February 14, 2020

Attn:
Ms. Katherine Miller, Ms. Jessica Malcolm, & Mr. Michael Busby
MassHousing—Office of Planning & Programs
One Beacon Street
Boston, MA 02108

Re: M.G.L. Ch. 40B Applications; Town response to recent application changes:
MHID 1058-Apple Hill Estates, 31 Hunting Lane, Sherborn, MA
MHID 1059-Pine Residences, 41 N. Main St., Sherborn, MA

Ms. Miller, Ms. Malcolm, & Mr. Busby:

Thank you for granting the response date extension to February 14, 2020. The additional time to respond was needed, and the consideration is greatly appreciated.

This letter is the Town’s response to the two letters (with accompanying documents) dated January 23, 2020 (the “Lybarsky 1/23/20 letters”) sent to Ms. Jessica Malcom and Ms. Kat Miller by LDS Consulting Group, LLC (”LDS”), on behalf of the applicants, revising the above-described 40B applications previously submitted in November, 2019, to MassHousing. It is also in response to the letter dated January 31, 2020 (the “Lybarsky 1/31/20 letter”) sent to Ms. Jessica Malcolm, Ms. Kat Miller and Mr. Michael Busby by LDS, on behalf of the applicants, rebutting various issues of concern that were presented in the Town’s first response letter to Mass Housing dated January 17, 2020 (the “Select Board 1/17/20 letter”).

The changes made by the applicants and the comments contained in the Lybarsky 1/31/20 Letter, which includes several misrepresentations, do not alter the position of the Town, which is unanimously opposed (as evidenced by the Select Board’s most recent vote of 2/13/20). While the Select Board and residents are strongly supportive of affordable housing in Sherborn, the Town reiterates its prior comments to MassHousing in the 1/17/20 letter from the Town, and all of those concerns are now supplemented by the following:

The applicants do not have site control over the applicable 31 Hunting Lane parcels1. The applicant of the Apple Hill Estates is 31 Hunting Lane, LLC, yet the owner of the property at 31 Hunting Lane is Barsky Estate Realty Trust. Barsky Estate Realty Trust is not the named applicant in the application, nor is it even an eligible applicant.

Therefore, the applicant misrepresents its interest in the property and has not provided convincing evidence of having site control.

In order to obtain site control, the applicant will need to purchase the property from Barsky Estate Realty Trust.2 Since all but two acres (including the existing house) of the property is subject to M.G.L. Chapter 61B, any transfer

---

1 Hunting Lane Assessor’s Map 11, Parcel 3C, a 16.95-acre parcel, and Hunting Lane Assessor’s Map, Parcel 3B, an 8-acre parcel
2 In fact, we note that the applicant withdrew a purchase and sale agreement between Barsky Estate Realty Trust and the applicant after the Town rejected the applicant’s Notice of Intent to sell the property filed with the Town in late November, 2019, for numerous reasons, including that the purchase and sale agreement was between affiliates and the purported purchase price of $3,000,000 was not a bona fide purchase price.

Visit us at: www.SherbornMA.org
to a party that has filed an application under M.G.L. Ch. 40B would clearly constitute a change of use of the property, thereby triggering a right of first refusal on behalf of the Town of Sherborn. This right of first refusal will continue for so long as the property is subject to the 61B statute.3

The applicants try to avoid, in part, the statute’s implications by inappropriately seeking to remove Parcel 3B from the PEL application claiming that this parcel was not deemed necessary for any purpose relative to the 31 Hunting Lane development. See the Lybarsky 1/23/20 letters. Notwithstanding the foregoing, the 31 Hunting Lane letter goes on to state that this parcel (which the letter states is largely covered in wetlands) may be used to put a water line under it for the benefit of the 31 Hunting Lane project.

These two positions are contradictory. This eight-acre parcel, which is subject to the Town’s right of first refusal under Chapter 61B, if triggered, is an essential part of both the 31 Hunting Lane and the 41 N. Main Street developments if either: (i) a water line will be placed beneath this parcel to run water up to the 31 Hunting Lane project; or, (ii) a sewage line will be placed beneath this parcel to allow the sewage treatment plant to be located on the 31 Hunting Lane parcel to service the 41 N. Main Street parcel as specifically contemplated in the two 40B applications. The Town questions why the developer maintains that this parcel is not necessary for these developments. The Town’s position is that any use of this parcel for water or sewage pipes to service either development would constitute a change of use and would trigger the Town’s right of first refusal. It should be further noted that installing water and sewer lines through the parcel is entirely contingent upon regulatory approvals from the Conservation Commission.

In the Lybarsky 1/31/20 letter there are vague references to a valuation of the 61B parcels and the existing house. The Select Board has not seen these appraisals and is highly skeptical of the ascribed value of $1,200,000 for the 61B parcels since this would represent a multiple of the assessed value of these parcels. Less than four years ago, the applicants’ affiliate purchased the 61B parcels as well as the house and accompanying property, which are not covered by the 61B lien, for $2,030,500. It is highly unlikely that the 61B parcels and the house and related property have increased in value by more than 50% in 4 years. Land values have increased, if at all, on a more moderate pace in Sherborn than in higher growth markets in the Boston area.

Moreover, with no apparent basis, the applicants make speculative assumptions about the motivation of one not-for-profit entity that has expressed preliminary interest in purchasing the 61B property by a reassignment of the Town’s interest, a transaction that is expressly permitted by the 61B statute. In fact, the assumptions the applicants make are inaccurate.

It is also highly presumptuous for the applicants to state that there has been no indication that the Town has or is willing to allocate the resources necessary to purchase the 61B property. In fact, the Town has not faced the issue as yet because it has not received a valid notice of intent to sell or convert from the owner. As noted in a footnote to the Lybarsky 1/31/20 letter, the owner did in fact submit to the Select Board on November 19, 2019, a notice of intent to sell that was deemed by the Select Board, after Town Counsel reviewed and advised on the matter, that the Notice was improper and not acceptable for several reasons. The reasons were conveyed to MassHousing and the developer in writing. The Town expects the developer to meet the requirements of the statute.4

In the Lybarsky 1/31/20 letter, the applicants indicate that they have taken some preliminary steps to deal with the railroad crossing issue, yet the letter also states that MADOT “has no issues”. Ms. Sweet misrepresents the

3 See Division of Local Services-MA Department of Revenue, Chapterlands Frequently Asked Questions (FAQS), FAQs on Classified Forest, Agricultural/Horticultural and Recreational Land, G.L. c. 61, 61A and 61B, #13 (the “FAQs #13”) (“Specifically, a municipality has a ROFR when a landowner converts, or decides to sell, classified land for residential, commercial or industrial development or use during (1) any fiscal year the land is classified or (2) the fiscal year after the year the land was last classified.”).

4We note that the applicant misstates the party giving the Notice of Intent as it was in fact given by Barsky Estate Realty Trust
status of this issue and mischaracterizes her attachment letter from a project consultant. Ms. Sweet states that a project consultant “has contacted MADOT and they have no issues allowing the crossings for utilities, to the extent necessary for the development of 41 North Main Street.” Reading the letter of Project Consultant Timothy D. Higgins, it is apparent that there has been no such representation by MADOT. In the letter, Mr. Higgins states that another individual, Ms. Patricia Barrett, of Asset Performance Management, Inc. (APM), “was recently contacted to itemize the required procedures and permits” – presumably meaning that Mr. Higgins or someone else contacted Ms. Barrett for such itemization. According to Mr. Higgins, APM “provides consulting services to MADOT and coordinates all the Right-of-Way (ROW) permitting.” [It should be noted that ROW permitting is in fact “coordinated” by MADOT’s own transportation planners.] Mr. Higgins states that Ms. Barrett – not a MADOT representative – “did not identify any irresolvable issues or problems with the proposed improvements.” The remainder of Mr. Higgins’s letter simply lists MADOT applications and guidelines. In other words, a consultant to this project contacted another individual, whose firm does contract work for MADOT, and that individual reportedly “did not identify any irresolvable issues or problems.” This is quite some distance from “MADOT have no issues allowing the crossing for utilities,” as represented by Ms. Sweet. Mr. Higgins did not provide his comments on commercial letterhead, but the Town believes that he has some affiliation with the firm Civico Development, consultant to the applicant.

Risk of groundwater depletion and contamination. As a town virtually solely dependent on private septic systems and private wells for drinking water, these proposed developments would pose significant dangers to the fragile localized aquifer and the confined area where the effluent sewage from 80-100 incremental households would need to be treated and dissipated.

As noted in the Board of Health’s 1/8/20 Letter, there are physical reasons why Sherborn remains relatively rural despite its proximity to Boston and in comparison, to surrounding communities. These include:

- Reliance on private and small-scale wells and septic systems that are co-located;
- A prevalence of ledge outcroppings and related shallow depth to bedrock;
- Shallow depth to groundwater, which is also reflected in the significant presence of wetlands throughout; and,
- An absence of substantial overburden aquifers, with nearly all drinking water wells drawing from bedrock fractures.

Both proposals include building in an area where there is a significant concentration of ledge, suggesting that building on the scale as proposed would involve blasting as was required in connection with a nearby development. That ledge blasting appears to have contaminated at least one private well through the release of toxic manganese.

The proposed projects put safe drinking water for potentially hundreds of residents at risk.

Incompatible with Town planning. Neither proposal is compatible with the Town’s Master Plan or its Housing Production Plan.

- Inconsistent with existing residential typology and housing density. The proposed four-story residential apartment building at 41 N. Main Street and the proposed 28 units at 31 Hunting Lane are inconsistent with the existing residential building typology and housing density of the neighborhoods. In addition, there is no transition from either development to the existing neighborhoods.

- 41 N. Main Street: The proposed apartment building (to be located in the heart of the Town’s very small commercial center) is not compatible with nearby structures in terms of height, mass and scale. The building would be entirely out of character with nearby structures. The four-story apartment building would tower over the other neighboring one to two story buildings and the massing and scale
of the building would dwarf other nearby structures. In addition, the minimal proposed open space does not mitigate the density concerns. The apartment building would seriously damage the visual quality of the Town Center.

- It is hardly true as stated in the Lybarsky 1/31/20 Letter that “The height of the building at 41 North Main Street at four stories is suitable to any town center.” That may be true in some, more urban town centers, but certainly not true in the Town of Sherborn.

- Furthermore, the applicants imply that Sherborn offers a range of necessary services to any resident along Main Street and that they are easily accessible to an apartment dweller at the proposed development. This is not the case. For example, the nearest grocery store is several miles away in Natick or Medfield and, as we have noted previously, there is no public transportation to any of these locations.

- 31 Hunting Lane: The Hunting Lane residences are proposed to be dropped into a neighborhood of single-family homes on 2 acre lots on one side and Unity Farm, an animal sanctuary housing 250 animals, on the other side. Fewer than 100 people live in the houses along the two-mile-long Hunting Lane yet the proposal is to build residences for approximately 80-100 people on approximately 14 acres that fall within the first one quarter mile of Hunting Lane. The density of the residences is completely out of character with the neighborhood, and the long-term planning evidenced here is not representative of any aspects of best practices utilized in a modern, rural community.

Inconsistent with the historic designation of the property. The applicant claims that the 41 N. Main Street project is not in a historic district when in fact it is. The entire property at 41 N. Main, including the Whitney-Paul Tavern and its surrounding outbuildings, is located in a historic district as defined by the Town of Sherborn Historic Assets Survey and by its inclusion in the Massachusetts Historical Commission (MHC) State Register of Historic Places. The entire 41 N. Main Street property is the anchor of the Edward's Plain-Dowse's Corner National Register District, an important Multiple Resource Area of 35 properties. We also note that the Tavern, barn, and outbuildings have been recommended for listing on the National Register of Historic Places. The Tavern and its historic barn and outbuildings represent a rare 19th century tavern landscape that is fast disappearing in the region. As noted in the narrative of the Sherborn Historic Assets survey update of 1999, in the 18th and 19th century "taverns and stores constituted Sherborn’s commercial architecture. The most significant example is the Whitney-Paul House at 41 North Main...in use as a tavern and store by 1824."

Four Assets Survey Forms, #94, 286, 285 and 287, attest to the importance of each of the buildings to the whole, including the 1819 two-story barn with an extra tall door thought to have accommodated stage coaches. A priority of the Sherborn Assets Survey update of 1999, performed by professional historian Sanford Johnson following the process outlined by the Massachusetts Historical Commission, was to document such surviving outbuildings that completed rural landscapes like the one the 41 N. Main Street property represents.

To claim, as the applicants do, that these are old structures only fit "to be demolished" is to deny the rural history of most of the region's small towns. To dwarf the importance of this rare survival by constructing a 4-story apartment building on the site in close proximity to the Tavern would adversely alter the character and historic value of the entire property and the very visible Multiple Resource Area neighborhood it occupies. [See Historical Commission comment email dated 2/5/20, which is attached.]

---

5 Reference is made to the Historic Commission’s letter attached to the Select Board 1/17/20 Letter for further explanation.
6 The property was identified as being a recommended property by professional historians hired by the Sherborn Historical Commission to create and update the Sherborn Historic Assets Survey. Formal application must be made by the owner of the property and Barsky Estate Realty Trust has not pursued this designation.
Affordable housing efforts in Sherborn. The applicants mischaracterize the long-standing efforts by Town officials to encourage the development of affordable housing in the Town. The Town is compelled to point out the following:

The Town has a long history of supporting affordable housing going back 40-years, and there are three projects currently under construction: Whitney Farms (approved in 2003, now called Meadows Edge at Whitney Farms; 48 units; 25% affordable), 59 North Main Street (12 units; 25% affordable) and the Fields of Sherborn (32 units; 25% affordable) – a notable achievement for a town of Sherborn’s small size of about 4,500 residents. All of these projects have affordable units unsold or to be constructed. The Lybarsky 1/31/20 Letter and the attached table omit any reference to these current projects, referring only to an additional 67-unit elderly-affordable project that was approved overwhelmingly by the Town in 2017.

As mentioned in the Select Board 1/17/20 Letter, this 67-unit elderly-affordable project is connected with an adjacent 88-unit 40B rental project which is currently being planned. The applicant states in their letter dated 1/31/20, “The Town notes the developer is having issues selling the age restricted units.” The Town never stated this. In fact, the units haven’t been built. In addition, there may be a Warrant Article on the 2020 Annual Town Meeting that could increase the number of rental units to 120.

Both of these projects are located in Sherborn’s northeast corner bordering Natick, and would be closer to employment opportunities and public transportation than the applicants’ proposals. Also, development in the northeast corner of Sherborn has opportunities for public water and sewer to be supplied from the adjacent Town of Natick and City of Framingham. Water and sewer are of essential consideration in Sherborn for any large-scale development, given our fragile water resources and unique hydrology. These two projects on the Natick border, upon completion, would bring the Town to over the 10% SHI threshold.

Concerns About Revised Application:

31 Hunting Lane revised application document has possible errors: a.) The Narrative Description and Development Summary on page 2, second paragraph from the bottom appears to incorrectly state that “Parcels 1” (11-02) abuts Parcel 2 to the West. But “Parcel 1” is not contiguous with “Parcel 2” (11-0-3C). They have removed 11-0-3B, which lies between the parcels; b.) See also page 3 under Wetlands Resources where there is a reference to parcel 3, evidently it is an error; and, c.) Note that the actual discussion of ‘wetlands’ is inconsistent between the 31 Hunting Lane and 41 North Main narratives.

Related matters of concern regarding the 31 Hunting Lane application itself are: a.) the page 4 project description states the applicant is “preserv[ing] one single family home”, but this creates some concern for the Town, so the Town would like to know if the plan is to sell this home at a market rate; and if so, have the anticipated proceeds of this sale been incorporated into the project pro forma?; and, b.) On page 14 regarding the stated $3,200,000 land acquisition cost, the dollar amount seems to be completely fictitious, so the Town looks forward to seeing MassHousing’s commissioned property appraisal.

41 North Main revised application document has a possible error and spurs some questioning by the Town. In page 4 of the Application, project description, the applicant (41 North Main, LLC) does not have site control over the parcel, but proposes to provide water and sewer. That parcel is owned by Barsky Estate Realty Trust, proposed to be sold to 31 Hunting Lane, LLC. The entire dependence upon another entity and project for wastewater disposal raises red flags. The Town would like to know what happens if in the future there is an interruption of service, or dispute between two projects regarding costs, or the other project actually goes under? This is not an acceptable arrangement for providing sewage disposal.
For all of the reasons cited in this letter, as well as in the Select Board 1/17/20 Letter, the Select Board urges MassHousing to conclude that each of the applicants’ applications for a determination of Project Eligibility under M.G.L. Chapter 40B, 760 CMR 56.00 and the Comprehensive Permit Guidelines issued by the Department of Housing and Community Development should be denied on the basis that the sites, as well as the development proposals taken as a whole, do not meet all of the required findings.

The Town of Sherborn reserves the right to provide additional comments as its review of the proposed projects continues or as additional project information becomes available or in the event that the applications are further revised by the applicants.

Thank you for your consideration of the Select Board’s serious concerns about these 40B applications. Please do not hesitate to contact Town Administrator David Williams if you have any questions regarding this letter.

Sincerely,

Town of Sherborn Select Board

George Morrill, Chair
Charles Yon, Vice Chair
Eric Johnson, Clerk
Paul R. DeRensis, Member
Jeff Waldron, Member

cc: Town Administrator
   Town Counsel
   Town Website
ATTACHMENT

Historical Commission email to the Select Board, dated 2/5/2020 (1 page)
To: The Sherborn Select Board

From: The Sherborn Historical Commission

Following is the Commission's further response and corrections to the January 31 letter from Lynne D. Sweet which followed the Select Board's letter of opposition to the proposed 40B development at the historic Whitney-Paul Tavern property located at 41 N. Main Street:

The Sherborn Historical Commission would like to reiterate that the entire property at 41 N. Main St. including the Whitney-Paul Tavern and its surrounding outbuildings is the anchor of the Edward's Plain-Dowse's Corner National Register District, an important Multiple Resource Area of 35 properties. Further, the Tavern and its barn and outbuildings are listed on the Massachusetts State Register of Historic Places and are recommended for listing on the National Register of Historic Places. Including its historic barn and outbuildings, the property represents a rare 19th century tavern landscape that is fast disappearing in the region. According to the introductory narrative of the 1999 Sherborn Assets Survey update, in the 18th and 19th century "taverns and stores constituted Sherborn's commercial architecture. The most significant example is the Whitney-Paul House at 41 North Main...in use as a tavern and store by 1824." An important objective of the local 1999 update was to survey complete "landscapes that possess historic outbuildings" such as this one.

Four Assets Survey Forms, #94, 286, 285 and 287, attest to the importance of each of the buildings to the whole, including the 1819 two-story barn with an extra tall door thought to have accommodated stage coaches. The Sherborn Assets Survey update was performed by professional historian Sanford Johnson following the process outlined by the Massachusetts Historical Commission. To claim, as the applicant does, that these are old structures only fit "to be demolished" is to deny the history of most of the region's small towns. To dwarf the importance of this rare survival by constructing a towering 4-story apartment building in close proximity to the Tavern would adversely alter the character and historic value of the entire property and the very visible Multiple Resource Area neighborhood it occupies.

We will place a hard copy of the map of the Edward's Plain-Dowse's Corner Historic District with 41 N. Main delineated in the file in the Select Board Office.

Thank you for your efforts to prevent this completely inappropriate 40B, The Pine Residences, from moving forward.

Susie Wheelwright, Co-Chair Peggy Novak, Co-Chair

Sherborn Historical Commission