

58 Farm Road
Sherborn, Massachusetts 01770

January 16, 2024

BY ELECTRONIC MAIL: rick.novak@sherbornma.org

Richard S. Novak, Chairman
Sherborn Zoning Board of Appeals
19 Washington Street
Sherborn, Massachusetts 01770

Re: Proposed Farm Road Development Not Permitted Without Town Meeting Approval

Dear Chairman Novak:

This letter is intended to summarize just one of the multiple reasons the Sherborn Zoning Board of Appeals (ZBA) should deny a comprehensive permit in this matter. As set out below, on the record developed before the ZBA, there remains no genuine dispute that deed restrictions currently prohibit the development proposed on Farm Road.

1. The developer has not disputed the black letter law which establishes that deed restrictions prohibiting subdivision and development of the property being proposed for the development are currently valid and enforceable. See Fenno, Letter to Sherborn ZBA (Sep. 13, 2023) at 3-4.
2. The developer has not disputed that the Town of Sherborn (Town) recognized in its letter to MassHousing that those deed restrictions are still applicable, and also a property interest effectively owned by the Town, see Sherborn Select Board, Town of Sherborn Letter to MassHousing, (July 18, 2022) at 2-3; see also Fenno, Letter, supra at 3-4 & n.4.
3. The developer has not disputed that G. L. c. 40B does not authorize conveyance of a property interest owned by a town, including a negative easement set out as a deed restriction, to a developer absent a vote of Town Meeting so granting such interest, see 135 Wells Avenue, LLC v. Housing App. Comm., 478 Mass. 346, 348, 352-357 (2017); Zoning Bd. of App. of Groton v. Housing App. Comm., 451 Mass. 35, 40-41 (2008).¹
4. The developer has not disputed that Sherborn Town Meeting has not so voted to grant him such property interest.

Please let me know if you have any questions about this letter or any of the issues addressed herein. Thank you for your kind consideration of this matter and the many others throughout this process.

Very truly yours,

/s/

Arthur C. Fenno, Esq.

¹The developer's claim that MassHousing, during the early stages of the process, conclusively determined this issue in his favor, see Haverty, Letter to Sherborn ZBA, Aug. 30, 2023, at 1-2, is belied by MassHousing itself, see MassHousing, Letter to Murchison, Nov. 2, 2022, at 2 n.1, as well as settled law, see 135 Wells Avenue, LLC, supra; Zoning Bd. of App. of Groton, supra.