

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
HOUSING APPEALS COMMITTEE

NO. _____

31 HUNTING LANE, LLC,

Appellant,

v.

SHERBORN 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) by the Appellant/Applicant 31 Hunting Lane, LLC (the “Applicant”) from a decision of the Sherborn Board of Appeals (the “Board”) denying a comprehensive permit for the development of a twenty-eight (28) unit home ownership development (the “Project”) on property located at 31 Hunting Lane, Sherborn, Massachusetts (the “Property”).

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

2. On April 30, 2020, MassHousing issued a Project Eligibility Letter to the Applicant, authorizing the development of twenty-eight (28) home-ownership units consisting of an existing single-family home and twenty-seven (27) new home ownership structures on the Property.

3. On October 6, 2020, the Applicant filed a comprehensive permit application (the “Application”) with the Board seeking the approval for the development of a twenty-eight (28) unit homeownership development on the Property. A copy of the Application will be submitted with the Pre-Hearing Order.

4. The Board opened the public hearing on October 29 2020.

5. The Board held nine (9) separate public hearings on the Application. The Applicant did not provide any extensions to the one-hundred and eighty (180) day period for conducting the public hearing pursuant to 760 CMR 56.05(3).

6. The Board was represented during the course of the public hearing by its peer review consultant Thomas Houston, P.E., of Professional Services Corporation, P.C. The Board also notified the Applicant on April 16, 2021 that it wanted to retain Dr. James Vernon of the Nobis Group to review water and wastewater concerns. Despite the fact that this date was beyond the one hundred and eighty (180) day period for closing the public hearing, the Applicant agreed to fund a portion of the review work proposed by Dr. Vernon.

7. The Applicant also provided detailed information regarding water and wastewater from its consultants David Formato, P.E., and Susan Hunnewell, P.E., of Onsite Engineering, Inc., as well as general civil engineering information from its engineer Michael Malynowski, P.E., of Allen & Major Associates, Inc. The Applicant also provided detailed traffic information from its traffic engineer Jeffrey Dirk, P.E., PTOE of Vanasse & Associates, Inc., as well as information relating to wetlands and species habitat from Scott Goddard, PWS and Daniel L. Wells, M.S., of Goddard Consulting, LLC.

8. The Board closed the public hearing on May 27, 2021.
9. The Board held multiple deliberative sessions before voting on its decision on June 28, 2021.
10. The Board filed its decision with the Sherborn Town Clerk on July 8, 2021. A copy of the Board's decision is attached hereto as Exhibit "1".

II. OBJECTIONS TO FINDINGS OF FACT

11. Section A, Summary – This section incorrectly couples the Project with a separate application located at 41 North Main Street, Sherborn, Massachusetts. The two projects are not inter-dependent. The Applicant could, if necessary, relocate the proposed wastewater treatment plant for the 41 North Main Street development without reliance upon the Property or the Project. The Board's claims in this section are thus not factually accurate.

12. Section B – G. L. c. 61B, the Option to Purchase and Site Control under c. 40B. This section addresses the issue of Site Control without making any actual findings. The Applicant disputes the claims made by the Town regarding Site Control, and notes that the Board made the affirmative decision during the course of the comprehensive permit hearing process not to avail itself of the process set forth in 760 CMR 56.04(5) for challenging changes in Site Control after the issuance of a Project Eligibility Letter.

13. Section C, Key Background and Project History – This section addresses historical circumstances in Sherborn unrelated to the proposed Project. The Applicant neither accepts nor denies the majority of these factual claims, as they are not relevant to the Project. The Applicant does note that the claim of a large public water supply at an expected cost of \$2,000,000 to \$4,000,000 involved an area much larger than the

proposed Project, and is not relevant to this proposal. Furthermore, contrary to the claims of the Board, there was no Special Town Meeting held on these proposals, but rather there were only background informational sessions that did not garner the necessary local support to lead the property owner to seek a zoning change from Town Meeting. The Applicant also notes that in the affordable housing history, the Board fails to note that the Fields at Sherborn project proceeded only after the developer was forced to appeal the Board's decision to the Housing Appeals Committee (the "Committee"), as well as being forced to appeal the denial of the Title 5 approval by the Sherborn Board of Health to the Land Court and being forced to appeal the denial of an Order of Conditions by the Sherborn Conservation Commission to the Department of Environmental Protection. This development certainly does not hold up as evidence of a municipality working to increase its affordable housing stock. Similarly, the Coolidge Crossing project referenced in the Board's decision was the subject of cross-appeals to the Housing Appeals Committee and the Land Court, appeals which have been stayed since 2017, and which was only able to obtain local approvals nearly four years later. Again, hardly evidence of municipal action open to the development of affordable housing. Moreover, the approval of the Coolidge Crossing project on June 18, 2021 is irrelevant to the question of whether the Town of Sherborn has sufficient affordable housing to be consistent with local needs as of the date of the comprehensive permit Application on October 5, 2020. Finally, the Applicant objects to the factually inaccurate claim made by the Board that no material changes were made to the Project after the issuance of the Project Eligibility Letter. During the course of the public hearing, the Applicant made significant material changes to the design of the Project, including changing the Project

design from condominium units in multiple unit structures to single-family houses. This change substantially increased the setbacks to nearby residential properties, and reduced the length of roadway, which in turn reduced the amount of impervious area of the Project.

III. OBJECTION TO PROCEDURAL HISTORY

14. The Applicant objects to the inclusion of the procedural history No. 1 relating to 41 North Main Street, as that application is separate and distinct from the Project.

15. The Applicant objects to the inclusion of the procedural history No. 2 relating to 41 North Main Street, as that application is separate and distinct from the Project. The Applicant also objects to the inclusion of Parcel 3B as part of the Project site, as the Applicant did not include that parcel as part of its Application.

16. The Applicant has no objection to procedural history No. 3.

17. The Applicant objects to the inclusion of the procedural history No. 4 relating to 41 North Main Street, as that application is separate and distinct from the Project.

18. The Applicant objects to the inclusion of the procedural history No. 5 relating to 41 North Main Street, as that application is separate and distinct from the Project.

19. The Applicant objects to the inclusion of the procedural history No. 6 relating to 41 North Main Street, as that application is separate and distinct from the Project.

20. The Applicant has no objection to the inclusion of procedural history No. 7.
21. The Applicant has no objection to the inclusion of procedural history No. 8.
22. The Applicant has no objection to the inclusion of procedural history No. 9.
23. The Applicant has no objection to the inclusion of procedural history No. 10.
24. The Applicant has no objection to the inclusion of procedural history No. 11.
25. The Applicant objects to the inclusion of procedural history No. 12.
26. The Applicant objects to the inclusion of procedural history No. 13.

IV. OBJECTIONS TO GOVERNING LAW

27. The Applicant objects to the Board's incomplete recitation of the law governing comprehensive permit decisions.

V. OBJECTIONS TO FINDINGS

28. The Applicant objects to the Board's finding No. 1 that the Town's need for low and moderate income housing is not substantial. Sherborn's SHI at the time the Application was filed was 2.3%, far below the required 10% affordable housing minimum.

29. The Applicant objects to the Board's finding No. 2 that the Project will endanger the drinking water resources of the surrounding neighborhood. The Applicant submitted substantial information regarding the adequacy of the water supply. Moreover,

the Applicant proposes a public water supply, which is within the exclusive permitting discretion of the Department of Environmental Protection (the “DEP”). The Board has no permitting authority over drinking water for the Project. Similarly, the Applicant has proposed an on-site wastewater treatment facility, the permitting of which is also within the exclusive jurisdiction of the DEP. Once again, the Board has no permitting authority over this issue, and thus does not have the right to deny the comprehensive permit based upon purported wastewater concerns.

30. The Applicant objects to the Board’s finding No. 3 regarding vehicular safety. Once again, the project at 41 North Main Street was the subject of a separate application, and the purported claims regarding vehicular safety relate exclusively to that project.

31. The Applicant objects to the Board’s finding No. 4 regarding compatibility with the surrounding neighborhood and the removal of valuable open space. First, the Board raises concerns regarding compatibility relating only to the proposed project at 41 North Main Street, which is a separate and distinct development from the Project. Regarding open space, the Applicant notes that it has not included Parcel 3B in the Project, and this eight (8) acre parcel will be permanently restricted as open space. The Applicant is also providing significant open space on Parcel 3B as part of the development. The issue of the Town’s right to purchase Lot 3C (and potentially Lot 3B) is currently pending in the Land Court, and is not properly a part of this proceeding. Additionally, Parcel 11-2 will also remain entirely as open space, with no structures proposed to be located on this parcel.

V. **RELIEF SOUGHT**

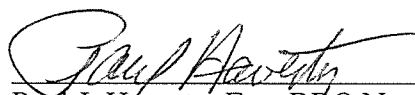
32. The Applicant prays that the Housing Appeals Committee, after hearing, overturn the decision of the Board denying the Comprehensive Permit, and ordering the Board to grant a comprehensive permit for the Project as proposed.

VIII. **NAME AND ADDRESS OF APPLICANT**

33. 31 Hunting Lane, LLC
Igor Lybarsky, Manager
23 Hunting Lane
Sherborn, MA 01770

Respectfully submitted
31 Hunting Lane, LLC
By its attorneys,

Date: July 13, 2021



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