board and the proposed interveners on January 31, 2006. Â [1] On February 10, 2006, she denied the motion to intervene without prejudice, but granted the proposed interveners status as Interested Persons. In her ruling, the presiding officer allowed the Interested Persons to submit argument, but not evidence, on "the issues raised by the motion for summary decision, on the timetable set for the Board's submissions on that motion." *Grandview Realty, LLC v. Lexington,* No. 05-11, slip op. at 5 (Mass. Housing Appeals Committee Ruling Feb. 10, 2006); see Tr. I, 41. On February 17, 2006, the Board filed its opposition to Grandview's motion for summary decision and a cross-motion for summary decision. Grandview filed its reply on March 6, 2006, and the Board and the Interested Persons filed sur-reply memoranda on March 20, 2006. Both Grandview and the Board submitted affidavits **[*4]** and exhibits in connection with these motions; the Interested Persons attached an affidavit to their memorandum. On March 24, 2005, Grandview moved to strike portions of the Interested Persons' memorandum as well as the affidavit they had submitted. The presiding officer granted Grandview's motion to strike on June 22, 2006. Â [2]

II. JURISDICTION

To be eligible for a comprehensive permit and to maintain an appeal before the Housing Appeals Committee, three jurisdictional requirements must be met. Although this issue was not reached before the Committee, we note that the Board's decision indicates that Grandview met the following jurisdictional requirements: that it is a limited dividend organization as required by 760 CMR 31.01(1)(a) and that the project that is the subject of this proceeding is fundable through the MassDevelopment Tax-Exempt Bond Program as required by 760 CMR 31.01(1)(b). With regard to the issue **[*5]** of site control as required by 760 CMR 31.01(1)(c), the Board indicated that Grandview demonstrated adequate control over the parcels upon which the buildings would be constructed, but it questioned whether Grandview had adequate control over Grandview Avenue. This issue has not been reached by the parties in their pending motions and need not be addressed here.

III. CROSS MOTIONS FOR SUMMARY DECISION

Grandview has moved for summary decision overturning the Board's permit denial, arguing that the determination by the Department of Housing and Community Development (DHCD) that Lexington has attained the statutory minimum violates Chapter 40B and applicable regulations. The Board has filed a cross-motion for summary decision on two grounds: 1) that DHCD's decision that Lexington has attained the 10 percent statutory minimum is valid; and 2) that Grandview filed and maintained open a related application within the "cooling off" period specified in 760 CMR 31.07(1)(h). The Interested Persons' memorandum supports summary decision for the Board and opposes summary decision for Grandview, on theories **[*6]** similar to those advanced by the Board.

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[1] A stenographic transcript was made of this conference.

[2] Grandview moved to strike the affidavit and portions of the memorandum supported by reference to the affidavit for the reason that they contravened the presiding officer's order regarding the scope of the Interested Persons' participation. The presiding officer's order specifically barred the Interested Persons from submitting evidence in this appeal, while allowing them to renew their motion to intervene if the case proceeded beyond the motions for summary decision. *Grandview Realty, Inc. v. Lexington,* No. 05-11, slip op. at 5 (Mass. Housing Appeals Committee Ruling Feb. 10, 2006); see Tr. I, 41. The presiding officer's order striking the affidavit and part of the memorandum is consistent with the scope of the Committee's customary grant of participation to interested persons. Interested persons are not parties, but rather have roles generally limited to providing commentary or legal argument in proceedings; they do not contribute evidence to the record. In addition, the portion of the memorandum stricken by the presiding officer also may have failed to comply with the prohibition in G.L. c. 233, Â§ 23C against the disclosure in an administrative proceeding of communications made in the course of a mediation session. We concur in the presiding officer's order striking the affidavit and related argument.

Summary decision is appropriate on one or more issues that are the subject of an appeal before the Committee if "the record before the committee, together with the affidavits shows that there is no genuine issue as to any material fact and that the moving party is entitled to a decision in its favor as a matter of law." 760 CMR 30.07(4). See Catlin v. Board of Registration of Architects, 414 Mass. 1, 7, 604 N.E.2d 1301 (1992). As discussed below, we uphold the Board's decision under the related application provision, 760 CMR 31.07(1)(h).

A. Factual Background

As we decide this case based on our related application regulation, the factual background provided relates solely to this issue. In July 1999, a principal of Grandview, David E. Burns, acting through another entity, DEBCO Properties, Inc., submitted to the Lexington Planning Board an Application for Preliminary Subdivision Review for approval to develop market rate single-family housing on three undeveloped parcels on Grandview Avenue in Lexington. Burns **[*7]** Affidavit, Exh. A, P11. On May, 22, 2000, the Planning Board approved the subdivision application. Exh. 17. A group of abutters then appealed the Planning Board's decision in June 2000. On September 28, 2004, the Land Court overturned the subdivision approval. Exh. 18. The Land Court's decision was appealed and, according to the record, remains pending in the Appeals Court. See *Berg, et al. v. Lexington Planning Board,* Appeals Court No. 2005-P-0045. The subdivision approval appears not to have been recorded in the Registry of Deeds. Messenger Affidavit, Exh. 19. There is no record that Burns has withdrawn his application for approval of the subdivision plan for the parcels in issue from the Planning Board, the Land Court or the Appeals Court.

The Appellant is this proceeding, Grandview, has a purchase and sale agreement to buy the same three parcels on Grandview Avenue in Lexington. On August 17, 2004, Grandview submitted an application for a comprehensive permit for a project to be developed on these parcels. Exh. A., Burns Affidavit, P5. The Zoning Board conducted a site visit and held public hearings on the application on six days between September 9, 2004 and March 10, 2005. **[*8]** Exhs. H, 20, p. 2. Among the persons appearing before the Zoning Board, were neighbors to the site who raised objections to the project.

The Board issued its decision denying Grandview's application for a comprehensive permit on April 19, 2005, giving as a reason that the Subsidized Housing Inventory maintained by DHCD now listed Lexington's affordable housing stock at 10.78%. The Board attached to its decision, as an exhibit, a list of conditions that it would have required as part of the grant of the comprehensive permit it would have issued had Lexington not received notice from DHCD that it had attained the 10% statutory minimum before the decision on the comprehensive permit was issued. Â [3] Exhs. H, 20.

B. A Pending Related Application Requires that the Board's Decision be Upheld

The Committee's regulations establish a twelve-month protective period for zoning boards when a comprehensive permit developer has had a related application pending on the same property site. The developer is not prohibited **[*9]** from filing a comprehensive permit application within the same period. However, any decision issued by the zoning board must be upheld as a matter of law if twelve months have not elapsed between the date

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[3] The Board's decision notes that it was aware of the possibility that housing units in an Avalon Bay development would be included in the SHI before the Grandview decision was issued, and that it voted alternative decisions, one granting a comprehensive permit in the event the Board's decision was rendered before the SHI was amended, and the version it actually issued, denying the permit on the ground that Lexington had attained the statutory minimum. Exhs. H, 20, p. 3. This approach creates a conundrum. Section 20 of Chapter 40B provides only that attainment of the statutory minimum renders any decision made by the Board consistent with local needs as a matter of law; it does not establish attainment of the minimum as a ground for denial. Even when a town attains the statutory minimum, the statute envisions the Board giving full consideration to the application to build housing, and granting or denying it on substantive grounds relating to the merits of the specific application, and not merely on the town's attainment of the minimum. *Id.* Rather, it is on appeal to this Committee that attainment of the statutory minimum can be raised by the Board as an affirmative defense. See *East Homes Trust v. Tyngsborough,* No. 02-37, slip op at 2 (Mass. Housing Appeals Committee July 21, 2003). Although the Board's couching its grounds for denial in terms of the statutory minimum is illogical, and inconsistent with the spirit of Chapter 40B, it has no practical effect, since however the decision is worded, the Board may raise the affirmative defense on appeal. See G.L. c. 40B, Â§ 20; 760 CMR 31.06(5).

of the comprehensive permit application and the dates of certain actions relating to a prior application for a special permit or other approval that does not include low or moderate income housing. The regulation, 760 CMR 31.07(1)(h), states:

> (h) Related Applications. A decision by the Board to deny a comprehensive permit or grant a permit with conditions shall be consistent with local needs if 12 months has not elapsed between the date of application and any of the following:
>
> 1. the date of filing of a prior application for a variance, special permit, subdivision or other approval related to construction on the same land if that application included no low or moderate income housing,
>
> 2. any date during which such an application was pending before a local permit granting authority,
>
> 3. the date of disposition of such an application, or
>
> 4. the date of withdrawal of such an application.
>
> An application shall not be considered a prior **[*10]** application if it concerns insubstantial construction or modification of the preexisting use of the land. Â [4]

There is no dispute that the prior subdivision application was an application for approval related to the same land and that it included no low or moderate income housing. The parties' disagreement focuses on the meaning of subsection (3) of Â§ 31.07(1)(h): "the date of disposition of such an application." The Board argues that the word "disposition" must be construed to mean "final" disposition and to require the conclusion of all appeals following action by the local board. Here, it argues, because the subdivision approval remains on appeal at the Appeals Court, the comprehensive permit application was filed before the expiration of the one-year protection, or "cooling off," period contemplated by the regulation. Grandview argues that "disposition" refers only to the final decision at the local permit granting authority and therefore, the August 2004 filing of the comprehensive permit application, **[*11]** compared to the Board's May 2000 approval of the subdivision application more than meets the "cooling off" requirements of Â§ 31.07(1)(h).

Our first step in understanding the meaning of "disposition," as it is used in 760 CMR 31.07(1)(h)(3), requires examining the word in the context of the language of the regulation. Grandview compares the language of subsections (h)(1) and (h)(2), which refer, respectively, to "the date of filing of a prior application ....", and to "any date during which such an application was pending before a local permit granting authority," to argue that "disposition" must be construed to refer back to the "local permit granting authority" mentioned in subsection (h)(2). Grandview also contrasts the lack of a reference to any appeal period in Â§ 31.07(1)(h) with the specific reference to filing appeals in 760 CMR 31.08(4), which governs lapse of permits, to argue that the lack of a specific reference in the related application section means that "disposition" was not intended to encompass any appeal period.

The presence or lack of a specific reference to appeal periods in **[*12]** Â§ 31.07(1)(h), however, is not dispositive. Subsection (h)(2) sets the twelve-month clock running from the end of the period encompassed by "any date during which such an application was pending before a local permit granting authority." If subsection (h)(3) only refers to a local board's final decision, the date of disposition would be the same as the last day on which the application was pending before the local board. In this circumstance, subsection (h)(3) would be superfluous. The same reasoning applies to the "withdrawal" provision of subsection (h)(4).

A construction that would make subsections (h)(3) and (h)(4) unnecessary must be avoided, if possible. In order to give subsection (h)(3) meaning, it would have to refer to more than the time period during which the application is pending before the local board. Interpreting "disposition" and "withdrawal" to include appeals of local board decisions adds meaningful content to the regulation.

Moreover, interpreting "disposition" to mean a final disposition after appeal is consistent with the language of G.L. c. 41, Â§ 81V, which suggests that subdivision approvals are not considered disposed **[*13]** of until after appeals

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[4] In proceedings before the Committee, the existence of a related application establishes an irrebuttable presumption that the board's action is consistent with local needs. 760 CMR 31.07(1).

have been resolved. The comparison to 760 CMR 31.08(4), which governs lapses of comprehensive permits and does not address conventional permits, is not meaningful in this context. Therefore, interpreting disposition to mean final disposition after the conclusion of all appeals renders the regulation provisions consistent and meaningful. To do otherwise would lead to an illogical result. See *Apple Farm Estates, LLC v. Medway,* No. 04-26, slip op. at 2-3 (Mass. Housing Appeals Committee Ruling Feb. 16, 2005).

Similarly, reference to the proposed draft of the regulation submitted for public comment does not require any different result. The proposed regulation provided for a six-month, rather than a twelve-month cooling off period, and only in the case of a denial by the local permit granting authority. Â [5] Exh. O, p. 2. As promulgated, the regulation expands the scope of related applications, by eliminating the restriction to denials by **[*14]** local authorities and by lengthening the protection period; thus commentary on the proposed regulation is unpersuasive. See Exh. O, p. 4; Exhs. S, T.

Finally, and most importantly, our interpretation of the meaning of "disposition" is also consistent with and advances the purpose and overall policy of the related application provision, which was promulgated to prevent developers from using the Chapter 40B process to coerce or intimidate local zoning boards and communities with respect to traditional zoning applications. See *Stanley Realty Holdings, LLC v. Watertown,* No. 04-04, slip op. at 3 (Mass. Housing Appeals Committee Apr. 15, 2004); *Apple Farm Estates, LLC v. Medway,* No. 04-26, slip op. at 3 (Mass. Housing Appeals Committee Ruling Feb. 16, 2005). It is also intended to discourage developers from maintaining multiple pending applications for the same property. *Stanley Realty Holdings,* No. 04-04, slip op. at 3. Chapter 40B affords developers great flexibility in developing affordable housing projects for submission to local zoning boards for approval. This flexibility is not intended, however, to grant them additional leverage with respect to conventional applications **[*15]** they may pursue.

Grandview's arguments that it is being punished because abutters appealed the grant of the subdivision application, and that applying the related application provision to it would amount to retroactive treatment, are without merit. Grandview could have withdrawn its subdivision application and waited the one-year cooling off period before filing its comprehensive permit application. Furthermore, the related application provision was promulgated well before Grandview filed its comprehensive permit application. Indeed, the subdivision application could have been withdrawn following the promulgation of this provision in 2001, and Grandview then could have chosen to file a comprehensive permit application a year thereafter, well before the date on which it did file the application.

We therefore conclude that "disposition" means final disposition after the conclusion of all appeals with respect to a prior application under Â§ 31.07(1)(h)(3). Therefore an active, related application exists for the property in question. A determination that the pending subdivision appeal constitutes an active related application, and that the comprehensive permit application was filed during **[*16]** the protected period, triggers an irrebuttable presumption that the Board's denial of Grandview's application is consistent with local needs under 760 CMR 31.07(1)(h). Such an irrebuttable presumption requires that the Board's denial of the comprehensive permit be upheld.

IV. CONCLUSION

Accordingly, we conclude that the developer's subdivision application constitutes a related application. The Board's denial of the comprehensive permit is therefore deemed consistent with local needs under 760 CMR 31.07(1)(h).

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[5] DHCD stated that the proposed regulation would "[i]nvoke a 6-month 'cooling off' period" and that:

> 760 CMR 31.08 would be amended to add a section that bars an applicant from filing a comprehensive permit for 6 months from the date of a prior application or, if later, the date of denial by the local permit granting authority, for a building permit, variance, special permit, subdivision or other approval related to construction on the same land if that application included no low or moderate income housing.

Exh. O. DHCD's letter accompanying the proposed regulatory change stated that the proposed regulatory changes, including the proposal above, "reflect our continued support of affordable housing development, but are responsive to many of the concerns that we have heard from local communities." Exh. O, p. 1; See Exh. T.

The Board's motion for summary decision is granted. We therefore need not reach Grandview's motion for summary decision.

This decision may be reviewed in accordance with the provisions of G.L. c. 40B, Â§ 22 and G.L. c. 30A by instituting an action in the Superior Court within 30 days of receipt of the decision.

Date: July 10, 2006

MA Housing Appeals Committee

End of Document

EXHIBIT B

22 MISC 000591 Chebacco Hill Capital Partners, LLC v. Marnie Crouch Member of the Hamilton Planning Board , et al. SPEICHER

- Case Type:
- Miscellaneous
- Case Status:
- Open
- File Date
- 11/07/2022
- DCM Track:
-
- Initiating Action:
- ZAC - Appeal from Zoning/Planning Board, G.L. Chapter 40A, § 17
- Status Date:
- 11/07/2022
- Case Judge:
- Speicher, Hon. Howard P.
- Next Event:
-

Property Information

133 Essex Street
Hamilton

All Information | Party | Event | Docket | Financial | Receipt | Disposition

Party Information

Chebacco Hill Capital Partners, LLC
- Plaintiff

Party Attorney
- Attorney
- Borenstein, Esq., Donald Francis
- Bar Code
- 566810
- Address
- Johnson and Borenstein, LLC
  12 Chestnut St
  Andover, MA 01810
- Phone Number
- (978)475-4488
- Attorney
- Glass, Esq., Gordon T
- Bar Code
- 706234
- Address
- Johnson and Borenstein, LLC
  12 Chestnut St
  Andover, MA 01810
- Phone Number
- (978)475-4488

More Party Information

Crouch, Marnie
- Defendant

Party Attorney
- Attorney
- Mullen, Esq., Connor A
- Bar Code
- 703742
- Address
- K.P. Law, PC
  101 Arch St
  12th Fl
  Boston, MA 02110
- Phone Number
- (617)556-0007
- Attorney
- Stein, Esq., Robin

- Bar Code
- 654829
- Address
- KP Law, P.C.
  101 Arch St
  Boston, MA 02110
- Phone Number
- (617)654-1706

More Party Information

Herr, Beth
- Defendant

Party Attorney
- Attorney
- Mullen, Esq., Connor A
- Bar Code
- 703742
- Address
- K.P. Law, PC
  101 Arch St
  12th Fl
  Boston, MA 02110
- Phone Number
- (617)556-0007
- Attorney
- Stein, Esq., Robin
- Bar Code
- 654829
- Address
- KP Law, P.C.
  101 Arch St
  Boston, MA 02110
- Phone Number
- (617)654-1706

More Party Information

Mitchell, Rick
- Defendant

Party Attorney
- Attorney
- Mullen, Esq., Connor A
- Bar Code
- 703742
- Address
- K.P. Law, PC
  101 Arch St
  12th Fl
  Boston, MA 02110
- Phone Number
- (617)556-0007
- Attorney
- Stein, Esq., Robin
- Bar Code
- 654829
- Address
- KP Law, P.C.
  101 Arch St
  Boston, MA 02110
- Phone Number
- (617)654-1706

More Party Information

Poore, Jonathan
- Defendant

Party Attorney
- Attorney
- Mullen, Esq., Connor A
- Bar Code
- 703742
- Address
- K.P. Law, PC
  101 Arch St
  12th Fl
  Boston, MA 02110
- Phone Number
- (617)556-0007
- Attorney
- Stein, Esq., Robin

- Bar Code
- 654829
- Address
- KP Law, P.C.
  101 Arch St
  Boston, MA 02110
- Phone Number
- (617)654-1706

More Party Information

Wheaton, William
- Defendant

Party Attorney
- Attorney
- Mullen, Esq., Connor A
- Bar Code
- 703742
- Address
- K.P. Law, PC
  101 Arch St
  12th Fl
  Boston, MA 02110
- Phone Number
- (617)556-0007
- Attorney
- Stein, Esq., Robin
- Bar Code
- 654829
- Address
- KP Law, P.C.
  101 Arch St
  Boston, MA 02110
- Phone Number
- (617)654-1706

More Party Information

Boroff, Richard
- Defendant

Party Attorney
- Attorney
- Mullen, Esq., Connor A
- Bar Code
- 703742
- Address
- K.P. Law, PC
  101 Arch St
  12th Fl
  Boston, MA 02110
- Phone Number
- (617)556-0007
- Attorney
- Stein, Esq., Robin
- Bar Code
- 654829
- Address
- KP Law, P.C.
  101 Arch St
  Boston, MA 02110
- Phone Number
- (617)654-1706

More Party Information

Norton, Patrick
- Defendant

Party Attorney
- Attorney
- Mullen, Esq., Connor A
- Bar Code
- 703742
- Address
- K.P. Law, PC
  101 Arch St
  12th Fl
  Boston, MA 02110
- Phone Number
- (617)556-0007
- Attorney
- Stein, Esq., Robin

- Bar Code
- 654829
- Address
- KP Law, P.C.
  101 Arch St
  Boston, MA 02110
- Phone Number
- (617)654-1706

More Party Information

Dahlquist, Emil
- Defendant

Party Attorney
- Attorney
- Mullen, Esq., Connor A
- Bar Code
- 703742
- Address
- K.P. Law, PC
  101 Arch St
  12th Fl
  Boston, MA 02110
- Phone Number
- (617)556-0007
- Attorney
- Stein, Esq., Robin
- Bar Code
- 654829
- Address
- KP Law, P.C.
  101 Arch St
  Boston, MA 02110
- Phone Number
- (617)654-1706

More Party Information

Events

Date	Type	Event Judge	Result
12/15/2022 11:45 AM	Case Management Conference	Speicher, Hon. Howard P.	Rescheduled
01/05/2023 10:45 AM	Case Management Conference	Speicher, Hon. Howard P.	Held via video

Docket Information

Docket Date	*Docket Text*	Amount Owed	*Image Avail.*
11/07/2022	Complaint filed.		Image
11/07/2022	Case assigned to the Fast Track per Land Court Standing Order 1:04.		
11/07/2022	Land Court miscellaneous filing fee Receipt: 435721 Date: 11/07/2022	$240.00	
11/07/2022	Land Court surcharge Receipt: 435721 Date: 11/07/2022	$15.00	
11/07/2022	Land Court summons Receipt: 435721 Date: 11/07/2022	$40.00	
11/07/2022	Uniform Counsel Certificate for Civil Cases filed by Plaintiff.		Image
11/15/2022	Event Scheduled Judge: Speicher, Hon. Howard P. Event: Case Management Conference Date: 12/15/2022 Time: 11:45 AM		
11/15/2022	The case has been assigned to the F Track. Notice sent.		
11/25/2022	Appearance of Robin Stein, Esq., Connor A Mullen, Esq. for Marnie Crouch Member of the Hamilton Planning Board, filed		Image
11/25/2022	Affidavit of Compliance with Notice requirements of Chapter 40A, Sec. 17 filed by Gordon T Glass, Esq..		Image
12/05/2022	Assented to Motion to continue Case Management Conference, filed and Allowed.		
12/05/2022	Event Resulted: Case Management Conference scheduled on: 12/15/2022 11:45 AM		

Docket Date	Docket Text	Amount Owed	Image Avail.
	Has been: Rescheduled Hon. Howard P. Speicher, Presiding		
12/05/2022	Event Scheduled Judge: Speicher, Hon. Howard P. Event: Case Management Conference Date: 01/05/2023 Time: 10:45 AM		
12/16/2022	Summons returned to Court with service on Emil Dahlquist Member of the Hamilton Planning Board, Marnie Crouch Member of the Hamilton Planning Board, Beth Herr Member of the Hamilton Planning Board, Jonathan Poore Member of the Hamilton Planning Board, Richard Boroff Member of the Hamilton Planning Board, Patrick Norton Member of the Hamilton Planning Board, William Wheaton Member of the Hamilton Planning Board filed. Summons returned to Court with service on Frederick Mitchell		Image
12/27/2022	Joint Case Management Conference Statement,filed.		Image
01/05/2023	Case management conference held by videoconference. Early intervention event held. Attorneys Donald Borenstein and Robin Stein appeared. Counsel provided an overview of the dispute and legal issues. All discovery, including expert disclosures and depositions, if any, to be completed by May 6, 2023. If either party intends to file a motion for summary judgment, counsel is instructed to contact sessions clerk Emily Rosa to request a status conference. Assuming neither party decides to file a motion for summary judgment, at the close of discovery, counsel for plaintiff is instructed to contact sessions clerk Emily Rosa to schedule a pretrial conference. Parties encouraged to explore settlement.		
01/05/2023	Alternative Dispute Resolution: Early Intervention Event held. Judge: Speicher, Hon. Howard P.		
01/19/2023	Answer, filed.		Image
03/07/2023	Joint Motion to Stay,filed and Allowed. Parties to file a status report at the end of the 90-day stay.		Image
05/26/2023	Joint Motion to Extend Stay,filed and Allowed.		Image
08/03/2023	Joint Motion to Extend Stay, filed and Allowed to November 17, 2023. The parties should not anticipate any further extensions.		Image
12/18/2023	Joint Motion to Extend Stay, filed and Allowed.		Image

Financial Summary

Cost Type	Amount Owed	Amount Paid	Amount Dismissed	Amount Outstanding
Cost	$295.00	$295.00	$0.00	$0.00
	$295.00	$295.00	$0.00	$0.00

Receipts

Receipt Number	Receipt Date	Received From	Payment Amount
435721	11/07/2022	Borenstein, Esq., Donald Francis	$295.00
			$295.00

Case Disposition

Disposition	Date	Case Judge
Undisposed		Speicher, Hon. Howard P.