

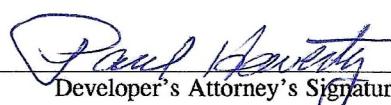
## INITIAL PLEADING COVER SHEET

## HOUSING APPEALS COMMITTEE

(PER 760 CMR 56.00)

Developer/Applicant (Name/Address): Ferry Partners Greenwood Street, LLC Bob Marchison, Manager 177 Lake Street Sherborn, MA 01770	Chairman/Zoning Board (Name/Address): Richard S. Novak, Chair Sherborn Zoning Board of Appeals 19 Washington Street Sherborn, MA 01770
Developer/Applicant's Attorney (Name/Address/Phone/Fax/Email): Paul J. Haversty, Esq. Blatman, Bobrowski, Haversty + Silverstein, LLC 9 Damomill Square, Suite 4A4 Concord, MA 01742	Zoning Board's Attorney (Name/Address/Phone/Fax/Email): Michael K. Terry, Esq. Petris + Associates, P.C. 372 Union Avenue Framingham, MA 01702

Project Name:

Greenwood Homes  
28 Greenwood Street  
Sherborn, MA 01770Type of Development: Rental  Ownership  Mixed Funding Agency/Program: Mass Housing / NEFSite Approval/Project Eligibility: Yes  No  Date: \_\_\_\_\_Total No. UnitsAppealed to H.A.C.: 4 No. Affordable (subsidized) Units: 1ZBA Decision: Denial  Grant  Grant With Conditions  Constructive Grant   
Constructive Denial  Other Date ZBA Decision Filed With Municipal Clerk: 3/18/24Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
 Developer's Attorney's Signature and Date

## FOR DOCKET CLERK USE ONLY

Standard Fee Amount: \$ \_\_\_\_\_

Full Standard Fee enclosed  
with Initial Pleading?  Yes  NoMotion on Fee enclosed  
with Initial Pleading?  Yes  NoMinimum Fee of \$1,500 enclosed  
with Initial Pleading?  Yes  No

Docket #: \_\_\_\_\_

Case #: \_\_\_\_\_

Motion on Fee:  Granted  Denied

on (date) \_\_\_\_\_

Additional Fee beyond \$1,500 Minimum  
Fee paid as per Ruling on Motion on Fee:

amount: \$ \_\_\_\_\_

on (date): \_\_\_\_\_

HAC Appeal Date: \_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
HOUSING APPEALS COMMITTEE

FENIX PARTNERS GREENWOOD  
STREET DEVELOPMENT, LLC,

Appellant,

v.

SHERBORN ZONING BOARD OF  
APPEALS,

Appellee

**INITIAL PLEADING UPON DENIAL OF A COMPREHENSIVE PERMIT**

**INTRODUCTION**

1. This is an appeal brought pursuant to G. L. c. 40B, §§ 20-23 and 760 CMR 56.06(4) brought by the Appellant/Applicant Fenix Partners Greenwood Street Development, LLC (the “Applicant”) from a decision of the Sherborn Zoning Board of Appeals (the “Board”) denying a comprehensive permit application filed by the Applicant.

**I. PRIOR PROCEEDINGS – 760 CMR 56.04(a)(1)**

2. The Applicant is the recipient of a Determination of Project Eligibility dated January 9, 2023 issued by MassHousing, for the construction of a four (4) unit home-ownership development on a site consisting of approximately 3.67 acres located at 28 Greenwood Street, Sherborn, Massachusetts (the “Property”).

3. The Applicant filed a comprehensive permit application with the Board on or about August 18, 2023 seeking authorization for the construction of a four (4) unit home ownership development consisting of four (4) detached units on individual lots (the “Project”) on the Property.

4. The Board opened its public hearing on September 6, 2023.

5. The public hearing on the Project was continued for an additional five (5) dates, through February 5, 2024, at which point the Board closed the public hearing.

6. The Board used Tetra Tech as its peer review engineer during the course of the public hearing.

7. While the public hearing was ongoing, the Applicant pursued approval of the proposed septic system for the Project with the Sherborn Board of Health.

8. The Sherborn Board of Health voted on January 3, 2024 to approve the individual septic systems for the four (4) proposed homes, including voting to accept a deed restriction on the number of bedrooms pursuant to 310 CMR 15.002. Despite voting to grant this septic approval, the Board of Health has not yet issued Disposal Works Permits for these four (4) lots.

9. At the end of the public hearing, the Board requested that the Applicant extend the 180-day period for the Board to conclude the public hearing in order to allow it examine the cumulative impacts from a separate forty (40) unit abutting development located at 121-129 Washington Street proposed by an entity which the Applicant’s Manager is a member.

10. Counsel for the Applicant informed the Board that impacts from the Applicant’s four (4) lot development would be minimal in comparison to the abutting

forty (40) unit development, and that as that project was just commencing, the Board would have ample time to review the cumulative impacts of both projects before voting on the Washington Street development.

11. The Board held deliberative sessions on March \_\_, 2024 and March \_\_, 2024, at which time the Board voted to deny the comprehensive permit application submitted by the Applicant.

12. The Board filed its decision with the Sherborn Town Clerk on March 18, 2024. A copy of the Board's decision is attached hereto as Exhibit "1".

## **II. OBJECTIONS TO FINDINGS OF FACT**

13. The Applicant objects to Findings of Fact # A of the Board's decision that the Project has "fatal design errors with respect to nitrate loading and safe drinking water which cannot, due to the tight site constraints created by the Applicant, be Conditions Consistent with Local Needs[.]" This finding is patently erroneous, as the Board could have quite easily conditioned any approval to address any legitimate issues of local concern. The fact that the Board instead chose to deny the comprehensive permit is consistent with the historic practice of the Town of Sherborn to thwart the development of affordable housing.

14. The Applicant has no objections to Findings of Fact # B.

15. The Applicant objects to Findings of Fact # C as it relates to Sherborn's Affordable Housing History. The Board points to the Fields at Sherborn as an affordable housing development that was locally approved. In fact, the developer of the Fields at Sherborn was forced to appeal the denial of its Title V permit to the Land Court, was forced to defend an adjudicatory appeal filed with the Division of Administrative Law

Appeals by the Sherborn Conservation Commission, and was also forced to appeal the comprehensive permit issued by the Board to the Committee. The applicant for the Fields at Sherborn obtained a Land Court decision overturning the Board of Health's denial, and ultimately negotiated a reduction in density to resolve the appeals to DALA and the Committee. The Applicant also notes that the Meadowbrook Commons development near the Framingham/Natick border requires water and sewer from abutting towns, and such connections may never come to fruition. Also, Meadowbrook Commons contains only seven (7) affordable units, so it cannot be described as an affordable housing development. Finally, the Applicant notes that although the Board's decision claims that feared impacts at 59 North Main Street have come to pass and instructs the reader to "see below", no further information regarding 59 North Main Street is contained in the Board's decision.

### **III.     OBJECTIONS TO PROCEDURAL HISTORY**

16.     The Applicant acknowledges Procedural History #1 that it submitted an application for a comprehensive permit seeking the construction of four (4) single-family structures on individual lots, of which one (1) unit would be restricted as an affordable unit.

17.     The Applicant acknowledges Procedural History # 2 that the Property consists of approximately 3.67 acres.

18.     The Applicant acknowledges Procedural History # 3 that the zoning in Sherborn is so restrictive that only one single-family house would be allowed to be constructed on approximately 3.67 acres, despite that fact that sufficient lot area exists to allow for four (4) single-family structures pursuant to 310 CMR 15.00.

19. The Applicant acknowledges Procedural History # 8<sup>1</sup> that the Board timely noticed the public hearing.

20. The Applicant acknowledges Procedural History # 9 that the public hearing was timely commenced, and continued from September 6, 2023 through February 5, 2024.

21. The Applicant acknowledges Procedural History # 10 that a site walk was held.

22. The Applicant acknowledges Procedural History # 11 that Tetra Tech was retained by the Board to act as its peer review consultant.

23. The Applicant disputes Procedural History # 12, stating that it informed the Board that review of the combined impact of the larger Washington Street project and the much smaller impacts of the Project could appropriately be reviewed as part of the hearing process on the Washington Street development. The Applicant also disputes the Board's determination that it can draw a negative inference from the Applicant's refusal to extend the hearing on the Project beyond the 180-day period set forth in the regulations, particularly when the Board did not bring the issue up until the end of the hearing process.

24. The Applicant disputes Procedural History # 13, specifically the claims made by the Sherborn Board of Health that it approved the Project's Title V permit "assuming acceptance of the applicant's proposed Deed Restrictions for the market rate units to artificially reduce bedroom count." The Title V deed restriction is a well-established basis for limiting the number of bedrooms in a development, and in no way

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<sup>1</sup> The Applicant notes that the numbering for the Procedural History in the Board' Decision goes from # 3 to # 8.

artificially reduces bedroom count. The Applicant also objects to the claim that the Board of Health has identified specific grounds supporting the denial.

25. The Applicant disputes Procedural History # 14, which claims that the Applicant declined to offer evidence or comment on the cumulative impacts of the Project and the Washington Street project. The Applicant notes that it expressly informed the Board that it would be open to such discussion during the Washington Street hearing, the project for which the bulk of the impacts would occur. The Board's determination that the Applicant's desire to defer review of the cumulative impacts to the hearing on which the overwhelming bulk of such impacts would occur constitutes probative evidence that such evidence would be materially adverse to approval of either project is not justified, and is evidence of the clear antipathy to the development of affordable housing in Sherborn.

26. The Applicant acknowledges Procedural History # 15 that the public hearing was timely closed on February 5, 2024.

#### **IV. OBJECTION TO GOVERNING LAW**

27. The Applicant objects to the Governing Law section of the Board's decision to the extent that it suggests there is a legitimate legal basis supporting the Board's denial. There exists no legitimate issue of local concern that could support the Board's denial of the Project.

#### **V. OBJECTIONS TO FINDINGS**

28. The Applicant objects to Finding # 1 of the Board's decision. The Board's claim that the Town is nearing the 10% affordable housing threshold is demonstrably false. Pursuant to the SHI dated June 29, 2023, the Town of Sherborn's SHI is at 3.1%,

well below the 10% affordable housing unit minimum. The Board's claim relies upon the approval of a 120-unit project approved in 2021 which depends upon water and sewer connections from neighboring towns, approval of which may never occur, which is why nearly three years have elapsed since the project was approved, with no progress on construction having occurred.

29. The Applicant objects to Finding # 2 of the Board's decision. The Board alleges that the Project will endanger the drinking water resources of the surrounding neighborhood. The Project will comply with all applicable state and federal standards relating to drinking water resources. Although the Board points to waivers requested by the Applicant to local well requirements, the Board does not bother to note how such waivers will impact any local health or safety concern. The Board also alleges that the wastewater for the Project will impact health and safety local concerns. Again, the Board simply notes the requested waivers of more stringent local rules, without providing any evidence of purported harm that would occur if such waivers were granted. Specifically, the Board points to concerns that the number of rooms in the market-rate units could result in additional bedrooms beyond the four-bedrooms shown on the Project Plans. The Board's decision contains nothing beyond pure speculation that additional rooms in the market-rate units could be converted to bedrooms, despite a deed restriction prohibiting such conversion. The Board doesn't bother to consider potential conditions that could alleviate its concerns regarding the potential conversion to additional bedrooms, conditions that a reasonable board would have considered prior to denying a comprehensive permit. Furthermore, the Board's comment that nitrates in the Fields at Sherborn Public Water Supply ("PWS") increased by 87% during the same timeframe

ignores that fact that the Framingham MWRA system increased by 830% in the same timeframe. Furthermore, the Board's claim ignores the fact that the testing for the Fields at Sherborn PWS show nitrate levels close to 1 mg/L, while the state standard for nitrates is 10 mg/L. The Board's claims regarding the nitrate increases at the Fields at Sherborn PWS are clearly intended to distract from the fact that this system is fully compliant with state law, with no legitimate issues of local concern. There is no legitimate risk to public health associated with the Project, and the Board's denial is consistent with the decades-long antipathy to affordable housing in Sherborn.

## **VI. OBJECTIONS TO DECISION**

30. The Applicant objects to the Board's decision to deny the comprehensive permit application. The Applicant states that, to the extent the Board identified any legitimate local concerns relating to health and safety of the local water supply and wastewater disposal, the Board could have easily addressed those concerns with appropriate conditions. The Board's failure to approve the Project with conditions is simply further evidence of the overwhelming animosity towards affordable housing development in the Town of Sherborn.

## **VII. RELIEF SOUGHT**

31. The Applicant prays that the Housing Appeals Committee, after hearing, overturn the decision of the Board denying the Comprehensive Permit, and order the Board to approve a comprehensive permit for the Project, as proposed.

## **VIII. NAME AND ADDRESS OF APPLICANT**

32. Fenix Partners Greenwood Street Development, LLC  
177 Lake Street  
Sherborn, MA 01770

Respectfully submitted  
Fenix Partners Greenwood Street  
Development, LLC  
By its attorneys,

s/ Paul Haverty

Date: April 5, 2024

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