Zoning Board of Appeals

July 14, 2016

Surfside Commons

106 surfside road

40B

PACKET

Part II

ZBA Packet Part II

July 14, 2016

File No. 04-16

106 Surfside Rd.40B

Comprehensive Permit

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Print Form

TOWN CLERK

NANTUCKET

10PM 3:30:02

Town Clerk
Town & County Building
16 Broad St
Nantucket, MA 02554

TC

June 10
gh

TOWN OF NANTUCKET
BOARD OF APPEALS
NANTUCKET, MA 02554

File No. 04 - 16 SURFSIDE COMMONS 140-B Map 67 Parcel 80

This agreement to extend the time limit for the Board of Appeals to make a decision, hold a public hearing, or to take other action concerning the application of:

Donald T. MacKinnon, Tr. of NANTUCKET 106 SURFSIDE REALTY TRUST

Pursuant to the provisions of the Acts of 1987, Chapter 498, amending the State Zoning Act, Chapter 40A of the Massachusetts General Laws, Applicant(s)/Petitioner(s) and the Zoning Board of Appeals hereby agree to extend the time limit

- ○ For a public hearing on the application
- ○ For a written decision
- ● For other action EXTEND THE 180 DAY PERIOD TO CLOSE PUBLIC HEARING

Such application is:

- ○ An appeal from the decision of any administrative official
- ○ A petition for a special permit
- ○ A petition for a variance
- ○ An extension
- ○ A modification
- ● COMPREHENSIVE PERMIT APPLICATION

The new time limit shall be midnight on OCTOBER 31, 2016, which is not earlier than a time limit set by statute or bylaw.

The Applicant (s), attorney, or agent for the Applicant represented to be duly authorized to act in this matter for the applicant, in executing this agreement waives any rights under the Nantucket Zoning Bylaw and the State Zoning Act, as amended, to the extent, but only to the extent, inconsistent with this agreement.

Stan Slavin, Attorney For Applicant
For Applicant (s)

Eleanore W. Antonietti; Zoning Administrator
For Zoning Board of Appeals

June 9, 2016
Effective Date of Agreement

Town Clerk Stamp:

2 Fairgrounds Road Nantucket Massachusetts 02554
508-228-7215 telephone 508-228-7298 facsimile

Surfside Commons, Nantucket, MA

Application for Comprehensive Permit Site Eligibility Letter

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Exhibit C, Site Plans and GIS map

Exhibit D, Building Drawings

Exhibit E, Rental Market Feasibility report, John Ryan, July 2015

Exhibit F, Nantucket Neighborhood Density Analysis

Surfside Commons LLC
c/o Atlantic Development
62 Derby Street
Hingham, MA 02043

August 19, 2015

Mr. Richard A. Mason
Deputy Director of Lending
Massachusetts Housing Partnership
160 Federal Street
Boston MA 02110

RE: Application for 40B Project Eligibility Letter for Surfside Commons, Nantucket, Massachusetts

Dear Mr. Mason,

On behalf of Surfside Commons, LLC, c/o Atlantic Development (the "Applicant"), enclosed please find our application for a Project Eligibility Letter ("PEL") for Surfside Commons in Nantucket, Massachusetts. As President of Atlantic Development, Manager of the Applicant, my signature below indicates my certification of the following:

1. I have completed the enclosed MHP PEL Information Form dated August 19, 2015, and, to the best of my knowledge, information and belief, the information set forth therein is true and accurate as of the date hereof. I further understand that MHP is relying upon this certification in processing the request for issuance of a Project Eligibility Letter in connection with the above-referenced Project.

2. I have reviewed MHP's requirements as outlined in the letter received from MHP on July 1, 2015, and I understand MHP's requirements in connection with (a) the application for the PEL and (b) the procedures to be followed after the issuance of the PEL, including the requirements for (i) the completion, within 90 days of project completion and prior to the permanent loan closing, of an audited cost certification by a certified public accountant who has been prequalified with the Department of Housing and Community Development ("DHCD") and (ii) the posting of a bond for completion of such cost certification as a condition of final approval by MHP under Chapter 40B.

We are excited to pursue this initiative. Due to its remote location, lack of available land and extremely high cost of housing, Nantucket has the most severe and urgent need for affordable housing of any community in Massachusetts. According to DHCD and Housing Nantucket, there are 4,896 year round housing units on Nantucket and only 121 affordable units, just 2.5 percent of the available year-round housing. There are another 6,754 seasonal housing units but most are summer vacation homes and not available to year-round workers. With only 121 SHI qualified affordable housing units on Nantucket, the need for more units is evident.

Although all communities should have a sufficient supply of affordable housing, most high price communities with little or no affordable housing can still retain workers for essential services such as, police, fire, schools and hospitals. These essential workers can commute from a town with moderately priced housing to the town with high priced housing. However, Nantucket is a unique case. A daily commute to Nantucket is not feasible due to a number of factors including the prohibitive cost of daily round trip tickets for a ferry or flight and the impediments to travel caused by unpredictable weather. There are a number of days every year that the ferries and flights are canceled with no way to get on or off Nantucket. As a result, people employed in essential services as well as other full time jobs must live on Nantucket. These workers must compete for housing in one of the highest priced communities in the country.

Housing affordability is most severe and unique to Nantucket where less than one-third of the housing is occupied by year round residents, more than two-thirds of the housing is used for seasonal vacation homes, and more than 92% of the land is already developed or restricted for development. Of the 8% of land potentially available for development, values range from $500,000 to $5,000,000 per acre and there are significant challenges related to zoning, the historic district, and environmental review.

In April 2015, Housing Nantucket, a local nonprofit, completed the "Nantucket Workforce Housing Needs Assessment", which was prepared by RKG Associates, Inc. ("RKG"). Participants in the assessment process included all Nantucket selectmen, other town officials, planning staff, and other stakeholders. Much of the rationale for moving forward with this initiative comes from this report. Some of the key findings and its recommendations include:

- "Homeownership is cost prohibitive for 90 percent of the island's year-round households."
- "Nantucket needs to focus on creating reasonably priced rental housing for families if it expects to attract and keep workers over the long run."
- Nantucket needs to "make better use of Chapter 40B to create affordable housing for working families."

Some of the most desirable and expensive neighborhoods on the island, such as Town and Sconset, were built long ago as sustainable compact neighborhoods. Our architects and planners seek to use these existing on-island sustainable compact neighborhoods as models for Surfside Commons. Surfside Commons proposes 60 rental homes in three 2.5 story buildings and one 3.5 story building, including 15 affordable units. Amenities will include a full-time on-site manager, clubhouse, security system, pool, fitness center, landscaped open space, and storage facilities. This size, scale, and density are within the range of existing sustainable compact neighborhoods in Nantucket.

This new neighborhood will be along the Surfside Road bike path, close to the Surfside/Fairgrounds bus stop. Its central location will enable Surfside Commons residents to walk or bike to the schools, the hospital, and the Mid-Island retail and commercial areas as well as to many recreational activities.

Please initiate the "as is" property appraisal process. We understand that we will fund the cost of the appraisal as soon as you determine the appraisal fee. Also enclosed is a check to MHP in the amount of $6,300 to cover the processing fee of $2,000 and 40B Fund fee of $4,300 ($30/unit x 60 units = $1,800 + $2,500 = $4,300).

We look forward to working with Massachusetts Housing Partnership through the process. Please let us know if you have any questions or require any additional information.

Sincerely,

Donald J. MacKinnon

President, Atlantic Development
Manager of Surfside Commons LLC

Appended Section IV:
Project Financing
Information

Nantucket 40B Atlantic Development

Unit Mix	Total	100%	
Total Units	**60**		
Total Affordable Units	**0**	**0%**	
Total Moderate	**15**	**25%**	
Total Market Units	**44**	**73%**	
Live-in Manager	**1**	**2%**	
Total Development Cost	**Total**	**Total/Unit**	**Total/GSF**
TDC	**$18,612,976**	**$310,216**	**$237.62**
Acquisition	$1,500,000	$25,000	$19.15
Construction	$12,622,486	$210,375	$161.14
Soft Costs	$2,460,503	$41,008	$31.41
Developer Fee/Overhead	$1,775,599	$29,593	$22.67
Reserves	$254,387	$4,240	$3.25
Total Sources	**Total**	**Total/Unit**	**Total/GSF**
Total Sources	**$18,612,976**	**$310,216**	**$237.62**
Permanent Loan	$15,795,890	$263,265	$201.66
Federal Tax Credit Equity	$0	$0	$0.00
State Tax Credit	$0	$0	$0.00
Housing Trust	$0	$0	$0.00
Local Subordinate Debt	$0	$0	$0.00
State Soft Debt	$0	$0	$0.00
Developer Fee Loaned	$1,775,599	$29,593	$22.67
Cash Equity	$1,041,487	$17,358	$13.30
Surplus or (Gap)	**$0**		

Nantucket 40B Atlantic Development

Municipality: Nantucket

Proposed Unit Mix and Operating Assumptions

Unit Mix			Units	%total	NSF	Total NSF	Annual Income	Monthly Total Rent	Utility Allowance	Gross Monthly Rent	Net Monthly Rent/SF
0 BR	1 BA	affordable 30%	$0	0%	0	0	$0	$0		$0	$0.00
0 BR	1 BA	affordable Sec.8	0	0%	0	0	$0	$0		$0	$0.00
0 BR	1 BA	affordable MRVP	0	0%	0	0	$0	$0		$0	$0.00
0 BR	1 BA	affordable 50%	0	0%	0	0	$0	$0		$0	$0.00
0 BR	1 BA	affordable 60%	0	0%	0	0	$0	$0		$0	$0.00
0 BR	1 BA	affordable 80%	1	2%	597	597	$14,294	$1,191	$135	$1,326	$2.22
0 BR	1 BA	Moderate	0	0%	0	0	$0	$0		$0	$0.00
0 BR	1 BA	Market	0	0%	0	0	$0	$0		$0	$0.00
Sub-Total 0 BR			**1**	**2%**		**597**	**$14,294**	**$1,191**			
1 BR	1 BA	affordable 30%	0	0%	0	0	$0	$0		$0	$0.00
1 BR	1 BA	Sec. 8	0	0%	0	0	$0	$0		$0	$0.00
1 BR	1 BA	affordable MRVP	0	0%	0	0	$0	$0		$0	$0.00
1 BR	1 BA	affordable 50%	0	0%	0	0	$0	$0		$0	$0.00
1 BR	1 BA	affordable 60%	0	0%	0	0	$0	$0		$0	$0.00
1 BR Den (K)	1 BA	affordable 80%	1	2%	888	888	$14,919	$1,243	$177	$1,420	$1.60
1 BR Den (K)	1 BA	Livein-In Manager	1	2%	888	888	$0	$0		$0	$0.00
1 BR Den (H)	1 BA	Market	1	2%	1,154	1,154	$27,000	$2,250		$2,250	$1.95
Sub-Total 1 BR			**3**	**5%**		**2,930**	**$41,919**	**$3,493**			
2 BR	2-2.5 BA	affordable 30%	0	0%	0	0	$0	$0		$0	$0.00
2 BR	2-2.5 BA	Sec. 8	0	0%	0	0	$0	$0		$0	$0.00
2 BR	2-2.5 BA	affordable MRVP	0	0%	0	0	$0	$0		$0	$0.00
2 BR	2-2.5 BA	affordable 50%	0	0%	0	0	$0	$0		$0	$0.00
2 BR	2-2.5 BA	affordable 60%	0	0%	0	0	$0	$0		$0	$0.00
2 BR - 2BR Den	2-2.5 BA	affordable 80%	9	15%	1,189	10,699	$160,731	$13,394	$217	$1,705	$1.43
2 BR	2-2.5 BA	Moderate	0	0%	0	0	$0	$0		$0	$0.00
2 BR - 2BR Den	2-2.5 BA	Market	31	52%	1,189	36,854	$1,041,600	$86,800		$2,800	$2.36
Sub-Total 2 BR			**40**	**67%**		**47,553**	**$1,202,331**	**$100,194**			
3BR	2.5 BA	affordable 30%	0	0%	0	0	$0	$0		$0	$0.00
3BR	2.5 BA	Sec. 8	0	0%	0	0	$0	$0		$0	$0.00
3BR	2.5 BA	affordable MRVP	0	0%	0	0	$0	$0		$0	$0.00
3BR	2.5 BA	affordable 50%	0	0%	0	0	$0	$0		$0	$0.00
3BR	2.5 BA	affordable 60%	0	0%	0	0	$0	$0		$0	$0.00
3 BR	2.5 BA	affordable 80%	4	7%	1,349	5,394	$82,097	$6,841	$259	$1,969	$1.46
3 BR	2.5 BA	Moderate	0	0%	0	0	$0	$0		$0	$0.00
3 BR	2.5 BA	Market	12	20%	1,349	16,182	$468,000	$39,000		$3,250	$2.41
Sub-Total 3 BR			**16**	**27%**		**21,576**	**$550,097**	**$45,841**			
Total Units			**60**	**100%**		**72,656**	**$1,808,641**	**$150,720**			

Unit Summary	**Total Units**	**% of Units**	**of Units/SF**	
Total 30%	***0***	**0%**	**0%**	$0
Total Section 8	***0***	**0%**	**0%**	$0
Total MRVP	***0***	**0%**	**0%**	$0
Total 50%	***0***	**0%**	**0%**	$0
Total 60%	***0***	**0%**	**0%**	$0
Total 80%	***15***	**25%**	**24%**	$272,041
Total Manager	***1***	**2%**	**1%**	$0
Total Market	***44***	**73%**	**75%**	$1,536,600
% of Units LIHTC-Eligible		**0%**	**0%**	

Percentage LIHTC Eligible				
Commercial	$0	0 s.f.		$0
Other Income				
Parking	$0	0		$0
Laundry	$0	0		$0
Storage	$10	4505		$45,050
Total Commercial and Other Income				**$45,050**
GROSS POTENTIAL RESIDENTIAL INCOME				**$1,853,691**
Vacancy				
Affordable	5%			$13,602
Market/Mod	5%			$76,830
Other Income	5%			$2,253
Commercial	10%			$0
EFFECTIVE RESIDENTIAL RENTAL INCOME				**$1,761,007**

Residential Operating Expenses			**Annual Total**	**Monthly Total**	**Per Unit Annual**
Total Residential Operating expenses (net meals and housekeeping)					
Management Fee	5%		$88,050	$7,338	$1,468
Administrative			$90,820	$7,568	$1,514
Maintenance			$103,200	$8,600	$1,720
Resident Services			$0	$0	$0
Utilities			$66,000	$5,500	$1,100
Taxes			$96,000	$8,000	$1,600
Insurance			$25,500	$2,125	$425
Replacement Res.	$325		$19,500	$1,625	$325
Housekeeping (u/wk/market)	$0	*note- $55/week/unit*	$0	$0	$0
Meals (1 per day)	$0		$0	$0	$0
Total Expenses (inlcuding meals and housekeeping)			**$489,070**	**$40,756**	**$8,151**
Net Operating Income (including cost of meals/housekeeping)			**$1,271,936**		
Debt Service			**$1,017,549**		
Cash Flow			**$254,387**		
DSCR			**1.25**		

	0%	Cushion:	0%	5%
Rents	**Sec 8**	**MRVP**	30%	**80%**
Studio	$0	$0	$523	$1,326
1 Bedroom	$0	$0	$561	$1,420
2 Bedrooms	$0	$0	$0	$1,705
3 Bedroom	$0	$0	$777	$1,969

Utility Allowances				
(HAC)	0BR	1BR	2BR	3BR
Bottle Gas Heat	$71	$82	$93	$104
Electric Cooking	$10	$14	$18	$22
Electricity	$33	$48	$62	$77
Electric Water Heating	$21	$33	$44	$56
TOTAL	**$135**	**$177**	**$217**	**$259**

UNIT MIX	UNIT MIX	No.	Type
3/2.5	1,336	8	A
3/2.5	1,361	8	C
2/2	1,215	9	B
2D2.5	1,336	1	A-2BR
2D/2.5	1,361	1	C-2BR
2/2	1,240	9	D
2/2	1,170	9	E
2/2	1,055	9	F
2D/2	1,368	2	G
1D/1	888	2	K
1D/1	1,154	1	H
Studio	597	1	J
		60	

Building Square Footage			
24 Unit Building			
Lower Level		8,188	
First Floor		8,040	
Second Floor		8,188	
Third Floor		7,066	
	1	31,482	31,482
12 Unit Building			
First Floor		5,390	
Second Floor		5,489	
Third Floor		4,737	
	3	15,616	46,848
			78,330

Residential Parking	**Total Spaces**
Surface Parking	91
Surface Garage Parking	0
Underground Parking	0
Total Space	**91**

Nantucket 40B Atlantic Development

	4% or 9%	9%				
SOURCES		**Total**	**Per Unit**	**Per Aff. Uit**	**Mod/Market**	
Total Permanent Sources		**$18,612,976**	**$310,216**		**$0**	**$0**
Permanent Loan		$15,795,890	$263,265		$0	
Tax Credit Equity		$0	$0	$0		
State Tax Credit		$0	$0	#DIV/0!		
Local Home		$0	$0	#DIV/0!		
Local Trust/Other		$0	$0	#DIV/0!		
DHCD Sub Debt		$0	$0	#DIV/0!		
Moderate Entry Fee		$0	$0		$0	
Market Entry fee		$0	$0		$0	
Equity		$1,041,487	$17,358		$0	
Deferred Dev. Fee		$1,775,599	$29,593		$0	
SURPLUS		**$0**	**$0**			
Uses		**Total**	**Cost/Unit**	**Cost/GSF**	**Mod/Market**	**MM/Unit**
Total Development Costs		**$18,612,976**	**$310,216**		**$0**	**$0**
Acquisition		**$1,500,000**	**$25,000**		**$0**	**$0**
Construction		**$12,622,486**	**$210,375**	**$161**	**$0**	**$0**
Residential		$9,039,941	$150,666	$115		
Commercial		$0		$0		
Site Improvements		$1,751,000				
Demolition		$20,000				
Parking Surface		$0		$0		
Parking Surface Garage		$0		$0		
Parking Underground		$0		$0		
Gen'l Condition, OH, Profit	11%	$1,210,475		$15		
Hard Cost Contingency	5%	$601,071		$8		
				$0		
Soft Costs		**$2,460,503**	**$40,983**		**$0**	**$0**
A&E	4.00%	$480,857	$8,014		$0	
Survey/Testing		$42,726	$712		$0	
Permit	1.00%	$96,411	$1,607		$0	
Owner's Rep	$140,000	$140,000	$2,333		$0	
Bond Premium	1.0%	$120,419	$2,007		$0	
Legal		$125,000	$2,083		$0	
Title/Recording	$34,400	$34,400	$573		$0	
Accounting/Cost Cert		$30,000	$500		$0	
Marketing		$120,000	$2,000		$0	
FF&E		$75,000	$1,250		$0	
Builders Risk Insurance	$0.25	$30,054	$501		$0	
Appraisal/Market Study		$20,000	$333		$0	
Property Taxes	$3.61	$1,500			$0	
Const Loan Interest	$596,857	$596,857	$9,948		$0	
Construction Loan Fee		$157,959	$2,633		$0	
Bridge Loan Interest	$0	$0	$0		$0	
Bridge Loan Fee		$0	$0		$0	
Inspecting Engineer	$23,000	$23,000	$383		$0	
Security		$0	$0		$0	
Relocation					$0	
Perm. Loan Fees	1.0%	$157,959	$2,633		$0	
Mortgage Insurance		$0	$0		$0	
Development Consultant		$75,000	$1,250		$0	
Acquisition Loan Interest		$0	$0		$0	
Acquisition Loan Fee		$0	$0		$0	
Lease-Up Deficit	$17,006	$17,006	$283		$0	
Soft Cost Contingency	5%	$116,357	$1,939		$0	
Fees/Overhead		**$1,775,599**	**$29,593**		**$0**	
LIHTC Fees		**$0**	**$0**			
Reserves		**$254,387**	**$4,240**		**$0**	

Notes

Permanent Loan				
Interest			5.00%	0.00%
Override			0.00%	0.00%
MIP			0.00%	0.00%
Amortiz			30	30
Term			20	20
Loan Constant			6.44%	3.33%
DSCR			1.25	1.25
LTV			85%	85%
Cap Rate			6.00%	6.00%
Max Loan:			**$15,795,890**	**$18,019,098**
Debt Service			**$1,017,549**	**$600,637**
Reserves:	Mos of DS	3	Mos of Oper	0
Construction Loan				
Loan Amount			$15,795,890	
Interest Rate			3.50%	
Monthly Rate			0.002916667	
Number of Months			22	
Fee			1.0%	
Bridge Loan				
Loan Amount			$0	
Interest Rate			0.00%	
Monthly Rate			0	
Number of Months			22	
Fee			1.0%	
Acquisition Loan				
Acquisition Cost			$1,500,000	
Owner Equity		0%	$0	
Loan Amount			$1,500,000	
Interest Rate			0.00%	
Monthly Rate			0	
Number of Months			22	
Fee			0.0%	
Total Interest			$0	
Fee/Overhead				
	5%	$1,500,000	$75,000	
	15%	$3,000,000	$450,000	
	12.5%	$2,000,000	$250,000	
	10%	$10,000,000	$1,000,000	
	7.5%	$7,990	$599	
	5%	$0	$0	
	Fee/OH Allowed		$1,775,599	
		% of TDC	9.54%	
	Fee /OH Paid		$0	
		% Deferred	100.00%	

Nantucket 40B ***Atlantic Development***

	Trending	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025
		1	2	3	4	5	6	7	8	9	10
Revenue											
30% AMI	1.025	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Section 8	1.025	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
MRVP	1.025	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Tax Credit 60%	1.025	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
80% AMI	1.025	$272,041	$278,842	$285,813	$292,959	$300,283	$307,790	$315,484	$323,371	$331,456	$339,742
Moderate	1.030	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Market	1.030	$1,536,600	$1,582,698	$1,630,179	$1,679,084	$1,729,457	$1,781,341	$1,834,781	$1,889,824	$1,946,519	$2,004,914
Commercial	1.030	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Other	1.030	$45,050	$46,402	$47,794	$49,227	$50,704	$52,225	$53,792	$55,406	$57,068	$58,780
Other	1.030	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Other	1.030	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Gross Revenue		$1,853,691	$1,907,942	$1,963,786	$2,021,270	$2,080,444	$2,141,355	$2,204,057	$2,268,601	$2,335,043	$2,403,437
Vacancy Affordable	5%	($13,602)	$0	$0	$0	$0	$0	$0	$0	$0	$0
Vacancy Mod/Market	5%	($76,830)	($79,135)	($81,509)	($83,954)	($86,473)	($89,067)	($91,739)	($94,491)	($97,326)	($100,246)
Vacancy Other	5%	($2,253)	($2,320)	($2,390)	($2,461)	($2,535)	($2,611)	($2,690)	($2,770)	($2,853)	($2,939)
Vacancy Commercial	10%	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Total Revenue		$1,761,007	$1,826,487	$1,879,887	$1,934,855	$1,991,436	$2,049,677	$2,109,629	$2,171,340	$2,234,863	$2,300,252
Expenses											
Management Fee	5%	$88,050	$91,324	$93,994	$96,743	$99,572	$102,484	$105,481	$108,567	$111,743	$115,013
Administration	1.03	$90,820	$93,545	$96,351	$99,241	$102,219	$105,285	$108,444	$111,697	$115,048	$118,500
Maintenance	1.03	$103,200	$106,296	$109,485	$112,769	$116,153	$119,637	$123,226	$126,923	$130,731	$134,653
Resident Services	1.03	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Taxes	1.03	$96,000	$98,880	$101,846	$104,902	$108,049	$111,290	$114,629	$118,068	$121,610	$125,258
Utilities	1.03	$66,000	$67,980	$70,019	$72,120	$74,284	$76,512	$78,807	$81,172	$83,607	$86,115
Insurance	1.03	$25,500	$26,265	$27,053	$27,865	$28,700	$29,561	$30,448	$31,362	$32,303	$33,272
Replacement Reserve	1.03	$19,500	$20,085	$20,688	$21,308	$21,947	$22,606	$23,284	$23,983	$24,702	$25,443
Other	1.03	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Total Expenses		$489,070	$504,375	$519,436	$534,948	$550,923	$567,376	$584,320	$601,771	$619,743	$638,253
Net Operating Income		**$1,271,936**	**$1,322,112**	**$1,360,451**	**$1,399,907**	**$1,440,512**	**$1,482,301**	**$1,525,308**	**$1,569,569**	**$1,615,120**	**$1,661,999**
Debt Service		$1,017,549	$1,017,549	$1,017,549	$1,017,549	$1,017,549	$1,017,549	$1,017,549	$1,017,549	$1,017,549	$1,017,549
Coverage Ratio		1.25	1.30	1.34	1.38	1.42	1.46	1.50	1.54	1.59	1.63
Pre-Tax Cash flow		**$254,387**	**$304,563**	**$342,902**	**$382,358**	**$422,963**	**$464,752**	**$507,759**	**$552,020**	**$597,571**	**$644,450**

2026 11	2027 12	2028 13	2029 14	2030 15	2031 16	2032 17	2033 18	2034 19	2035 20
$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
$348,236	$356,942	$365,865	$375,012	$384,387	$393,997	$403,847	$413,943	$424,291	$434,899
$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
$2,065,062	$2,127,014	$2,190,824	$2,256,549	$2,324,245	$2,393,973	$2,465,792	$2,539,766	$2,615,959	$2,694,437
$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
$60,543	$62,360	$64,231	$66,157	$68,142	$70,186	$72,292	$74,461	$76,695	$78,995
$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
$2,473,841	$2,546,315	$2,620,920	$2,697,718	$2,776,775	$2,858,156	$2,941,931	$3,028,169	$3,116,945	$3,208,332
$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
($103,253)	($106,351)	($109,541)	($112,827)	($116,212)	($119,699)	($123,290)	($126,988)	($130,798)	($134,722)
($3,027)	($3,118)	($3,212)	($3,308)	($3,407)	($3,509)	($3,615)	($3,723)	($3,835)	$0
$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
$2,367,561	$2,436,846	$2,508,167	$2,581,583	$2,657,155	$2,734,948	$2,815,026	$2,897,458	$2,982,312	$3,073,610
$118,378	$121,842	$125,408	$129,079	$132,858	$136,747	$140,751	$144,873	$149,116	$153,680
$122,054	$125,716	$129,488	$133,372	$137,373	$141,495	$145,739	$150,112	$154,615	$159,253
$138,692	$142,853	$147,139	$151,553	$156,099	$160,782	$165,606	$170,574	$175,691	$180,962
$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
$129,016	$132,886	$136,873	$140,979	$145,209	$149,565	$154,052	$158,673	$163,434	$168,337
$88,698	$91,359	$94,100	$96,923	$99,831	$102,826	$105,911	$109,088	$112,361	$115,731
$34,270	$35,298	$36,357	$37,448	$38,571	$39,728	$40,920	$42,148	$43,412	$44,714
$26,206	$26,993	$27,802	$28,636	$29,495	$30,380	$31,292	$32,231	$33,197	$34,193
$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
$657,315	$676,948	$697,167	$717,991	$739,436	$761,523	$784,271	$807,698	$831,825	$856,871
$1,710,245	**$1,759,899**	**$1,811,000**	**$1,863,592**	**$1,917,719**	**$1,973,424**	**$2,030,756**	**$2,089,760**	**$2,150,487**	**$2,216,738**
$1,017,549	$1,017,549	$1,017,549	$1,017,549	$1,017,549	$1,017,549	$1,017,549	$1,017,549	$1,017,549	$1,017,549
1.68	1.73	1.78	1.83	1.88	1.94	2.00	2.05	2.11	2.18
$692,696	**$742,350**	**$793,451**	**$846,043**	**$900,170**	**$955,875**	**$1,013,207**	**$1,072,211**	**$1,132,938**	**$1,199,189**

Surfside Commons LLC
c/o Atlantic Development
62 Derby Street
Hingham, MA 02043

October 7, 2015

Bob DeCosta, Chairman
Board of Selectmen
16 Broad Street
Nantucket, MA 02554

Dear Chairman DeCosta,

Attached please find a letter and exhibits sent to Mr. Richard A. Mason, Deputy Director of Lending, Massachusetts Housing Partnership (MHP) amending the Project Eligibility Letter (PEL) application for Surfside Commons. We have also notified the Department of Housing and Community Development that we have amended the PEL application with MHP.

We look forward to working with the Town of Nantucket and Massachusetts Housing Partnership through the process. Please let us know if you have any questions or require any additional information.

Sincerely,

Donald J. MacKinnon
President, Atlantic Development
Manager of Surfside Commons LLC

RECEIVED
OCT - 9 2015
NANTUCKET TOWN ADMINISTRATION

Surfside Commons LLC
c/o Atlantic Development
62 Derby Street
Hingham, MA 02043

October 7, 2015

Mr. Richard A. Mason
Deputy Director of Lending
Massachusetts Housing Partnership
160 Federal Street
Boston, MA 02110

RE: Amendment to Application for 40B Project Eligibility Letter for Surfside Commons, Nantucket, Massachusetts

Dear Mr. Mason,

On behalf of Surfside Commons, LLC, c/o Atlantic Development (the "Applicant"), enclosed please find the following materials amending our application for a Project Eligibility Letter ("PEL") for Surfside Commons in Nantucket, Massachusetts. Updated concept site plan, updated building elevations, update Proforma and updated Summary of Town Contacts and Community Outreach.

The number of apartments has been reduced from 60 to 56, including 14 affordable units. The change in the unit count is detailed in the attached updated proforma.

We look forward to working with Massachusetts Housing Partnership through the process. Please let us know if you have any questions or require any additional information.

Sincerely,

Donald J. MacKinnon
President, Atlantic Development
Manager of Surfside Commons LLC

cc: Bob DeCosta, Chairman
Nantucket Board of Selectmen

Chrystal Kornegay, Undersecretary
Massachusetts Department of Housing and Community Development

Surfside Commons LLC
c/o Atlantic Development
62 Derby Street
Hingham, MA 02043

October 7, 2015

Chrystal Kornegay, Undersecretary
Massachusetts Department of Housing and Community Development
100 Cambridge Street, Suite 300
Boston, MA 02114

Dear Ms. Kornegay,

On behalf of Surfside Commons, LLC, c/o Atlantic Development (the "Applicant"), enclosed please find a letter and exhibits sent to Richard A. Mason amending our application for a Project Eligibility Letter ("PEL") for Surfside Commons in Nantucket, Massachusetts. The original PEL application packet was submitted to MHP on August 19, 2015.

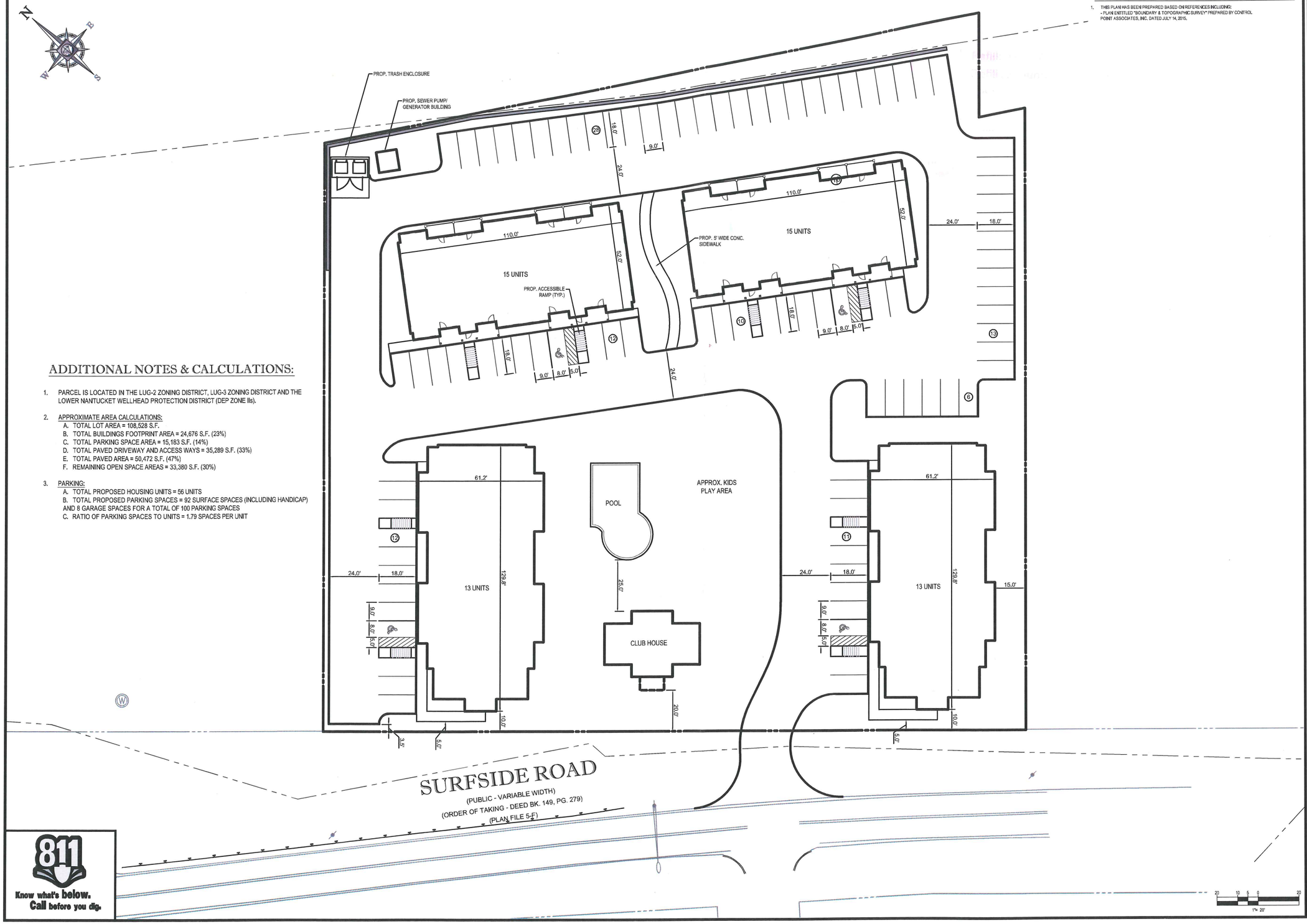
We look forward to working with the Town of Nantucket, Massachusetts Housing Partnership and all interested stockholders, through the process. Please let us know if you have any questions or require any additional information.

Sincerely,

Donald J. MacKinnon
President, Atlantic Development
Manager of Surfside Commons LLC

CONCEPT LAYOUT PLAN NOTES

1. THIS PLAN HAS BEEN PREPARED BASED ON REFERENCES INCLUDING:
   - PLAN ENTITLED "BOUNDARY & TOPOGRAPHIC SURVEY" PREPARED BY CONTROL POINT ASSOCIATES, INC. DATED JULY 14, 2015.



ADDITIONAL NOTES & CALCULATIONS:

1. PARCEL IS LOCATED IN THE LUG-2 ZONING DISTRICT, LUG-3 ZONING DISTRICT AND THE LOWER NANTUCKET WELLHEAD PROTECTION DISTRICT (DEP ZONE IIs).
2. APPROXIMATE AREA CALCULATIONS:
   - A. TOTAL LOT AREA = 108,528 S.F.
   - B. TOTAL BUILDINGS FOOTPRINT AREA = 24,676 S.F. (23%)
   - C. TOTAL PARKING SPACE AREA = 15,183 S.F. (14%)
   - D. TOTAL PAVED DRIVEWAY AND ACCESS WAYS = 35,289 S.F. (33%)
   - E. TOTAL PAVED AREA = 50,472 S.F. (47%)
   - F. REMAINING OPEN SPACE AREAS = 33,380 S.F. (30%)
3. PARKING:
   - A. TOTAL PROPOSED HOUSING UNITS = 56 UNITS
   - B. TOTAL PROPOSED PARKING SPACES = 92 SURFACE SPACES (INCLUDING HANDICAP) AND 8 GARAGE SPACES FOR A TOTAL OF 100 PARKING SPACES
   - C. RATIO OF PARKING SPACES TO UNITS = 1.79 SPACES PER UNIT

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- LEHIGH VALLEY, PA
- SOUTHEASTERN, PA
- RENOBOTH BEACH, DE
- BALTIMORE, MD
- SOUTHERN MARYLAND
- NORTHERN VIRGINIA
- CENTRAL VIRGINIA
- RALEIGH, NC
- CHARLOTTE, NC
- TAMPA, FL
- SOUTH FLORIDA

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REVISIONS

REV	DATE	COMMENT	BY
1			
2			
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6			
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8			
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11			
12			
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14			
15			

PRELIMINARY

PROJECT No.:	W141149
DRAWN BY:	GMW
CHECKED BY:	JGS
DATE:	09/25/2015
SCALE:	AS NOTED
CAD I.D.:	W141149SBCC1

PROJECT:

CONCEPT PLAN

FOR

SURFSIDE COMMONS

ATLANTIC DEVELOPMENT

LOCATION OF SITE
106 SURFSIDE ROAD
TOWN OF NANTUCKET
NANTUCKET COUNTY
MASSACHUSETTS

BOHLER ENGINEERING
352 TURNPIKE ROAD
SOUTHBOROUGH, MA 01772
Phone: (508) 480-9900
Fax: (508) 480-9080
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NEW HAMPSHIRE LICENSE No. 10280
MAINE LICENSE No. 9490
NEW YORK LICENSE No. 071984-1
FLORIDA LICENSE No. 66202

SHEET TITLE:

CONCEPT PLAN

SHEET NUMBER:

1

OF 1

REV 0 - 09/25/2015

Surfside Commons Atlantic Development

Unit Mix	Total	100%	
Total Units	**56**		
Total LIHTC Units	**0**	**0%**	
Total Affordable	**14**	**25%**	
Total Market Units	**41**	**73%**	
Live-in Manager	**1**	**2%**	
Total Development Cost	**Total**	**Total/Unit**	**Total/GSF**
TDC	**$18,208,052**	**$325,144**	**$239.15**
Acquisition	$1,500,000	$26,786	$19.70
Construction	$12,327,121	$220,127	$161.90
Soft Costs	$2,402,813	$42,907	$31.56
Developer Fee/Overhead	$1,740,493	$31,080	$22.86
Reserves	$237,624	$4,243	$3.12
Total Sources	**Total**	**Total/Unit**	**Total/GSF**
Total Sources	**$18,208,052**	**$325,144**	**$239.15**
Permanent Loan	$14,755,023	$263,483	$193.79
Federal Tax Credit Equity	$0	$0	$0.00
State Tax Credit	$0	$0	$0.00
Housing Trust	$0	$0	$0.00
Local Subordinate Debt	$0	$0	$0.00
State Soft Debt	$0	$0	$0.00
Developer Fee Loaned	$1,740,493	$31,080	$22.86
Cash Equity	$1,712,536	$30,581	$22.49
Surplus or (Gap)	**$0**		

Surfside Commons Atlantic Development

Municipality: Nantucket

Proposed Unit Mix and Operating Assumptions

Unit Mix			Units	%total	NSF	Total NSF	Annual Income	Monthly Total Rent	Utility Allowance	Gross Monthly Rent	Net Monthly Rent/SF
0 BR	1 BA	affordable 30%	$0	0%	0	0	$0	$0		$0	$0.00
0 BR	1 BA	affordable Sec.8	0	0%	0	0	$0	$0		$0	$0.00
0 BR	1 BA	affordable MRVP	0	0%	0	0	$0	$0		$0	$0.00
0 BR	1 BA	affordable 50%	0	0%	0	0	$0	$0		$0	$0.00
0 BR	1 BA	affordable 60%	0	0%	0	0	$0	$0		$0	$0.00
0 BR	1 BA	affordable 80%	0	0%	597	0	$0	$0	$135	$0	$0.00
0 BR	1 BA	Moderate	0	0%	0	0	$0	$0		$0	$0.00
0 BR	1 BA	Market	0	0%	0	0	$0	$0		$0	$0.00
Sub-Total 0 BR			**0**	**0%**		**0**	**$0**	**$0**			
1 BR	1 BA	affordable 30%	0	0%	0	0	$0	$0		$0	$0.00
1 BR	1 BA	Sec. 8	0	0%	0	0	$0	$0		$0	$0.00
1 BR	1 BA	affordable MRVP	0	0%	0	0	$0	$0		$0	$0.00
1 BR	1 BA	affordable 50%	0	0%	0	0	$0	$0		$0	$0.00
1 BR	1 BA	affordable 60%	0	0%	0	0	$0	$0		$0	$0.00
1 BR Den (K)	1 BA	affordable 80%	1	2%	888	888	$14,919	$1,243	$177	$1,420	$1.60
1 BR Den (K)	1 BA	Livein-In Manager	1	2%	888	888	$0	$0		$0	$0.00
1 BR Den (H)	1 BA	Market	0	0%	1,154	0	$0	$0		$2,250	$1.95
Sub-Total 1 BR			**2**	**4%**		**1,776**	**$14,919**	**$1,243**			
2 BR	2-2.5 BA	affordable 30%	0	0%	0	0	$0	$0		$0	$0.00
2 BR	2-2.5 BA	Sec. 8	0	0%	0	0	$0	$0		$0	$0.00
2 BR	2-2.5 BA	affordable MRVP	0	0%	0	0	$0	$0		$0	$0.00
2 BR	2-2.5 BA	affordable 50%	0	0%	0	0	$0	$0		$0	$0.00
2 BR	2-2.5 BA	affordable 60%	0	0%	0	0	$0	$0		$0	$0.00
2 BR - 2BR Den	2-2.5 BA	affordable 80%	10	18%	1,209	12,092	$178,590	$14,883	$217	$1,705	$1.41
2 BR	2-2.5 BA	Moderate	0	0%	0	0	$0	$0		$0	$0.00
2 BR - 2BR Den	2-2.5 BA	Market	32	57%	1,209	38,694	$1,075,200	$89,600		$2,800	$2.32
Sub-Total 2 BR			**42**	**75%**		**50,786**	**$1,253,790**	**$104,483**			
3BR	2.5 BA	affordable 30%	0	0%	0	0	$0	$0		$0	$0.00
3BR	2.5 BA	Sec. 8	0	0%	0	0	$0	$0		$0	$0.00
3BR	2.5 BA	affordable MRVP	0	0%	0	0	$0	$0		$0	$0.00
3BR	2.5 BA	affordable 50%	0	0%	0	0	$0	$0		$0	$0.00
3BR	2.5 BA	affordable 60%	0	0%	0	0	$0	$0		$0	$0.00
3 BR	2.5 BA	affordable 80%	3	5%	1,349	4,046	$61,573	$5,131	$259	$1,969	$1.46
3 BR	2.5 BA	Moderate	0	0%	0	0	$0	$0		$0	$0.00
3 BR	2.5 BA	Market	9	16%	1,349	12,137	$351,000	$29,250		$3,250	$2.41
Sub-Total 3 BR			**12**	**21%**		**16,182**	**$412,573**	**$34,381**			
Total Units			**56**	**100%**		**68,744**	**$1,681,282**	**$140,107**			

Unit Summary	**Total Units**	**% of Units**	**of Units/SF**	
Total 30%	*0*	0%	0%	$0
Total Section 8	*0*	0%	0%	$0
Total MRVP	*0*	0%	0%	$0
Total 50%	*0*	0%	0%	$0
Total 60%	*0*	0%	0%	$0
Total 80%	*14*	25%	25%	$255,082
Total Manager	*1*	2%	1%	$0
Total Market	*41*	73%	74%	$1,426,200
% of Units LIHTC-Eligible		0%	0%	

Percentage LIHTC Eligible			
Commercial	$0	0 s.f.	$0
Other Income			
Parking	$200	8	$19,200
Laundry	$0	0	$0
Storage	$10	4505	$45,050
Total Commercial and Other Income			**$64,250**
GROSS POTENTIAL RESIDENTIAL INCOME			**$1,745,532**
Vacancy			
Affordable	5%		$12,754
Market/Mod	5%		$71,310
Other Income	5%		$3,213
Commercial	10%		$0
EFFECTIVE RESIDENTIAL RENTAL INCOME			**$1,658,255**

Residential Operating Expenses			**Annual Total**	**Monthly Total**	**Per Unit Annual**
Total Residential Operating expenses (net meals and housekeeping)					
Management Fee	5%		$82,913	$6,909	$1,481
Administrative			$90,820	$7,568	$1,622
Maintenance			$103,200	$8,600	$1,843
Resident Services			$0	$0	$0
Utilities			$61,600	$5,133	$1,100
Taxes			$89,600	$7,467	$1,600
Insurance			$23,800	$1,983	$425
Replacement Res.	$325		$18,200	$1,517	$325
Housekeeping (u/wk/market)	$0	*note- $55/week/unit*	$0	$0	$0
Meals (1 per day)	$0		$0	$0	$0
Total Expenses (inlcuding meals and housekeeping)			**$470,133**	**$39,178**	**$8,395**
Net Operating Income (including cost of meals/housekeeping)			**$1,188,122**		
Debt Service			**$950,498**		
Cash Flow			**$237,624**		
DSCR			**1.25**		

	0%	Cushion:	0%	5%
Rents	**Sec 8**	**MRVP**	**30%**	**80%**
Studio	$0	$0	$523	$1,326
1 Bedroom	$0	$0	$561	$1,420
2 Bedrooms	$0	$0	$0	$1,705
3 Bedroom	$0	$0	$777	$1,969

Utility Allowances				
(HAC)	0BR	1BR	2BR	3BR
Bottle Gas Heat	$71	$82	$93	$104
Electric Cooking	$10	$14	$18	$22
Electricity	$33	$48	$62	$77
Electric Water Heating	$21	$33	$44	$56
TOTAL	**$135**	**$177**	**$217**	**$259**

UNIT MIX	UNIT MIX	No.	Type
3/2.5	1,336	6	A
3/2.5	1,361	6	C
2/2	1,215	8	B
2D2.5	1,336	2	A-2BR
2D/2.5	1,361	2	C-2BR
2/2	1,240	10	D
2/2	1,170	8	E
2/2	1,055	8	F
2D/2	1,368	4	G
1D/1	1,154	2	H
		56	

Building Square Footage			
15 Unit Building			
Lower Level		5,490	
First Floor		5,390	
Second Floor		5,489	
Third Floor		4,737	
	2	21,106	42,212
13 Unit Building			
First Floor		6,118	
Second Floor		6,108	
Third Floor		4,737	
	2	16,963	33,926
			76,138

Residential Parking	**Total Spaces**
Surface Parking	92
Garage Parking	8
Underground Parking	0
Total Space	**100**

Surfside Commons Atlantic Development

	4% or 9%	9%			
SOURCES		**Total**	**Per Unit**	**Per Aff. Uit**	**Mod/Market**
Total Permanent Sources		**$18,208,052**	**$325,144**		**$0**
Permanent Loan		$14,755,023	$263,483		$0
Tax Credit Equity		$0	$0	$0	
State Tax Credit		$0	$0	#DIV/0!	
Local Home		$0	$0	#DIV/0!	
Local Trust/Other		$0	$0	#DIV/0!	
DHCD Sub Debt		$0	$0	#DIV/0!	
Moderate Entry Fee		$0	$0		$0
Market Entry fee		$0	$0		$0
Equity		$1,712,536	$30,581		$0
Deferred Dev. Fee		$1,740,493	$31,080		$0
SURPLUS		**$0**	**$0**		

Uses		**Total**	**Cost/Unit**	**Cost/GSF**	**Mod/Market**	**MM/Unit**
Total Development Costs		**$18,208,052**	**$325,144**		**$0**	**$0**
Acquisition		**$1,500,000**	**$26,786**		**$0**	**$0**
Construction		**$12,327,121**	**$220,127**	**$162**	**$0**	**$0**
Residential		$8,786,966	$156,910	$115		
Commercial		$0		$0		
Site Improvements		$1,751,000				
Demolition		$20,000				
Parking Surface		$0		$0		
Parking Surface Garage		$0		$0		
Parking Underground		$0		$0		
Gen'l Condition, OH, Profit	11%	$1,182,150		$16		
Hard Cost Contingency	5%	$587,006		$8		
				$0		
Soft Costs		**$2,402,813**	**$42,881**		**$0**	**$0**
A&E	4.00%	$469,605	$8,386		$0	
Survey/Testing		$42,726	$763		$0	
Permit	1.00%	$93,740	$1,674		$0	
Owner's Rep	$140,000	$140,000	$2,500		$0	
Bond Premium	1.0%	$117,601	$2,100		$0	
Legal		$125,000	$2,232		$0	
Title/Recording	$34,400	$34,400	$614		$0	
Accounting/Cost Cert		$30,000	$536		$0	
Marketing		$120,000	$2,143		$0	
FF&E		$75,000	$1,339		$0	
Builders Risk Insurance	$0.25	$29,350	$524		$0	
Appraisal/Market Study		$20,000	$357		$0	
Property Taxes	$3.61	$1,500			$0	
Const Loan Interest	$582,941	$582,941	$10,410		$0	
Construction Loan Fee		$147,550	$2,635		$0	
Bridge Loan Interest	$0	$0	$0		$0	
Bridge Loan Fee		$0	$0		$0	
Inspecting Engineer	$23,000	$23,000	$411		$0	
Security		$0	$0		$0	
Relocation					$0	
Perm. Loan Fees	1.0%	$147,550	$2,635		$0	
Mortgage Insurance		$0	$0		$0	
Development Consultant		$75,000	$1,339		$0	
Acquisition Loan Interest		$0	$0		$0	
Acquisition Loan Fee		$0	$0		$0	
Lease-Up Deficit	$14,101	$14,101	$252		$0	
Soft Cost Contingency	5%	$113,748	$2,031		$0	
Fees/Overhead		**$1,740,493**	**$31,080**		**$0**	
LIHTC Fees		**$0**	**$0**			
Reserves		**$237,624**	**$4,243**		**$0**	

Notes

Permanent Loan				
Interest			5.00%	0.00%
Override			0.00%	0.00%
MIP			0.00%	0.00%
Amortiz			30	30
Term			20	20
Loan Constant			6.44%	3.33%
DSCR			1.25	1.25
LTV			85%	85%
Cap Rate			6.00%	6.00%
Max Loan:			**$14,755,023**	**$16,831,732**
Debt Service			**$950,498**	**$561,058**
Reserves:	Mos of DS	3	Mos of Oper	0
Construction Loan				
Loan Amount			$14,755,023	
Interest Rate			3.50%	
Monthly Rate			0.002916667	
Number of Months			22	
Fee			1.0%	
Bridge Loan				
Loan Amount			$0	
Interest Rate			0.00%	
Monthly Rate			0	
Number of Months			22	
Fee			1.0%	
Acquisition Loan				
Acquisition Cost			$1,500,000	
Owner Equity		0%	$0	
Loan Amount			$1,500,000	
Interest Rate			0.00%	
Monthly Rate			0	
Number of Months			22	
Fee			0.0%	
Total Interest			$0	
Fee/Overhead				
	5%	$1,500,000	$75,000	
	15%	$3,000,000	$450,000	
	12.5%	$2,000,000	$250,000	
	10%	$9,654,934	$965,493	
	7.5%	$0	$0	
	5%	$0	$0	
	Fee/OH Allowed		$1,740,493	
		% of TDC	9.56%	
	Fee /OH Paid		$0	
		% Deferred	100.00%	

Surfside Commons Atlantic Development

	Trending	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025
		1	2	3	4	5	6	7	8	9	10
Revenue											
30% AMI	1.025	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Section 8	1.025	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
MRVP	1.025	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Tax Credit 60%	1.025	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
80% AMI	1.025	$255,082	$261,459	$267,995	$274,695	$281,562	$288,601	$295,816	$303,212	$310,792	$318,562
Moderate	1.030	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Market	1.030	$1,426,200	$1,468,986	$1,513,056	$1,558,447	$1,605,201	$1,653,357	$1,702,957	$1,754,046	$1,806,667	$1,860,868
Commercial	1.030	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Other	1.030	$64,250	$66,178	$68,163	$70,208	$72,314	$74,483	$76,718	$79,019	$81,390	$83,832
Other	1.030	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Other	1.030	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Gross Revenue		$1,745,532	$1,796,622	$1,849,214	$1,903,350	$1,959,077	$2,016,441	$2,075,492	$2,136,277	$2,198,850	$2,263,261
Vacancy Affordable	5%	($12,754)	$0	$0	$0	$0	$0	$0	$0	$0	$0
Vacancy Mod/Market	5%	($71,310)	($73,449)	($75,653)	($77,922)	($80,260)	($82,668)	($85,148)	($87,702)	($90,333)	($93,043)
Vacancy Other	5%	($3,213)	($3,309)	($3,408)	($3,510)	($3,616)	($3,724)	($3,836)	($3,951)	($4,069)	($4,192)
Vacancy Commercial	10%	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Total Revenue		$1,658,255	$1,719,864	$1,770,153	$1,821,917	$1,875,201	$1,930,049	$1,986,508	$2,044,624	$2,104,447	$2,166,026
Expenses											
Management Fee	5%	$82,913	$85,993	$88,508	$91,096	$93,760	$96,502	$99,325	$102,231	$105,222	$108,301
Administration	1.03	$90,820	$93,545	$96,351	$99,241	$102,219	$105,285	$108,444	$111,697	$115,048	$118,500
Maintenance	1.03	$103,200	$106,296	$109,485	$112,769	$116,153	$119,637	$123,226	$126,923	$130,731	$134,653
Resident Services	1.03	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Taxes	1.03	$89,600	$92,288	$95,057	$97,908	$100,846	$103,871	$106,987	$110,197	$113,503	$116,908
Utilities	1.03	$61,600	$63,448	$65,351	$67,312	$69,331	$71,411	$73,554	$75,760	$78,033	$80,374
Insurance	1.03	$23,800	$24,514	$25,249	$26,007	$26,787	$27,591	$28,418	$29,271	$30,149	$31,054
Replacement Reserve	1.03	$18,200	$18,746	$19,308	$19,888	$20,484	$21,099	$21,732	$22,384	$23,055	$23,747
Other	1.03	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Total Expenses		$470,133	$484,830	$499,309	$514,222	$529,580	$545,397	$561,686	$578,463	$595,741	$613,536
Net Operating Income		**$1,188,122**	**$1,235,034**	**$1,270,843**	**$1,307,696**	**$1,345,622**	**$1,384,653**	**$1,424,822**	**$1,466,161**	**$1,508,706**	**$1,552,491**
Debt Service		$950,498	$950,498	$950,498	$950,498	$950,498	$950,498	$950,498	$950,498	$950,498	$950,498
Coverage Ratio		1.25	1.30	1.34	1.38	1.42	1.46	1.50	1.54	1.59	1.63
Pre-Tax Cash flow		**$237,624**	**$284,536**	**$320,345**	**$357,198**	**$395,124**	**$434,155**	**$474,324**	**$515,663**	**$558,208**	**$601,993**

2026	2027	2028	2029	2030	2031	2032	2033	2034	2035
11	12	13	14	15	16	17	18	19	20
$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
$326,526	$334,689	$343,056	$351,633	$360,424	$369,434	$378,670	$388,137	$397,840	$407,786
$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
$1,916,694	$1,974,194	$2,033,420	$2,094,423	$2,157,255	$2,221,973	$2,288,632	$2,357,291	$2,428,010	$2,500,850
$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
$86,347	$88,937	$91,605	$94,353	$97,184	$100,099	$103,102	$106,195	$109,381	$112,663
$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
$2,329,566	$2,397,821	$2,468,082	$2,540,409	$2,614,863	$2,691,507	$2,770,405	$2,851,624	$2,935,232	$3,021,299
$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
($95,835)	($98,710)	($101,671)	($104,721)	($107,863)	($111,099)	($114,432)	($117,865)	($121,401)	($125,043)
($4,317)	($4,447)	($4,580)	($4,718)	($4,859)	($5,005)	($5,155)	($5,310)	($5,469)	$0
$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
$2,229,414	$2,294,664	$2,361,830	$2,430,970	$2,502,141	$2,575,403	$2,650,818	$2,728,449	$2,808,362	$2,896,257
$111,471	$114,733	$118,092	$121,549	$125,107	$128,770	$132,541	$136,422	$140,418	$144,813
$122,054	$125,716	$129,488	$133,372	$137,373	$141,495	$145,739	$150,112	$154,615	$159,253
$138,692	$142,853	$147,139	$151,553	$156,099	$160,782	$165,606	$170,574	$175,691	$180,962
$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
$120,415	$124,027	$127,748	$131,581	$135,528	$139,594	$143,782	$148,095	$152,538	$157,114
$82,785	$85,269	$87,827	$90,462	$93,176	$95,971	$98,850	$101,815	$104,870	$108,016
$31,985	$32,945	$33,933	$34,951	$36,000	$37,080	$38,192	$39,338	$40,518	$41,733
$24,459	$25,193	$25,949	$26,727	$27,529	$28,355	$29,206	$30,082	$30,984	$31,914
$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
$631,862	$650,736	$670,175	$690,194	$710,812	$732,046	$753,915	$776,438	$799,634	$823,805
$1,597,552	**$1,643,928**	**$1,691,656**	**$1,740,776**	**$1,791,329**	**$1,843,357**	**$1,896,903**	**$1,952,011**	**$2,008,728**	**$2,072,451**
$950,498	$950,498	$950,498	$950,498	$950,498	$950,498	$950,498	$950,498	$950,498	$950,498
1.68	1.73	1.78	1.83	1.88	1.94	2.00	2.05	2.11	2.18
$647,054	**$693,430**	**$741,158**	**$790,278**	**$840,831**	**$892,859**	**$946,405**	**$1,001,513**	**$1,058,230**	**$1,121,954**

OFFICIAL

CORRESPONDENCE

PRIOR TO INITIAL HEARING ON 1/14/2016

SURFSIDE COMMONS

Summary of Town Contacts and Community Outreach
Updated October 6, 2015

8/3/15	Andrew Vorce, Nantucket Director of Planning
8/12/15	Elizabeth Gibson, Nantucket Town Manager
8/12/15	Dawn Holdgate, Board of Selectmen
8/12/15	Brian and Linda Davis, neighbors
8/12/15	Mary Beth Ferro, neighbor
8/13/15	Anne Kuszpa, Executive Director, Housing Nantucket
8/13/15	Michael Cozort, Nantucket Superintendent of Schools
8/13/15	Marianne Stanton, Editor and Publisher, The Inquirer and Mirror Newspaper
8/13/15	Dr. Margot Hartman, President & CEO, Nantucket Hospital
8/19/15	Matt Fee, Board of Selectmen
8/19/15	Tobias Glidden, Board of Selectmen
8/19/15	Henry Sanford, R.E. Broker, Housing Nantucket Board Member
9/2/15	Logan O'Connor, Asst. to School Supt.
9/2/15	Tom Rafter, Airport Manager
9/2/15	Margaretta Andrews, Executive Director, Community Foundation for Nantucket
9/2/15	Janet Shulte, Director of Nantucket Chamber of Commerce
9/2/15	Community Meeting, Grey Lady Restaurant ± 50 residents
9/2/15	Cormac Collier, Executive Director, Nantucket Land Council
9/4/15	Nantucket CATV, Channel 99, Daniel Drake interview
9/9/15	Selectmen Meeting
9/18/15	Luncheon meeting with ± 15 residents
9/18/15	Senator Dan Wolf
9/22/15	Representative Tim Madden
9/29/15	Melissa Philbrick, Executive Director, ReMain Nantucket
9/29/15	Janis Carriero, Administrator, Nantucket Rental Assistance

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Housing
Partnership

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462 Main Street
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www.mhp.net

December 1, 2015

Mr. Donald J. MacKinnon
President
Atlantic Development Corporation
62 Derby Street
Hingham, MA 02110

Re: Surfside Commons (the "Project")

Dear Mr. MacKinnon:

Enclosed please find the executed Project Eligibility Letter (PEL) for the Surfside Commons Project. There are two topics on which I'd like to provide you further guidance: 1) MHP's review of the draft Comprehensive Permit, and 2) the applicant's responsibilities if a municipality includes a local preference requirement in the Comprehensive Permit. Please see below for elaborations on each of these topics, and let me know of any questions you may have.

1. Prior to the issuance of the final Comprehensive Permit by the ZBA, MHP asks that a draft of the permit be supplied to MHP for its review. MHP will endeavor to make any comments on the draft permit within 10 days. MHP's intention in asking for review of the permit prior to its issuance is to avoid having the applicant need to return to the ZBA to request necessary changes once the final permit is issued.

2. If the municipality includes a local preference requirement within the Comprehensive Permit, the DHCD 40B Guidelines require that the municipality demonstrate the need for the local preference within 3 months of final issuance of the Comprehensive Permit. Failure to comply with this requirement shall be deemed to demonstrate that there is not a need for a local preference and a local preference shall not be approved as part of any Affirmative Fair Housing Marketing and Resident Selection Plan (AFHMP) or use restriction. Please work with the municipality on providing MHP with the necessary documentation.

> Please see DHCD's 40B Guidelines at http://www.mass.gov/hed/economic/eohed/dhcd/legal/comprehensive-permit-guidelines.html (Section III, Affirmative Fair Housing Marketing and Resident Selection Plan)
>
> Note that DHCD's 40B Guidelines specify the allowable preference categories. If the Comprehensive Permit includes a preference for some, but not all, of the allowable categories, additional information may be required. For example, if the municipality seeks to provide a preference for municipal employees but not employees of other businesses in the community, the municipality must provide documentation that shows the affordable housing demand for municipal employees is high in relationship to that of other employees. If the local preference is based solely on employment in

the municipality, this may have a disparate impact on the elderly or person with disabilities; therefore applicants residing in the community who are age 62 or older or are persons with disabilities must be given the benefit of the employment preference.

Some ways in which the need for local preference may be demonstrated and documented are by providing the following:

- Wait list information for comparable housing in the community, including public housing, with local applicants likely to apply for the project. For instance, if the affordable units at the project are 2-bedroom rental units affordable at the 80% of area median income (AMI) level, the number of local wait list applicants for rental units of a similar size and price at another development in the community may support a local preference (however, applicants for larger or smaller size units with higher or lower incomes would not; similarly, wait lists for for-sale housing or age-restricted housing may not be "comparable" housing). Whether or not the project provides rental assistance will be considered. A wait of more than 6 months for a comparable unit would be compelling.
- Data regarding the number of renter households in the municipality who would be eligible for the project. For instance, if the affordable units at the project are affordable at the 80% AMI level, renter households with incomes between 50 – 80% AMI might be eligible but renter households with higher or lower incomes would not.
- Data regarding rent-burdened residents, specifically the number of renter households in the community who would be eligible for the project who are paying more than 30% of their income for housing costs. Also, if applicable, data regarding renter households with other housing problems (i.e. overcrowding).
- Information regarding the supply of comparable affordable rental housing in the municipality and the vacancy rates in such housing.

Some of the above statistics can be found at the following HUD User web site: www.huduser.org/portal/datasets/cp/CHAS/data_querytool_chas.html Data is also available at the Metropolitan Area Planning Council Massachusetts Housing Data Portal: www.housing.ma.

Please note that a combination of such data, comparative regional data, and/or other data may be needed to justify the extent of the local preference in view of regional housing needs.

Also, please note that in the event local preferences are permitted, your AFHMP must ensure that non-local residents protected under fair housing laws are not negatively affected by the local preferences. For example, as part of your lottery process, minority applicants may need to be moved into the local selection pool to ensure that that the local selection pool reflects the racial/ethnic balance of the HUD defined Metropolitan Statistical Area (MSA). Regional (MSA) racial/minority statistics are available at http://www.mass.gov/hed/docs/dhcd/hd/fair/percentracialethnicminority.pdf.

Massachusetts
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Partnership

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www.mhp.net

December 1, 2015

Mr. Donald J. MacKinnon
Surfside Commons LLC
c/o Atlantic Development Corporation
62 Derby Street
Hingham, MA 02110

Re: Surfside Commons, Nantucket (the "Project") - Determination of Project Eligibility under MHP's Permanent Rental Financing Program

Dear Mr. MacKinnon:

This letter is in response to your request for a determination of Project Eligibility under the provisions of the Commonwealth of Massachusetts comprehensive permit process (M.G.L. Chapter 40B, 760 C.M.R. 56, and the Massachusetts Department of Housing and Community Development's Comprehensive Permit Guidelines) (collectively, the "Comprehensive Permit Rules") for the above-referenced Project. The Project, as proposed in your application dated August 19, 2015 as amended on October 13, 2015, shall consist of fifty-six (56) rental housing units, consisting of two (1) one-bedroom units, forty-two (42) two-bedroom units and twelve (12) three-bedroom units located in four buildings at 106 Surfside Road, Nantucket Massachusetts on 2.5 acres. As well as surface parking, there are two buildings with underground parking. The Project will also include a landscaped courtyard, a clubhouse with various indoor tenant amenities and a children's play area. The land is currently occupied by a single family home.

In connection with your request, and in accordance with the Comprehensive Permit Rules, MHP has performed an on-site inspection of the Project, and has reviewed initial pro forma and other pertinent information submitted by Surfside Commons LLC ("Applicant"), and has considered comments received from the Town of Nantucket.

Based upon our review, we find the following:

(i) The Project, as proposed, appears generally eligible under the requirements of MHP's Permanent Rental Financing Program (the "Program"), certain terms of which are set forth on Exhibit A, attached hereto, subject to final approval.

(ii) The site of the proposed Project is generally appropriate for multifamily residential development. The location provides access to the mid-island commercial and municipal services area with significant employment opportunities. There is a seasonal bus route with a stop within walking distance of the site.

The Town of Nantucket's Subsidized Housing Inventory (SHI) is 2.47%. Nantucket does not currently have a Housing Production Plan (HPP). The Town's previous HPP expired in 2014 and, other than units permitted under Chapter 40B, no SHI units were added during the 5-year term of the HPP.

The Town's 2009 Master Plan has a housing element. The Town has passed zoning code revisions accommodating multi-family production through

mechanisms including a multi-family overlay district, secondary and tertiary lot allowances, and by-right mixed-used developments, however, these mechanisms do not carry any affordability requirements. Recently approved zoning changes provide for a special permit process for multifamily developments with some affordability requirements. To date, other than units permitted under Chapter 40B, no affordable units eligible for inclusion on the SHI have been permitted or built since the adoption of the Master Plan in 2009.

While the Town's actions to encourage multi-family housing and to address middle-income housing needs are positive, they have not resulted in a meaningful increase of affordable units and thus do not warrant a conclusion that the Project site is not generally appropriate for residential development.

Municipal water and sewer infrastructure are nearby. MHP expects that the Town of Nantucket's concerns about the extension of water and sewer to the Project site will be addressed through the comprehensive permit process.

(iii) The proposed conceptual Project design is generally appropriate for the site. The site design incorporates clustering of the buildings to the rear and sides of the site to minimize their visual impact. Building side yard setbacks from adjacent properties are 15', the same as required in the underlying zoning district. The buildings have been situated to present the programmed activity spaces visibly to the main road so as to create a welcoming, residential entrance. The building exteriors have features to visually reduce the mass and scale. The design incorporates projected bays, trim accents at the windows, and material and textures to visually reduce the mass of the building.

MHP expects that local concerns regarding traffic and parking will be addressed through the comprehensive permit process.

(iv) Based upon comparable rentals and potential competition from other projects, the proposed Project appears financially feasible within the Nantucket market.

(v) The Project appears financially feasible on the basis of estimated development and operating costs set forth in the initial pro forma provided by the Applicant and a land value determination consistent with the Comprehensive Permit Rules. In addition, the Project budgets are consistent with the Comprehensive Permit Rules relative to cost examination and limitations on profit and distributions.

(vi) The Project will be owned by the Applicant, a single-purpose entity with Donald J. MacKinnon, President, Atlantic Development Corporation, as manager, and will be subject to MHP's limited dividend requirements. The Applicant meets the general eligibility standards of the Program; and

(vii) The Applicant controls the site through a Purchase and Sale Agreement.

This letter is intended to be a written preliminary determination of Project Eligibility under the Comprehensive Permit Rules, establishing fundability by a subsidizing agency under a low and moderate income housing subsidy program, which qualifies the Project for consideration for a Comprehensive Permit under M.G.L. Chapter 40B.

This preliminary determination of eligibility is subject to final review of eligibility and final approval by MHP, and is expressly limited to the specific Project proposed in the request for determination of Project Eligibility submitted to MHP and subject to the minimum affordability and additional requirements set forth in Exhibit A hereto. The requirements of the Comprehensive Permit must not result in a loan to value ratio exceeding MHP requirements. Changes to the proposed Project, including without limitation, alterations in unit mix, proposed rents, development team, unit design, development costs and/or income restrictions may affect eligibility and final approval. Accordingly, you are encouraged to keep MHP informed of the status and progress of your application for a Comprehensive Permit and any changes to the Project that may affect program eligibility and/or financial projections. In addition, MHP requires that it be notified (1) when the applicant applies to the local ZBA for a comprehensive permit; (2) when the ZBA issues a decision; and (3) when any appeals are filed.

Please note that this preliminary determination of Project Eligibility is not a commitment or guarantee of or by MHP for financing, either expressed or implied, and, in the event that you determine not to apply to MHP for permanent financing and/or in the event that your application for permanent financing with MHP is denied, this letter shall be of no further force and effect. Also, please note that this letter shall be of no force or effect if the applicant has not filed for a Comprehensive Permit within two years of the date of this letter.

Final review and approval under the Comprehensive Permit Rules will be undertaken by MHP only in conjunction with an application to MHP for permanent mortgage financing for the Project. After the issuance of a Comprehensive Permit for the Project, MHP would be pleased to entertain a request for permanent mortgage financing pursuant to and in accordance with MHP's standard underwriting process. At that time, MHP shall require a complete loan application, a copy of the decision of the ZBA and any amendments thereto, a copy of the decision, if any, by the Housing Appeals Committee and revised preliminary plans and designs, if applicable, as well as such additional documents and information as is required as part of the loan underwriting process.

Should you have any comments or questions concerning this letter, please do not hesitate to call me at 617-330-9944 x242.

Sincerely,

Richard A. Mason
Deputy Director of Lending

cc: Roberta Rubin, Chief Counsel, Department of Housing and Community Development
Robert R. De Costa, Chair, Board of Selectmen, Town of Nantucket
Edward S. Toole, Chair, Zoning Board of Appeals, Town of Nantucket
Andrew V. Vorce, Director of Planning, Town of Nantucket

EXHIBIT A

Affordability Requirements:	At least fourteen (14) of the units must be affordable to households earning up to eighty percent (80%) of the median area income. Such units shall include a mix of bedroom sizes satisfactory to MHP. The affordability requirements will be documented through an affordable housing agreement that will be recorded prior to the mortgage and shall create covenants running with the Property for a minimum period of thirty (30) years.
Limited Dividend Policy:	The owner must comply with MHP's limited dividend policy.

If you have any questions about anything in the letter, please do not hesitate to call me at 617-330-9944 x242.

Best Regards,

Richard A. Mason
Deputy Director of Lending

goulston&storrs
counsellors at law

Steven Schwartz
sschwartz@goulstonstorrs.com
(617) 574-4147 (tel)
(617) 574-7636 (fax)

November 9, 2015

VIA EMAIL AND HAND DELIVERY
Mr. Richard A. Mason,
Director of Lending
Massachusetts Housing Partnership
160 Federal Street
Boston, MA 02110

Re: Surfside Commons, Nantucket, Massachusetts (the "Project")

Dear Mr. Mason:

As you are aware, Surfside Commons LLC (the "Applicant") has proposed to develop the Project on property located at 106 Surfside Road on Nantucket (the "Property") pursuant to M.G.L. Chapter 40B, §§20-23, and its implementing regulations at 760 CMR 56.00 (collectively, "Chapter 40B"). The Applicant filed an initial application for a Project Eligibility Letter ("PEL") with the Massachusetts Housing Partnership ("MHP") on August 19, 2015, and amended its application with a filing on October 7, 2015 (as so amended, the "Application").

The Nantucket Board of Selectmen ("BOS") submitted a letter to MHP dated November 5, 2015 (the "Town Letter") urging MHP to deny issuance of a PEL for a number of reasons discussed below. A letter from the Nantucket Land Council, Inc. ("NLC") dated October 29, 2015 (the "NLC Letter") was also sent to the BOS, with a copy to MHP, urging the BOS to oppose the Project.

On behalf of the Applicant, the purpose of this letter is to respond to certain of the arguments in the Town Letter and the NLC Letter.

1. **Sewer Issues**.

The Town Letter argues that a PEL should not be issued because the "Property is not in a municipal sewer district and legislative action, which the ZBA has no jurisdiction to take, would be required to include the Property; and sewer development costs are not addressed in the pro forma." In making this argument, the BOS relies on Chapter 396 of Acts of 2008 (the "Act"), and subsequent action taken by the Nantucket Town Meeting. For your convenience, a copy of the Act is attached hereto as Exhibit A.

Section 1 of the Act states that the Nantucket Sewer Commission may authorize sewer facilities and sewer extensions and connections "for a part or whole of its territory, as may be from time to time defined and established by adoption by town meeting of one or more by-laws as a designated sewer district under the jurisdiction and control of the sewer commission ... no other sewers shall be constructed in any public roads or ways of the town which are not within the limits of such designated sewer districts ..."

Based on this language, the Town Letter argues that the Legislature directed that only those properties which are within areas designated by Town Meeting as sewer districts within the Town of Nantucket (the "Town") are eligible for connection to the Town sewer system. The Town Letter states that the Nantucket Zoning Board of Appeals ("ZBA"), the comprehensive permit granting authority under Chapter 40B, "does not have jurisdiction to extend a municipal sewer district to the Property as the ZBA cannot take the Town Meeting action". The Town Letter further advises that it is highly unlikely that the Town Meeting would approve including the Property in a sewer district.

The BOS is incorrect as a matter of law. In fact, as detailed below, the ZBA has the exclusive ability and jurisdiction to approve of a sewer extension and connection of the Project.

The Town Letter totally disregards Section 11 of the Act which provides as follows:

> "Notwithstanding anything to the contrary contained herein, the board having charge of the maintenance and repair of sewers may at any time permit extensions, new connections or increases in flow to the sewer system, subject to capacity, to serve municipal buildings or public restrooms or other public service uses as defined by the municipality; provided, however, that such uses may include, but shall not be limited to, affordable housing constructed pursuant to chapters 40B and 40R of the General Laws, without thereby creating any entitlement on the part of any person to connect to such sewer system, and subject to capacity, in order of application, may permit or if in the public interest, may require, extensions, new connections or new flow to the sewer system within such districts." (emphasis added)

Section 11 of the Act therefore overrides the provisions of Section 1 by providing, among other things, that projects developed under Chapter 40B are to be treated as "public service uses" akin to municipal buildings. As such, Town Meeting approval to extend and connect to the Town sewer system is not required. The only approval that is required is the permission of the board having jurisdiction over sewers.

In the case of Chapter 40B developments, it has been established beyond doubt that the board having jurisdiction over sewer matters, whether it is the board of selectmen, a specially designated sewer commission established by act of the Legislature, or some other board, is a "local board". As the Supreme Judicial Court found in Dennis Housing Corp. V. Zoning Bd. of Appeals of Dennis, 439 Mass. 71 (2003): "[t]he 'local boards' whose ordinary jurisdiction may be exercised by the [ZBA] under [Chapter 40B] are defined as 'any town or city board of survey,

board of health, board of subdivision control appeals, planning board, building inspector or the officer or board having supervision of the construction of buildings or the power of enforcing municipal building laws, or city council or board of selectmen.'"

Furthermore, 760 CMR 56.02, the comprehensive permit regulation, defines a local board as:

> "any local board or official, including, but not limited to any board of survey; board of health; planning board; conservation commission; historical commission; water, sewer, or other commission or district; fire, police, traffic, or other department; building inspector or similar official or board; city council or board of selectmen. All boards, regardless of their geographical jurisdiction or their source of authority (that is, including boards created by special acts of the legislature or by other legislative action) shall be deemed Local Boards if they perform functions usually performed by locally created boards." (emphasis added)[1]

Since the board that has jurisdiction over sewer matters is a "local board", it inexorably follows that the provisions of the Act granting that board the ability to grant approval to Chapter 40B projects to connect to the Town's sewer system are "Local Requirements and Regulations", as defined in 760 CMR 56.02. This means that such approval is within the exclusive jurisdiction of the ZBA. See, e.g. Board of Appeals of Wilmington v. Wilmington Arboretum Apts. Associates Limited Partnership, 39 Mass. App. Ct. 1106, (Mass. App. Ct. September 8, 1995), with Judgment after Rescript dated October 24, 1995.

The Town Letter makes another point with respect to sewer issues, namely that "the Applicant's pro forma makes no mention of the cost the Applicant would incur to extend municipal sewer infrastructure to the Property or the resulting sewer fees ($716,382.00) that would be required for the Applicant to connect and this is a fatal flaw in the Applicant's pro forma."

With regard to the issue of costs, the Town Letter assumes that the cost of extending the sewer line to the Project will be borne only by the Applicant rather than the Town. This is not altogether clear – see e.g. 760 CMR 56.05(8)(d), which prohibits a zoning board from imposing any condition imposing costs of off-site improvements that among other things is intended to

[1] The legislative history of the Act provides more evidence that Town Meeting approval is not required for the Project to connect to the Town sewer system. As originally filed by the House, Section 11 did not include the clause: "or other public service uses as defined by the municipality; provided, however, that such uses may include, but shall not be limited to, affordable housing constructed pursuant to chapters 40B and 40R of the General Laws". In an October 9, 2008, message to the House, the Governor, stated that "the bill raises concerns that affordable housing developments could be denied access to sewer connections". After consideration of various proposals to suggest this concern, ultimately the language in Section 11 was adopted. Section 11 was, therefore, intentionally modified prior to ratification in a manner that supports Chapter 40B's general procedures and to remove the requirement that such projects would require Town Meeting approval.

"address a pre-existing condition affecting the municipality generally." But even assuming that the cost of extending the sewer line will be borne by the Applicant, (i) there is no requirement that this cost be broken out in the Applicant's pro forma, and (ii) review of the pro forma is an issue solely between the subsidizing agency and the Applicant, with respect to which the BOS has no standing. As it happens, the Applicant has included the estimated cost of extending the sewer and water line in its overall budget line item of site costs.

Finally, it is not clear how the BOS arrived at the figure of $716,382 as the sewer connection fee. According to information received from the Project's civil engineer, the sewer connection fee as shown under Section 200-26 of the Town's Wastewater Systems Regulations Governing the Use of Common Sewers is $2,000 per unit. Based on this, the connection fee would be $112,000 ($2,000/unit x 56 units = $112,000). The Project's engineer also reports that the Town in some cases also imposes sewer privilege fees and capacity utilization fees. If applicable, it is our understanding that these fees can typically take the form of a betterment charge and be paid over 20 years. We note that 760 CMR 56.05(8)(d) prohibits the imposition of costs that "are not generally imposed by a Local Board on unsubsidized housing" or that are "disproportionate to the impacts reasonably attributable to the Project." Accordingly, any imposition of sewer fees on the Project needs to be done in a manner which is fully consistent with the manner in which other non-Chapter 40B projects have been treated. Further, to the extent proposed sewer fees are not reasonably related to the Project's potential impacts on the Town sewer system, the Applicant intends to seek a waiver of a portion of the fees. Such a waiver would be especially warranted in this case, where Section 11 of the Act treats Chapter 40B projects as "public services uses".

The Town Letter states that an on-site sewer disposal system in not feasible for the Project. Insofar as the Project will connect to the Town sewer system pursuant to the comprehensive permit to be granted by the ZBA under Chapter 40B as discussed above, this argument is moot.

2. **Water Issues**.

The Town Letter urges denial of the PEL on the grounds that the "Property is not currently served by municipal water, which would be needed for drinking water, fire protection and sanitation; and on-site water is likely not feasible given the large size of the Project and small size of the Property and the proximity of the Property to an existing residential septic system on adjacent land."

The Applicant is fully aware that the Property is not currently served by municipal water. The Applicant reports that there is a 12" water main at the intersection of Surfside Road and Fairgrounds Road, approximately 800 feet from the Property. The Applicant commissioned a flow test in September, 2014, which indicated that there is adequate flow and pressure to support the Project. It is noteworthy that the Surfside Area Plan dated October 6, 2008, recommended extension of the Town's water lines to the area in which the Project is located "in order to provide an adequate system of hydrants to aid in fire suppression."

The Town Letter makes the same argument with respect to cost as with sewer, namely that there is a deficiency in the PEL application due to the pro forma not specifying the cost of connecting to municipal sewer. For the reasons outlined in Section 1 above, this is not required, nor any basis whatsoever for denying the PEL.

3. **Design and Location Issues**.

The Town Letter urges denial of the PEL on the grounds that (i) the "Project far exceeds the applicable density and height limitations ..."; (ii) the "Project design is historically and contextually inappropriate and inconsistent with the ... guidelines of the Historic District Commission ..."; and (iii) "the Project location is inconsistent with and contradictory to the Town and Country Overlay District concept that is included in the Zoning Bylaw and further supported in the 2009 Master Plan."

The appropriateness of the design of the Project was dealt with extensively in the initial PEL application, and substantial modifications were made in the amendment to the application to address MHP's concerns. Therefore, a lengthy response on design issues is not required.

With respect to the location of the Project being inconsistent with the Town's master plan, it is important to point out that it is generally very difficult for a zoning board to prevail when denying a Chapter 40B project on these grounds, and that would be especially the case for the Town. The Housing Appeals Committee (the "HAC") and the courts have reviewed a number of projects in which inconsistency of a project with a town's master plan was a significant issue. A recent example is Hanover R.S. Limited Partnership v. Andover Zoning Board of Appeals, No. 12-04, slip op. at 7 (Mass. Housing Appeals Committee Feb. 10, 2014).

Among the factors considered by the HAC in this context are (i) the quality of the master plan and the extent of its implementation; and (ii) the amount of affordable housing that has resulted from affordable housing planning. The HAC analyzes these and other factors to determine if there is "enough evidence to cumulatively establish a local concern of sufficient weight to outweigh the regional need for affordable housing." Hanover R.S. Limited Partnership, No. 12-04, slip op. at 7.

In Hanover R.S. Limited Partnership, the Andover zoning board failed to cumulatively establish a local concern of sufficient weight to deny a Chapter 40B permit for inconsistency with the master plan because the town's "failure to meet its statutory minimum 10% housing obligation 'provide[ed] compelling evidence that the regional need for housing [did] in fact outweigh the objections to the proposal.'" Hanover R.S. Limited Partnership v. Andover Zoning Board of Appeals, slip op. at 21 (citing Board of Appeals of Hanover v. Housing Appeals Committee, 363 Mass. 339, 367, 413 (1973)). This finding of the HAC was made despite the fact that Andover had a subsidized housing inventory of approximately 9.3% of total units, and had approved several large Chapter 40B projects in recent years. In the case of Nantucket, only 2.5% of its total units are on the SHI. Moreover, according to the "Nantucket Workforce Housing

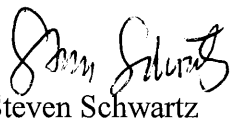
Needs Study", which was commissioned by the Town itself, in the years 2000-2010, the Town added approximately 2400 total housing units, but only 21 affordable units, less than 1%. Under these circumstances, the Town's reliance on its master plan in attempting to deny issuance of the PEL appears to be entirely misplaced.

4. **NLC Letter**.

The NLC Letter makes a number of arguments which are incorrect on their face (e.g. that the Project does not qualify for a subsidy) and others that are essentially the same as those made in the Town Letter. Therefore, no detailed response is required to most of the NLC Letter. There is one argument which may require some clarification to the extent that MHP was not previously aware of the issue. The NLC argues that the Deed dated June 24, 2015 (the "Deed"), from the Town for a portion of the Property prohibits the Project. A copy of the Deed in question is attached as Exhibit B. The Deed provides that the property conveyed "shall be used for residential purposes only and shall, for all intents and purposes be combined with and considered one parcel with ... 106 Surfside Road." The NLC Letter misleadingly contains a quotation mark to indicate that in the Deed, the "'Grantee [sic] [warrants and represents] that the assembled land will be used for a single family dwelling unit." This is simply false. There is absolutely no prohibition in the Deed on the use of any portion of the Property for multifamily residential purposes, or uses accessory thereto.[2]

We thank you for your consideration, and look forward to continuing to work with you on the Project.

Sincerely,



Steven Schwartz
Attorney for the Applicant

CC (VIA EMAIL ONLY):

Nantucket Town Manager
Nantucket Town Counsel
Nantucket Town Planner
D.J. MacKinnon

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2 It is important to note that the Town, which conveyed the subject land only a few months ago, and which is also the only party with standing to enforce the deed restriction, does not in the Town Letter make the argument that is made by NLC.

EXHIBIT A

THE ACT

AN ACT AUTHORIZING THE ESTABLISHMENT OF THE NANTUCKET SEWER COMMISSION AND SEWER DISTRICTS IN THE TOWN OF NANTUCKET

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:

SECTION 1. The town of Nantucket, acting by and through the Nantucket sewer commission described in section 3, may lay out, plan, construct, maintain and operate a system or systems of common sewers for a part or whole of its territory, as may be from time to time defined and established by adoption by town meeting of one or more by-laws as a designated sewer district under the jurisdiction and control of the sewer commission, with such capacity limitations, connections, pumping stations, treatment plants and other works, as may be allocated in such by-law to such sewer district as required for a system or systems of sewage treatment and disposal, and may construct such sewers and related works in said sewer districts defined and established by by-law as may be necessary. No other sewers shall be constructed in any public roads or ways of the town which are not within the limits of such designated sewer districts and which are not under the control of the sewer commission.

SECTION 2. The town may make and maintain, within sewer districts defined and established as set forth in section 1 in any way therein where common sewers are constructed, such connecting sewers within the limits of such way as may be necessary to connect any estate which abuts upon the way within such district.

SECTION 3. Notwithstanding the provisions of chapter 169 of the acts of 1965, the town may, at any town meeting, by a two-thirds vote, vote that the board of selectmen shall act as a Nantucket sewer commission, or that there shall be a separate Nantucket sewer commission, the members of which shall be appointed by the board of selectmen or elected by popular vote for 3 year terms. The number, constitution and the choice of elected or appointed commissioners of a separate sewer commission shall also be determined by a two-thirds vote of town meeting. If a separate Nantucket sewer commission is established by town meeting, any selectman shall be eligible to serve as a member thereof. Town meeting shall be authorized to change the method of establishment of the Nantucket sewer commission described herein without any limitation on the number of times such commission may be established or re-established as the case may be, by a two-thirds vote. Whenever the phrase "Nantucket sewer commissioners" appears in this act, such phrase shall include within its meaning either the board of selectmen acting as Nantucket sewer commissioners, or the separate appointed or elected Nantucket sewer commission.

SECTION 4. The Nantucket sewer commission, acting for and on behalf of the town of Nantucket, shall have charge of and shall be responsible for the policies, finances, and overall goals of the sewer system, but shall be subject to the charter of the town of Nantucket as to the administration and management of the systems operation and maintenance, and shall be responsible for the good order of all sewers, pipes, pumping stations, treatment and disposal works, and the like. The operations of the Nantucket sewer commission shall be governed by,

and any staff or employees shall be considered part of town administration within the meaning of, the charter of the town of Nantucket unless changed or modified pursuant to said charter.

SECTION 5. The board of selectmen acting for and on behalf of the town of Nantucket, after being duly authorized to do so by town meeting, may take by eminent domain pursuant to chapter 79 of the General Laws or otherwise may, utilizing the procedures described in the charter of the town of Nantucket acquire by purchase or gift any lands, rights of way, or easements, public or private, in the town necessary for accomplishing any purpose mentioned in this act and may construct such sewers under or over any state road, any bridge, pier, tidelands, boulevards or other public way, or within the location of any state land, without the necessity for any formal filings in the registry of deeds, and may enter upon and dig up any private land or any public land or public way, for the purpose of laying such sewers and of maintaining and repairing the same, and may do any other thing proper or necessary for the purposes of this act.

SECTION 6. The financial operations of the sewer system shall be an Enterprise Fund within the meaning of section 53F1/2 of chapter 44 of the General Laws, except as modified herein, and any expenditure from such fund shall be only upon authorization of the Nantucket sewer commission. The town shall, by vote at town meeting, determine whether it shall pay the whole or a portion of the cost of said system or systems of sewerage and sewage disposal, and if a portion, what proportion. If the town votes to pay less than the whole cost, in providing for the payment of the remaining portion of the cost of said system or systems, the town, acting through the Nantucket sewer commission, may avail itself of any or all of the methods permitted by the General Laws; and the provisions of the General Laws relative to the assessment, apportionment, division, reassessment, abatement and collection of sewer assessments or the additional methods set forth in section 8, and as to liens therefor and to interest thereon, shall apply to assessments made pursuant to this act by the Nantucket sewer commission, except that interest shall be at the rate as may be established by the Nantucket sewer commission from time to time. At the same meeting at which town meeting determines that any portion of the cost is to be borne by the town, it may by vote determine by which of such methods the remaining portion of said cost shall be provided for. The collector of taxes of said town shall certify the payment or payments of any such assessment or apportionments thereof to the sewer commission or to the selectmen acting as such, who shall preserve a record thereof.

SECTION 7. The revenues received by the fund described in section 6 of this act from sewer assessments, fees, charges, contributions from the town towards the costs of such sewer system as described in section 6, and the like as receipts or revenues, shall be applied to the payment of charges and expenses incident to the design, construction, maintenance, and operation of said system or systems of sewerage and sewage disposal or to the extensions thereof, to the payment of principal or interest upon bonds or notes issued for sewer purposes, or to the payment or redemption of such bonds or notes.

SECTION 8. The Nantucket sewer commission may, in its discretion, prescribe for the users of said sewer systems and disposal works such annual charges, connection fees, assessments, privilege fees, and the like, based on the benefits derived therefrom as such sewer commission may deem proper, subject however, to such by-laws as may be adopted by vote of the town, or as may be provided for in the General Laws. Notwithstanding any law to the contrary, the commission is authorized to impose and collect such charges, fees, or assessments prior to

connection or operation of such system of sewers, and may enter into agreements for the payment thereof over such time as the sewer commission shall determine. In fixing the charges to be imposed for said system, the Nantucket sewer commission is authorized to make use of any fee, charge, assessment or betterment provided for by the General Laws and further may take into consideration all costs for ongoing removal of infiltration and inflow of non-wastewater into the system as part of the normal operating costs of the system; may include, in setting privilege fees, capital costs and interest charges applicable thereto; may impose late fees for unpaid billings; may assess a capacity utilization fee to new estates and properties added to a sewer district authorized by this act from outside a designated needs area in addition to any privilege fee; may charge betterments, special assessments, or any other charge to the estates and properties being served by collection system improvements and extensions to pay for all costs for sewer line extensions to serve new connections, both within the sewer districts authorized by the act and in any areas added to such sewer district; and may impose such charges on properties within a sewer district authorized by the act whether or not such estates and properties are then connected to the sewer system.

SECTION 9. The Nantucket sewer commission may, from time to time, adopt and prescribe rules and regulations for the means of connection of estates and buildings with sewers and for inspection of the materials, the construction, alteration, and use of all connections entering to such sewers, but not including the expansion of districts except as provided in sections 1 and 10, and may prescribe penalties, not exceeding $300 for the violation of any such rule or regulation. Such rules and regulations shall be available for public review at the sewer commission's designated office during regular office hours. Any changes, deletions, additions or revisions to said rules and regulations deemed necessary by the Nantucket sewer commission from time to time, shall take full effect after a notice of change has been published at least once a week for 2 successive weeks in a newspaper of general circulation in the town of Nantucket, which notice shall detail where and when such revised rules and regulations may be viewed by the general public.

SECTION 10. Notwithstanding any provision of law to the contrary, owners of land not within the sewer districts defined and established pursuant to section 1 of this act shall not be permitted to connect to the town's sewer system except as is set forth in this act. The territory covered by said sewer districts may be amended from time to time by the board having charge of sewers, after a public hearing conducted to consider such amendment, upon approval of the department of environmental protection if otherwise required by law and upon enactment by town meeting of a by-law defining or establishing a new or expanded sewer district. In the event that the board having charge of sewers votes not to amend the territory of any sewer district in accordance with the foregoing sentence, the amendment may nevertheless be enacted in a form of a by-law upon a two-thirds vote of town meeting.
Any by-law adopted pursuant to the authority granted to the town of Nantucket by this act may include authorization to the Nantucket sewer commission without a town meeting vote to add to the sewer districts created pursuant to this act properties located within "needs areas" as defined by Nantucket's Comprehensive Wastewater Management Plan prepared by Earth Tech dated March 2004, approved by the secretary of environmental affairs on May 14, 2004, with such conditions and limitations with respect to such authorization as such by-law may provide.

SECTION 11. Notwithstanding anything to the contrary contained herein, the board having charge of the maintenance and repair of sewers may at any time permit extensions, new

connections or increases in flow to the sewer system, subject to capacity, to serve municipal buildings or public restrooms or other public service uses as defined by the municipality; provided, however, that such uses may include, but shall not be limited to, affordable housing constructed pursuant to chapters 40B and 40R of the General Laws, without thereby creating any entitlement on the part of any person to connect to such sewer system, and subject to capacity, in order of application, may permit or if in the public interest, may require, extensions, new connections or new flow to the sewer system within such districts.

SECTION 12. This act shall take effect as of July 1, 2008.

EXHIBIT B

DEED

Bk: 01488 Pg: 213

2015 00001718
Bk: 1488 Pg: 213 Page: 1 of 11
Doc: DD 06/25/2015 02:17 PM

QUITCLAIM DEED

Parcel 7, Copeland Street, Parcels 8 and 9, MacLean Street and Parcels 10 and 11, School Street, Nantucket, Massachusetts

The **TOWN OF NANTUCKET**, a Massachusetts municipal corporation having a principal place of business at 16 Broad Street, Nantucket, Nantucket County, Massachusetts acting by and through its Board of Selectmen (the "Grantor"), in consideration of Twenty-Five Thousand Five Hundred and 00/100 Dollars ($25,500.00), the receipt of which is hereby acknowledged, pursuant to the authority of Article 99 voted upon at the 2011 Annual Town Meeting and Article 84 voted upon at the 2012 Annual Town Meeting, certified copies of which are attached hereto, grants to **Whitney A. Gifford, Trustee of Nantucket 106 Surfside Realty Trust under a Declaration of Trust dated October 24, 2013 recorded with Nantucket County Registry of Deeds in Book 1410, Page 199** of Six Young's Way, Nantucket, Massachusetts 02554(the "Grantee"), with QUITCLAIM COVENANTS, five certain plots of land in Nantucket, Massachusetts shown as Parcel 7, Copeland Street, Parcels 8 and 9 MacLean Street and Parcels 10 and 11, School Street on a plan of land entitled "Taking and Disposition Plan of Land in Nantucket, MA Prepared for Nantucket 106 Surfside Realty Trust," dated June 2, 2014, prepared by Blackwell & Associates, Inc., recorded with said Deeds as Plan No. 2014-52. The premises hereby conveyed are a portion of Copeland Street, MacLean Street and School Street in Nantucket, Massachusetts. Parcel 7 contains approximately 5,354 square feet, more or less; Parcels 8 and 9 each contain 8,154 square feet, more or less; Parcel 10 contains 6,665 square feet, more or less; and Parcel 11 contains 6,764 square feet, more or less of vacant land as shown on said Plan (the "Parcels").

The Grantor's conveyance of these Parcels is based in part on the Grantee's warranty and representation to the Grantor that such Parcels shall be used for residential purposes only and shall, for all intents and purposes, be combined with and considered as one parcel with the abutting lot at 106 Surfside Road and shown on Town Assessor's Map 67 as Parcel 80 previously acquired by Grantee pursuant to Deed recorded with said Deeds in Book 1410, Page 205 (collectively with the Parcel, the "Combined Premises"), and that no part of such Parcels or the Combined Premises shall hereafter be used for non-residential purposes nor divided, subdivided or conveyed as a separate parcel or parcels, unless prior written permission is granted by the Town of Nantucket Board of Selectmen and such permission is recorded with said Deeds. Accordingly, the Parcels hereby granted to the Grantee are conveyed subject to permanent restrictions hereby reserved to and held by the Grantor, forever restricting the Parcels and Combined Premises to residential use, prohibiting the division or subdivision of any portion of the Combined Premises and prohibiting the conveyance or use of any portion of the Combined Premises apart from another portion of the Combined Premises, and automatically effectuating a reversion of the Parcels to the Grantor, if within twenty-four (24) months of the date of this Deed, the Parcels have not been merged with the Grantee's existing property in accordance with the Town of Nantucket By-Laws and statutes. These restrictions shall run with the title to the

Combined Premises, and no part of the Combined Premises shall be hereafter used, conveyed, divided or subdivided in a manner inconsistent with these restrictions unless prior written release is granted by the Town of Nantucket Board of Selectmen and recorded with said Deeds.

By accepting and recording this Quitclaim Deed, the Grantee expressly agrees to the Grantor's reservation of, and otherwise grants to the Grantor, such restrictions on the use of the Combined Premises. These restrictions shall be enforceable for a term of 200 years from the date hereof, and all of the agreements, restrictions, rights and covenants contained herein shall be deemed to be "other restrictions held by any governmental body," pursuant to G.L. c. 184, §26, such that the restrictions contained herein shall be enforceable for the term of 200 years and not be limited in duration by any contrary rule or operation of law. Nevertheless, if recording of a notice is ever needed to extend the time period for enforceability of these restrictions, the Grantee hereby appoints the Grantor as its agent and attorney in fact to execute and record such notice and further agrees that the Grantee shall execute and record such notice upon request.

The undersigned certifies that there has been full compliance with the provisions of G. L. c. 44 §63A.

No deed stamp taxes are due on this conveyance pursuant to G.L. c. 64D, §1.

For Grantor's title, see Order of Taking dated September 10, 2014 recorded with said Deeds in Book 1452, Page 137.

[Remainder of Page Intentionally Blank. Signatures Follow on Next Page.]

EXECUTED under seal this 24 day of June, 2015.

TOWN OF NANTUCKET
BY ITS BOARD OF SELECTMEN

Robert DeCosta

Matthew G. Fee

Rick Atherton

Tobias B. Glidden

Dawn E. Hill Holdgate

COMMONWEALTH OF MASSACHUSETTS

Nantucket, ss

On this 24 day of June, 2015, before me, the undersigned Notary Public, personally appeared Robert DeCosta, Matthew G. Fee, Rick Atherton, Tobias B. Glidden and Dawn E. Hill Holdgate as Members of the Board of Selectmen of the Town of Nantucket, proved to me through satisfactory evidence of identification, which was personal knowledge of the undersigned, to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose as the free and deed of the Board of Selectmen of the Town of Nantucket.

Erika D Mooney
Notary Public
My Commission Expires:

524223/NANT 9/12/2016
NANTUCKET LAND BANK
CERTIFICATE
☒ Paid $ 510.00
☐ Exempt
☐ Non-applicable
36400 6/25/15
No. Date
Authorization MW

ERIKA DAVIDSON MOONEY
Notary Public
COMMONWEALTH OF MASSACHUSETTS
My Commission Expires
November 17, 2017

Town and County of Nantucket
Board of Selectmen • County Commissioners

Robert R. DeCosta, Chairman
Rick Atherton
Matt Fee
Tobias Glidden
Dawn E. Hill Holdgate

16 Broad Street
Nantucket, Massachusetts 02554

Telephone (508) 228-7255
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www.nantucket-ma.gov

C. Elizabeth Gibson
Town & County Manager

November 5, 2015

Mr. Richard A. Mason, Director of Lending
Massachusetts Housing Partnership
160 Federal Street
Boston, MA 02110

Re: Surfside Commons 40B – Project Eligibility Letter Application

Applicant:	Surfside Commons LLC c/o Atlantic Development
Project:	Surfside Commons in Nantucket/56 rental units on 2.5 acres
Location:	106 Surfside Road, Nantucket, MA
Subsidizing Agency:	Massachusetts Housing Partnership

Dear Mr. Mason:

The Board of Selectmen ("Board") received your October 8, 2015 correspondence regarding the August 19, 2015 application, as amended October 7, 2015, ("Application") by Surfside Commons LLC c/o Atlantic Development ("Applicant") to Massachusetts Housing Partnership ("MHP") for a Project Eligibility Letter ("PEL"). The PEL would allow an application to the Nantucket Zoning Board of Appeals ("ZBA") for a Comprehensive Permit under G.L. c.40B for a residential project to be known as Surfside Commons ("Project"), with 56 rental units (14 affordable units) on property at 106 Surfside Road ("Property"), which has 2.5 acres of land in the Limited Use General (LUG)-2 Zoning District (which requires 80,000 s.f. for a building lot) and the LUG-3 Zoning District (which requires 120,000 s.f. for a building lot). The Project proposes four residential buildings with 122 bedrooms (2 1-bedroom, 42 2-bedroom and 12 3-bedroom units), with 100 parking spaces, a pool and a clubhouse.

On November 4, 2015, for the reasons detailed below, the Board unanimously voted (5 to 0) to inform MHP that the Project is **NOT APPROPRIATE** and to urge, in the strongest possible terms, that MHP deny the Application and not issue a PEL for the Project.

In summary, the dense development proposed by the Project is so inarguably objectionable on the Property and therefore the PEL should not issue because:

(1) The Property is not in a municipal sewer district and legislative action, which the ZBA has no jurisdiction to take, would be required to include the Property; and sewer development costs are not addressed in the pro forma;

(2) The Property is not served by municipal water and an on-site well would not be feasible; and water development costs are not addressed in the pro forma;

(3) The Property is in a Wellhead Protection District and an on-site septic system would be very inappropriate and likely technically impossible;

(4) The Project far exceeds applicable density and height limitations;

(5) The Project design is historically and contextually inappropriate; and

(6) The Project is inappropriate because it is wholly inconsistent with the development concepts established in the Town's 2009 Master Plan, as adopted and in active implementation by the Planning Board, Nantucket Planning & Economic Development Commission, BOS and Town Meeting.

The following exhibits are attached to assist MHP with its review of the Application:

1) St. 2008, c.396, special legislation that provides for creation and alteration of municipal sewer district only through legislative action;

2) Nantucket Code, Chapter 41-3, which established municipal sewer districts using St. 2008, c.396 in 2010 (i.e., 2010 ATM approval of Article 31 on June 17, 2010);

3) Nantucket Sewer Districts Town and Siasconset Map, as amended through April 2015, which shows the municipal sewer districts and that the Property is outside the municipal sewer districts;

4) 2014 Nantucket CWMP, the Town's 20-year wastewater planning document (hardcopy not attached, please see on Town of Nantucket website at http://www.nantucket-ma.gov/259/Wastewater-Action-Plan);

5) September 14, 2015 Memorandum of Woodard & Curran, confirming the Property is not included in the 20-year sewer plan set forth in the 2014 Nantucket CWMP; and

6) Nantucket Wellhead Protection District Map, which indicates that the Property is in a wellhead protection district, making it inappropriate for the density proposed and for any on-site septic system at the Property.

1) The Property is not in a municipal sewer district and legislative action, which the ZBA has no jurisdiction to take, would be required to include the Property in a municipal sewer district.

The Applicant's statement (Application p.32) that "municipal water and sewer are available near" the Property is disingenuous, as the Property is **not** within a municipal sewer district and legislative action would be required to include the Property in a sewer district, and the ZBA has no jurisdiction to take the necessary legislative action.

In 2008, the General Court enacted legislation (St. 2008, c.396) (See Exhibit 1) that authorized Nantucket to create municipal sewer districts through Town Meeting legislation.

In 2010, Nantucket Town Meeting used St. 2008, c.396 to adopt a by-law that created municipal sewer districts that can be altered only through Town Meeting Action (See Exhibit 2). The Property is not in a municipal sewer district. (See, Exhibit 3.)

Since the 2010 adoption of the sewer district by-law under St. 2008, c.396, Nantucket has undertaken extensive sewer planning and now has a 20-year comprehensive wastewater plan (See Exhibit 4). The careful and comprehensive planning undertaken by the Town has resulted in sewer districts that are carefully aligned with Town Overlay District properties, past 40B developments, and needs areas that were identified in the Comprehensive Wastewater Management Plan approved by the Town. The Property is not currently in a sewer district and there is no plan to extend a municipal sewer district to the Property within the next 20 years. (See, Exhibit 5.)

St. 2008, c.396, §1 expressly provides that, once Town Meeting establishes sewer districts, "No other sewers shall be constructed in any public roads or ways of the town which are not within the limits of such designated sewer districts and which are not under the control of the sewer commission." (Exhibit 1.) As a result of the enactment of St. 2008, c.396 (Exhibit 1) and the establishment of municipal sewer districts by Town Meeting (Exhibit 2), the ZBA does not have jurisdiction to extend a municipal sewer district to the Property as the ZBA cannot take the Town Meeting action that is mandated by the General Court as required in order to extend a municipal sewer district. Zoning Board of Appeals of Groton v. Housing Appeals Committee, 451 Mass. 35, 41 (2008)(G.L. c.40B provides no authority for the Housing Appeals Committee to override the requirement for town meeting authorization as established by the Legislature.)

Since the Property is not located in a municipal sewer district or a needs area and the ZBA does not have jurisdiction to take the legislative action necessary to include the Property within a sewer district, the Project cannot connect to municipal sewer. Since the Project proposes to site four residential buildings, a pool, a clubhouse, 100 parking spaces and access ways on 2.5 acres of land, the Property is not feasible without access to municipal sewer and the PEL should not issue.

The Applicant could seek legislative action to add the Property to a municipal sewer district; but, as noted above, Nantucket has a 20-year comprehensive wastewater plan (Exhibit 4) that does not include the Property (Exhibit 5).

Furthermore, even if the legislative action necessary to include the Property in a sewer district were to take place (which it has not and is not likely given the 2014 CWMP) the Applicant's pro forma makes no mention of the cost the Applicant would incur to extend municipal sewer

infrastructure to the Property or the resulting sewer fees ($716,382.00) that would be required for the Applicant to connect and this is a fatal flaw in the Applicant's pro forma.

As a result, the PEL should be denied unless and until the necessary legislative action is undertaken, under St. 2008, c.396 and Nantucket Code Chapter 41-3, to include the Property in the municipal sewer district and unless and until the Applicant provides a pro forma that details the resulting sewer costs; or unless the Applicant provides a feasible plan and a feasible pro forma for an on-site septic system, which is unlikely for such a large project on such a small amount of land.

(2) The Property is not currently served by municipal water, which would be needed for drinking water, fire protection and sanitation; and on-site water is likely not feasible given the large size of the Project and small size of the Property and the proximity of the Property to an existing residential septic system on adjacent land.

The Property is not in a municipal water service area and a water line does not adjoin the Property. The Applicant's pro forma makes no mention of the costs involved to extend municipal water infrastructure to the Property or the resulting connection fees that would be required for the Applicant to connect and this is another fatal flaw in the Application and the PEL should be denied.

If the Applicant were to attempt to rely on an on-site drinking water well and an on-site septic system, the small size of the Property and its proposed density would render the Project unfeasible. Furthermore an on-site septic system for an abutting residential property at 108 Surfside Road is within 100 feet of the boundary line for the Property, which would affect the location of a drinking water well on the Property as an on-site well could not be located within 100 feet of adjacent septic systems.

MHP should deny the PEL application and inform the Applicant that no PEL can issue as feasible on-site septic and water plans and a feasible pro forma, as to all applicable costs, have not been provided.

(3) The Property is in a Nantucket Wellhead Protection District; and an on-site septic system would be inappropriate.

The Property is in a Nantucket Wellhead Protection District (Exhibit 6), and, therefore, the Property is not appropriate for the density and lot coverage proposed or for an on-site septic system and the PEL application should be denied. The number of gallons of wastewater per day based on the number of proposed bedrooms exceeds the maximum allowance of 10,000 gallons per day in an area identified by the Department Environmental Protection as a Zone II aquifer recharge area.

(4) The Project far exceeds the applicable density and height limitations.

The Project far exceeds the applicable density and height limitations that apply in this area and, so, the Project is wholly inappropriate and the PEL should be denied.

The Town is well aware that 40B's typically exceed local zoning standards; however, the Project is entirely out of character with the surrounding neighborhood. The Project proposes to cover the majority of the Property with buildings, parking areas, access areas, and a swimming pool (which will be unusable for the majority of the year). The application cites 30% open space, the majority of which is unusable as thin strips of ineffective buffer around the perimeter of the property or land shadowed by the bulky buildings. These factors, combined with the lack of buffers for the Project from adjacent residential properties and the massive bulk and height of the buildings proposed, render the Project completely incompatible with its setting. It's worth noting that the proposed scale of the Project, in a more appropriate location, could be acceptable with further design refinements.

The Applicant asserts (Application p. 32) that the "living space per acre" proposed by the Project is 28,921 s.f. per acre and that this density compares favorably with other "sustainable compact neighborhoods" on Nantucket, as illustrated in Exhibit F to the Application. The neighborhoods, however, that are illustrated in Exhibit F are all located within the Town Overly District and the Town Sewer District, are connected to municipal water and sewer, and are more closely situated to high-density residential and commercial areas, including the downtown and the mid-island district in the vicinity of Pleasant Street and Sparks Avenue.

The density for the LUG-2 zoning district in which the Property is primarily located requires a minimum lot size of 80,000 s.f. of area, allows up to two full-size dwellings and one accessory dwelling not exceeding 550 s.f. with a maximum ground cover ratio of 4%. Assuming full build-out of the Property under existing regulations, there would be three (3) dwelling units totaling 4,341 s.f. of ground cover containing approximately 10,853 s.f. of living space (4,341 s.f. x 2.5 stories) equal to 1,736 s.f. of "living space per acre". However, the Project proposes 56 dwelling units totaling 24,676 (22.7%) s.f. of ground cover, and containing approximately 72,303 s.f. of living space, equal to 28,921 s.f. of "living space per acre". The Project as proposed includes <u>53 more</u> dwelling units, <u>5.68 times</u> as much ground cover, <u>6.66 times</u> as much living space, and <u>16.66 times</u> as much "living space per acre" as would be allowed under existing LUG-2 regulations.

Furthermore, only 100 parking spaces are proposed for 122 bedrooms, which is insufficient; and 122 are required and needed.

The height of the buildings proposed for the Project is wholly inappropriate for a rural Nantucket setting. The Zoning Bylaw provides that no building (with limited exceptions in very specific and limited sections of Nantucket that are reserved for dense development) shall exceed 30 feet. The Project proposes three residential buildings with a height of 44 feet and a fourth building with a height of 55 feet. This is totally out of character for Nantucket, generally, and should not be allowed. With the exception of utilitarian structures such as municipal or airport or other institutional buildings, fuel tanks, radio towers, and lighthouses, the only examples of commercial or residential buildings that are similar in scale are located within the downtown and mid-island commercial areas.

(5) The Project design is historically and contextually inappropriate and inconsistent with the well established guidelines of the Historic District Commission entitled "Building with Nantucket in Mind".

The Project design resembles a dated, oversized resort that would typically be located in a highway oriented commercial strip on the mainland, accented with an oddly located pool at the center. In fact, it is exactly the type of development that the Country Overlay District seeks to discourage and is contrary to the vision articulated throughout the Master Plan. The Project maximizes the use of three story balconies, a design feature which is unprecedented on Nantucket; and, furthermore, the balconies are located in such a way that they loom over adjacent residential properties and the Boy Scout Camp. There is no historic precedent for such a grouping of large scale buildings at an inland location.

In addition, two buildings would be within 10.6 feet of the front yard lot line and this is inappropriate in a location where the required front yard setback is 35 feet. The minimum side yard setback required is 15 feet; however, the proposed setback is as close as 5 feet and the dumpster appears to be located less than five feet from the lot line and in many places the setback from paved areas is less than five feet.

(6) The Project location is inconsistent with and contradictory to the Town and Country Overlay District concept that is included in the Zoning Bylaw and further supported in the 2009 Master Plan.

The Project is wholly inconsistent with the Town's Zoning and 2009 Master Plan.

Nantucket's 2009 Master Plan was adopted by the Planning Board pursuant to MGL Chapter 41 section 81D. It was accepted by the Nantucket Planning & Economic Development Commission, Board of Selectmen and Town Meeting (Article 26). The Master Plan was intended to be a 10 year document and it is actively referenced in over 100 zoning articles presented to Town Meeting over the past 6 years. There has been an effort to coordinate utilities with the zoning districts and to focus development around commercial nodes identified in Figure 15 of the 2009 Master Plan (page 46).

The Town and Country Overlay District concept was adopted by Town Meeting in 2001. In 2006 it was the subject of a survey distributed with the Annual Town Census. A total of 86% of respondents supported the creation of standards consistent with the Town and Country concepts. A non-binding 2006 ballot question was supported by 72% of the voters to "work to adopt additional standards consistent with the Town and Country concept". In 2009, as part of the Master Plan, zoning was re-structured for consistency with these organizational principles which affect the long-term physical development of the island.

The Country Overlay District, under Section 139-12F of the Zoning Bylaw, has the following purpose:

"The purpose of the Country Overlay District is to discourage development and to preserve areas characterized by traditional and historic rural land use patterns; to discourage the spread of

disperse development patterns that promote automobile dependency, and are costly to maintain. The purpose of the Country Overlay District shall be considered by the Planning Board or Zoning Board of Appeals when determining the character and extent of site and infrastructure improvements to be required in a decision on an application for site plan approval…"

Conversely, the purpose of the Town Overlay District is to limit the spatial extent of growth by encouraging development where existing infrastructure exists or can be extended without undue expense and to create affordable housing opportunities through infill development, and to create development patterns that are conducive to alternatives to the automobile.

The Project location is wholly out of character for Nantucket, generally, and, specifically it should not be allowed at this location on such a small site (only 2.5 acres) in a rural setting within the Country Overlay District.

Although this site is not appropriate for large scale development for all the reasons contained within this letter, there are numerous examples of support by the Town and the voters at Town Meeting for housing production pursuant to the 2009 Master Plan in areas that are appropriate for additional density. A sampling of initiatives over the last 5 years include the following:

- 2009 Annual Town Meeting: Article 27. Created "apartment" allowance by-right for up to 4 dwelling units within a mixed use structure in 3 zoning districts.

- 2014 Annual Town Meeting: Article 66. Modified "apartment" provision to relax standards. Approximately 130 multi-family units in a Multi-Family Overlay District. Recent examples have been approved for construction in mixed use structures such as a market with second floor apartments and a physical therapy clinic with second floor apartments.

- 2009 Annual Town Meeting: Article 27. Expanded "secondary lot" provision.

- 2011 Annual Town Meeting: Article 63. Modified "secondary lot" provision to relax development standards.

- 2014 Annual Town Meeting: Article 63. Modified "secondary lot" provision to further relax development standards. The Planning Board has approved special permits to create 30 income restricted ownership dwelling units.

- 2009 Annual Town Meeting: Article 72. Established Affordable Housing Trust Fund.

- 2014 Annual Town Meeting: Article 79. Modified membership of Affordable Housing Trust Fund to increase productivity. Several projects are underway including a 4 unit 40B LIP at 7 Surfside Road across the street from the Nantucket High School. The underlying land with a single structure was purchased by the AHTF and later transferred to a local housing group, Housing Nantucket, for further development.

- 2010 Annual Town Meeting: Article 88. Authorized use of Town owned land on Ticcoma Way for affordable housing. One lot has been transferred to Habitat for Humanity and one lot has been transferred to the Nantucket Housing Authority.

- 2014 Annual Town Meeting: Articles 67 and 68. Created "apartment building" allowance by special permit for up to 6 dwellings on a single lot in 2 zoning districts. In 2015, the Planning Board approved a 4 structure complex including 28 rental apartment units.

- 2015 Annual Town Meeting: Article 61. Modified "accessory apartment" to relax standards, including a by-right allowance in all residential zoning districts.

- 2015 Annual Town Meeting: Article 62. Created "tertiary dwelling" allowance by-right in the R-5, R-10, R-20, R-40, LUG-1, LUG-2, and LUG-3. Following the Attorney General approval in September, 6 tertiary dwellings have been approved by the Planning Board to convert existing structures to dwelling units.

- 2015 Annual Town Meeting: Article 99. Authorized the Town to lease a portion of land at 2 Fairgrounds Road for affordable housing. A design group appointed by the Town Manager is actively investigating the potential for this site.

- On-going support of housing efforts through funds available through the Community Preservation Committee. Significant amounts were appropriated in recent years: $1m at 2010 ATM, $1.2m at 2011ATM, $1.6m at 2012 ATM, $320k at 2013 ATM, $580k at 2014 ATM, and $1.5m at 2015 ATM.

In conclusion, for the above reasons, the PEL should be denied. If MHP chooses to issue a PEL, which the Board strongly urges MHP not to do, any PEL should be conditioned as follows:

- The Applicant shall not apply for a comprehensive permit without first obtaining Town Meeting approval to extend a municipal sewer district to the Property.

- The Applicant shall present MHP with a detailed pro forma that includes the costs for all relevant sewer municipal infrastructure and fees or that includes the costs for on-site septic and all water infrastructure and fee costs (whether municipal or on-site) and MHP shall be required to first determine that the Project is feasible given all of these costs.

- The Applicant shall provide the ZBA with an analysis of pre and post-construction conditions and pre and post-construction drainage calculations and that a qualified professional engineer provide a report that compares and analyzes the pre and post construction conditions for the Property and all adjoining land and all relevant watershed areas.

- The Applicant shall provide full stormwater drainage calculations (pre and post construction) to the ZBA and they shall be subjected to peer review at the Applicant's expense.

- If the Applicant proposes to use pervious pavement for walkways and parking areas, then that, of course, could mitigate stormwater runoff concerns; however, if that approach is contemplated, then the pro forma shall be revised to include adequate funding and adequate provisions for the cost of maintaining the pervious pavement, which would be a significant annual expense.

- The ZBA may withhold approval unless a suitable stormwater control design is proposed.

- The Applicant shall submit drainage information to the ZBA that shall:

a) be supported by adequate testing of the Property's soils, both as to percolation and permeability rates, and the location of seasonal high ground water levels;

b) be required to undergo peer review by a drainage consultant hired by the Town at the Applicant's expense;

c) be confirmed through peer review, before any approval can take place, to result in no net increase in the volume and rate of stormwater runoff from the Property, based upon drainage calculations that compare pre-construction and post-construction conditions;

d) be confirmed, in particular, through peer review, to not result in any increase in the rate or volume of stormwater runoff from the Property or any change in the runoff from existing adjoining properties, when pre-construction and post-construction conditions are compared;

e) include water control runoff from roofs of the dwellings and any accessory structures that are separate from and not combined with stormwater runoff from paved areas and not be introduced into any stormwater drainage basin;

f) include operation and maintenance and replacement requirements for the access ways and stormwater drainage infrastructure; and

g) include evidence of adequate funding to manage the resulting costs for maintaining, repair and replacing the access ways and stormwater drainage infrastructure and other infrastructure.

- The Project shall be modified to include a sidewalk to the nearest bus stop to allow safe access for residents.

- The location of the dumpster must be moved so as not to disturb any adjacent residential property. The Applicant shall include the cost of trash service within the pro forma. A detailed plan identifying frequency of pickup, dumpster locations, policies, enforcement procedures, etc. should be submitted with the final application.

- The Application shall obtain and provide a report that provides an estimate of the anticipated school aged children in the Project, so that the Town can plan ahead to serve the children.

- The buildings shall be redesigned to eliminate all balconies.

- If a connection to the water system, the Applicant shall perform all water capacity tests to verify and demonstrate that the Project will not adversely impact the public infrastructure or reduce the water pressure available to existing water users.

- The Project shall be designed and built so as to maximize energy efficiency in terms of building materials and heating and other infrastructure. This will reduce the cost to the residents and should not greatly increase the Applicant's costs to undertake the Project.

- The Project shall include internal and off-site sidewalk improvements so as to facilitate pedestrian access to nearby neighborhoods and public transportation facilities. Sidewalks should be constructed of brick, concrete or asphalt (or a combination thereof) and meet AASHTO standards where appropriate.

- The Project shall have wide enough access ways to allow access for emergency vehicles to enter and turn and adequate snow storage areas shall be provided.

- The dimension of each parking space shall be consistent with the requirements of the Zoning Bylaw.

- All units and confined spaces shall be sprinklered.

- The Applicant shall perform a traffic infrastructure study, which includes sight distance assessments, to evaluate any improvements that would be required to serve the traffic the Project proposes. This study, given the number of residents proposed to reside in the proposed development, must include an assessment of access to nearby commercial, community, and public transportation facilities. The Traffic Study must take the high tourist seasons into account and include the conflicts that arise from the high number of vehicles, pedestrians and bikers that compete for use of Nantucket's ways and the impact of proposed access points on existing residents and commercial property owners. The Applicant shall pay for traffic peer review.

- The Applicant shall provide a lighting plan, to provide safe lighting for residents, without light intrusion onto adjacent properties.

Attached to this letter is a set of comments from the Nantucket Land Council, which is a non-profit corporation dedicated to preserving the natural world and rural character of Nantucket. We urge MHP to take into consideration the comments of the Land Council and, in particular, to investigate the site control issues raised in the attached letter.

In closing the Board thanks you and MHP for consideration of the Board's comments and concerns regarding this project and strongly urges MHP to deny the PEL.

Very truly yours,

Robert R. De Costa, Chairman

Matt Fee, Vice Chairman

Rick Atherton

Tobias Glidden

Dawn E. Hill Holdgate

Enc. Exhibits

cc: Zoning Board of Appeals
Director of Planning and Land Use Services
Town Counsel
Surfside Commons, LLC c/o Atlantic Development

534312v1A/NANT40B/0005

Print

Acts
2008
Chapter 396 AN ACT AUTHORIZING THE ESTABLISHMENT OF THE NANTUCKET SEWER COMMISSION AND SEWER DISTRICTS IN THE TOWN OF NANTUCKET.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:

SECTION 1. The town of Nantucket, acting by and through the Nantucket sewer commission described in section 3, may lay out, plan, construct, maintain and operate a system or systems of common sewers for a part or whole of its territory, as may be from time to time defined and established by adoption by town meeting of one or more by-laws as a designated sewer district under the jurisdiction and control of the sewer commission, with such capacity limitations, connections, pumping stations, treatment plants and other works, as may be allocated in such by-law to such sewer district as required for a system or systems of sewage treatment and disposal, and may construct such sewers and related works in said sewer districts defined and established by by-law as may be necessary. No other sewers shall be constructed in any public roads or ways of the town which are not within the limits of such designated sewer districts and which are not under the control of the sewer commission.

SECTION 2. The town may make and maintain, within sewer districts defined and established as set forth in section 1 in any way therein where common sewers are constructed, such connecting sewers within the limits of such way as may be necessary to connect any estate which abuts upon the way within such district.

SECTION 3. Notwithstanding the provisions of chapter 169 of the acts of 1965, the town may, at any town meeting, by a two-thirds vote, vote that the board of selectmen shall act as a Nantucket sewer commission, or that there shall be a separate Nantucket sewer commission, the members of which shall be appointed by the board of selectmen or elected by popular vote for 3 year terms. The number, constitution and the choice of elected or appointed commissioners of a separate sewer commission shall also be determined by a two-thirds vote of town meeting. If a separate Nantucket sewer commission is established by town meeting, any selectman shall be eligible to serve as a member thereof. Town meeting shall be authorized to change the method of establishment of the Nantucket sewer commission described herein without any limitation on the number of times such commission may be established or re-established as the case may be, by a two-thirds vote. Whenever the phrase "Nantucket sewer commissioners" appears in this act, such phrase shall include within its meaning either the board of selectmen acting as Nantucket sewer commissioners, or the

separate appointed or elected Nantucket sewer commission.

SECTION 4. The Nantucket sewer commission, acting for and on behalf of the town of Nantucket, shall have charge of and shall be responsible for the policies, finances, and overall goals of the sewer system, but shall be subject to the charter of the town of Nantucket as to the administration and management of the systems operation and maintenance, and shall be responsible for the good order of all sewers, pipes, pumping stations, treatment and disposal works, and the like. The operations of the Nantucket sewer commission shall be governed by, and any staff or employees shall be considered part of town administration within the meaning of, the charter of the town of Nantucket unless changed or modified pursuant to said charter.

SECTION 5. The board of selectmen acting for and on behalf of the town of Nantucket, after being duly authorized to do so by town meeting, may take by eminent domain pursuant to chapter 79 of the General Laws or otherwise may, utilizing the procedures described in the charter of the town of Nantucket acquire by purchase or gift any lands, rights of way, or easements, public or private, in the town necessary for accomplishing any purpose mentioned in this act and may construct such sewers under or over any state road, any bridge, pier, tidelands, boulevards or other public way, or within the location of any state land, without the necessity for any formal filings in the registry of deeds, and may enter upon and dig up any private land or any public land or public way, for the purpose of laying such sewers and of maintaining and repairing the same, and may do any other thing proper or necessary for the purposes of this act.

SECTION 6. The financial operations of the sewer system shall be an Enterprise Fund within the meaning of section 53F1/2 of chapter 44 of the General Laws, except as modified herein, and any expenditure from such fund shall be only upon authorization of the Nantucket sewer commission. The town shall, by vote at town meeting, determine whether it shall pay the whole or a portion of the cost of said system or systems of sewerage and sewage disposal, and if a portion, what proportion. If the town votes to pay less than the whole cost, in providing for the payment of the remaining portion of the cost of said system or systems, the town, acting through the Nantucket sewer commission, may avail itself of any or all of the methods permitted by the General Laws; and the provisions of the General Laws relative to the assessment, apportionment, division, reassessment, abatement and collection of sewer assessments or the additional methods set forth in section 8, and as to liens therefor and to interest thereon, shall apply to assessments made pursuant to this act by the Nantucket sewer commission, except that interest shall be at the rate as may be established by the Nantucket sewer commission from time to time.
At the same meeting at which town meeting determines that any portion of the cost is to be borne by the town, it may by vote determine by which of such methods the remaining portion

of said cost shall be provided for.
The collector of taxes of said town shall certify the payment or payments of any such assessment or apportionments thereof to the sewer commission or to the selectmen acting as such, who shall preserve a record thereof.

SECTION 7. The revenues received by the fund described in section 6 of this act from sewer assessments, fees, charges, contributions from the town towards the costs of such sewer system as described in section 6, and the like as receipts or revenues, shall be applied to the payment of charges and expenses incident to the design, construction, maintenance, and operation of said system or systems of sewerage and sewage disposal or to the extensions thereof, to the payment of principal or interest upon bonds or notes issued for sewer purposes, or to the payment or redemption of such bonds or notes.

SECTION 8. The Nantucket sewer commission may, in its discretion, prescribe for the users of said sewer systems and disposal works such annual charges, connection fees, assessments, privilege fees, and the like, based on the benefits derived therefrom as such sewer commission may deem proper, subject however, to such by-laws as may be adopted by vote of the town, or as may be provided for in the General Laws. Notwithstanding any law to the contrary, the commission is authorized to impose and collect such charges, fees, or assessments prior to connection or operation of such system of sewers, and may enter into agreements for the payment thereof over such time as the sewer commission shall determine. In fixing the charges to be imposed for said system, the Nantucket sewer commission is authorized to make use of any fee, charge, assessment or betterment provided for by the General Laws and further may take into consideration all costs for ongoing removal of infiltration and inflow of non-wastewater into the system as part of the normal operating costs of the system; may include, in setting privilege fees, capital costs and interest charges applicable thereto; may impose late fees for unpaid billings; may assess a capacity utilization fee to new estates and properties added to a sewer district authorized by this act from outside a designated needs area in addition to any privilege fee; may charge betterments, special assessments, or any other charge to the estates and properties being served by collection system improvements and extensions to pay for all costs for sewer line extensions to serve new connections, both within the sewer districts authorized by the act and in any areas added to such sewer district; and may impose such charges on properties within a sewer district authorized by the act whether or not such estates and properties are then connected to the sewer system.

SECTION 9. The Nantucket sewer commission may, from time to time, adopt and prescribe rules and regulations for the means of connection of estates and buildings with sewers and for inspection of the materials, the construction, alteration, and use of all connections entering to such sewers, but not including the expansion of districts except as provided in sections 1

and 10, and may prescribe penalties, not exceeding $300 for the violation of any such rule or regulation. Such rules and regulations shall be available for public review at the sewer commission's designated office during regular office hours. Any changes, deletions, additions or revisions to said rules and regulations deemed necessary by the Nantucket sewer commission from time to time, shall take full effect after a notice of change has been published at least once a week for 2 successive weeks in a newspaper of general circulation in the town of Nantucket, which notice shall detail where and when such revised rules and regulations may be viewed by the general public.

SECTION 10. Notwithstanding any provision of law to the contrary, owners of land not within the sewer districts defined and established pursuant to section 1 of this act shall not be permitted to connect to the town's sewer system except as is set forth in this act. The territory covered by said sewer districts may be amended from time to time by the board having charge of sewers, after a public hearing conducted to consider such amendment, upon approval of the department of environmental protection if otherwise required by law and upon enactment by town meeting of a by-law defining or establishing a new or expanded sewer district. In the event that the board having charge of sewers votes not to amend the territory of any sewer district in accordance with the foregoing sentence, the amendment may nevertheless be enacted in a form of a by-law upon a two-thirds vote of town meeting.
Any by-law adopted pursuant to the authority granted to the town of Nantucket by this act may include authorization to the Nantucket sewer commission without a town meeting vote to add to the sewer districts created pursuant to this act properties located within "needs areas" as defined by Nantucket's Comprehensive Wastewater Management Plan prepared by Earth Tech dated March 2004, approved by the secretary of environmental affairs on May 14, 2004, with such conditions and limitations with respect to such authorization as such by-law may provide.

SECTION 11. Notwithstanding anything to the contrary contained herein, the board having charge of the maintenance and repair of sewers may at any time permit extensions, new connections or increases in flow to the sewer system, subject to capacity, to serve municipal buildings or public restrooms or other public service uses as defined by the municipality; provided, however, that such uses may include, but shall not be limited to, affordable housing constructed pursuant to chapters 40B and 40R of the General Laws, without thereby creating any entitlement on the part of any person to connect to such sewer system, and subject to capacity, in order of application, may permit or if in the public interest, may require, extensions, new connections or new flow to the sewer system within such districts.

SECTION 12. This act shall take effect as of July 1, 2008.

Approved December 17, 2008

Exhibit 2

Chapter 41: Board of Sewer Commissioners

[HISTORY: Adopted by the Annual Town Meeting of the Town of Nantucket 5-8-1990 by Art. 17, approved 9-5-1990. Amendments noted where applicable.]

GENERAL REFERENCES
Solid waste enterprise — See Ch. **42**.

§ 41-1 Responsibilities.

Pursuant to Chapter 169 of the Acts of 1965 of the Commonwealth of Massachusetts and pursuant to this chapter, the Board of Public Works is to be the Sewer Commissioners responsible for the maintenance, management, operation, direction, control and protection of the assets of the sewer enterprise.

§ 41-2 Power to enter contracts.

The Board of Sewer Commissioners is authorized to enter into contracts, to expend such sums as may be necessary as are authorized and appropriated by the Town and to take such action as may be necessary or advisable to provide the people of Nantucket with all the sewer uses in accordance with this chapter and with the laws of the commonwealth.

§ 41-3 Sewer districts.

[Added 4-12-2004 ATM by Art. 56, approved 9-3-2004[1]]

The Board of Sewer Commissioners is authorized to lay out, construct, maintain and operate a system or systems of common sewers and main drains in public or private ways for a part of the Town as set forth below for the public convenience or the public health with such connections and other works as may be required for a system or systems of sewerage or drainage and sewage treatment and disposal within the sewer districts set forth below. Such works for sewage treatment and disposal may include any wastewater treatment facility for treating, neutralizing or stabilizing sewage including treatment or disposal plants; the necessary intercepting, outfall and outlet sewers, pumping stations integral to such facilities; and equipment and appurtenances related to the foregoing. For the purposes of this chapter the word "sewage" shall mean wastewater from homes, public buildings, commercial or industrial establishments, or any combination thereof, and shall include any surface or ground water that may be present therein. The following systems of common sewers and main drains are hereby designated:

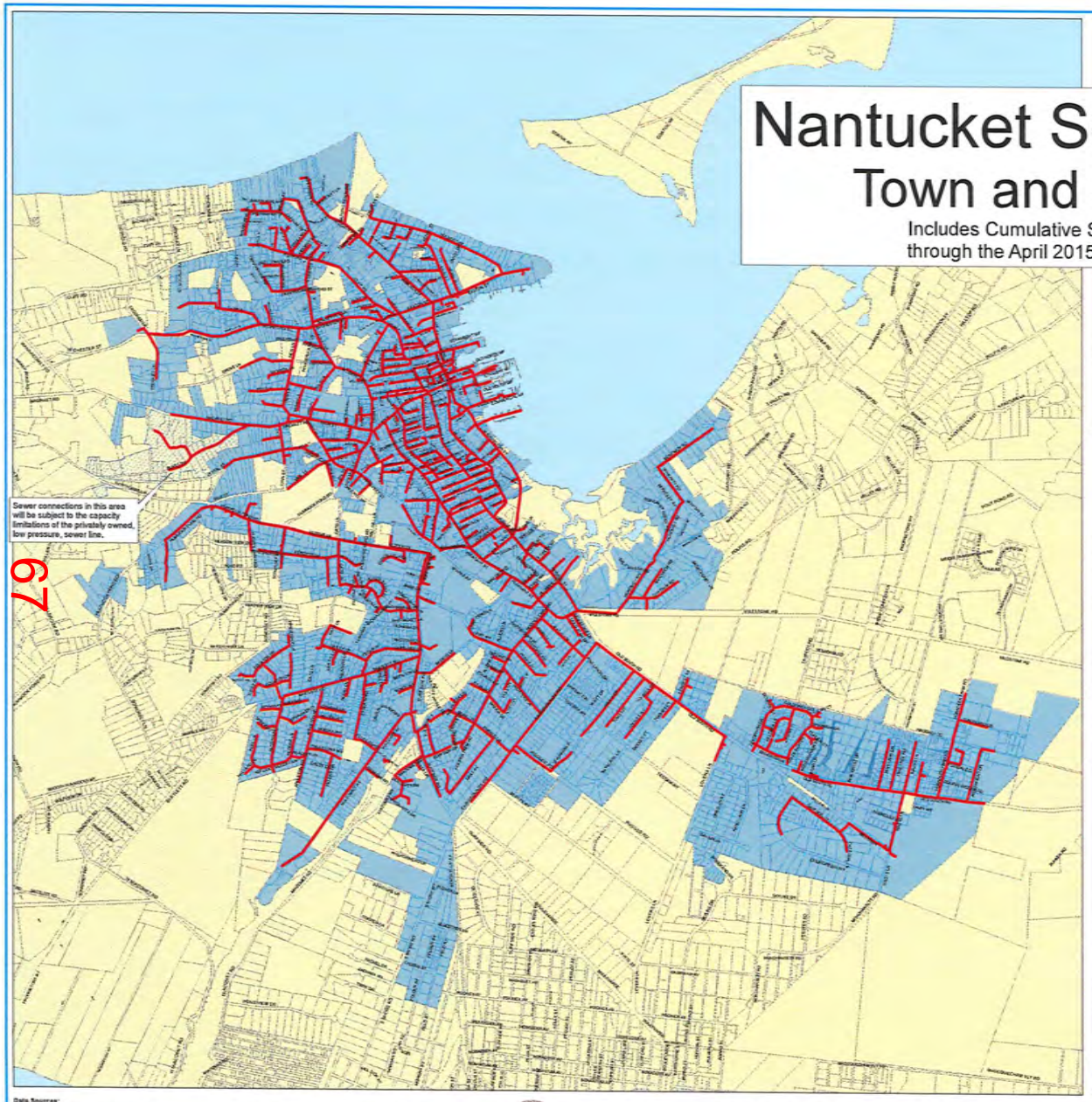
A. Town Sewer District is shown on a map entitled "Nantucket Sewer Districts Town and Siasconset" prepared by the Town of Nantucket GIS Coordinator, dated April 20, 2010, as may be amended from time to time. The above referenced map incorporates the original sewer district map dated March 2004 as approved through Article 56 of the 2004 Annual Town Meeting and all subsequent amendments as may be approved by Town Meeting from time to time. The Town Sewer District, projected to have a summer average daily flow capacity of 2,800,000 mgd, is serviced by the Surfside Wastewater Treatment Facility.
[Amended 10-19-2004 STM by Art. 14, approved 2-22-2005; 4-11-2007 ATM by Art. 43, approved 6-28-2007; 4-5-2010 ATM by Arts. 38, 40, approved 6-17-2010; 4-4-2011 ATM by Art. 47, approved 9-15-2011; 4-2-2013 ATM by Art. 42, approved 7-26-2013]

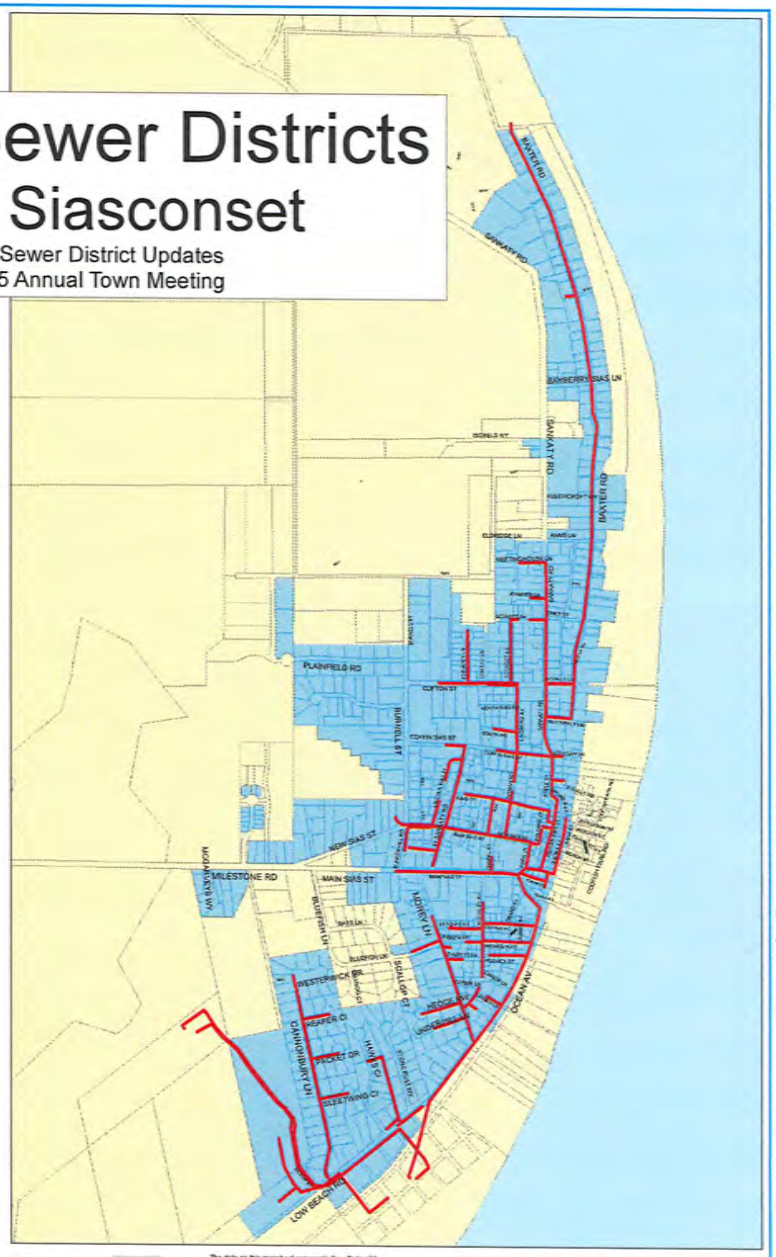
B. Siasconset Sewer District: as shown on a map entitled "Nantucket Sewer Districts Town and Siasconset" prepared by the Town of Nantucket GIS Coordinator, dated April 20, 2010, as may be amended from time to time. The above referenced map incorporates the original sewer district map dated March 2004 as approved through Article 56 of the 2004 Annual Town Meeting and all subsequent amendments as may be approved by Town Meeting from time to time. The Siasconset Sewer District, projected to have a summer average daily flow of 220,000 gallons per day, is serviced by the Siasconset Wastewater Treatment Facility.
[Amended 4-11-2007 ATM by Art. 41, approved 6-28-2007; 4-6-2009 ATM by Art. 53, approved 8-10-2009; 4-5-2010 ATM by Art. 38, approved 6-17-2010; 4-2-2013 ATM by Art. 43, approved 7-26-2013]

[1] *Editor's Note: Pursuant to Acts of 2008, ch. 396, the Town adopted this section as a bylaw 4-15-2010 ATM by Art. 31, approved 6-17-2010.*

Nantucket Sewer Districts
Town and Siasconset

Includes Cumulative Sewer District Updates
through the April 2015 Annual Town Meeting





Data Sources:

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Town of Nantucket - GIS Mapsheet

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Please send identification of any errors and corresponding corrections to:

GIS Coordinator
Town of Nantucket
2 Fairgrounds Road
Nantucket, MA 02554

April 15, 2014

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Exhibit 3

Exhibit 5

COMMITMENT & INTEGRITY
DRIVE RESULTS

980 Washington Street | Suite 325
Dedham, Massachusetts 02026
www.woodardcurran.com

T 800.446.5518
T 781.251.0200
F 781.251.0847

WOODARD &CURRAN

MEMORANDUM

TO: Libby Gibson, Town Manager
Kara Buzanoski, DPW Director
FROM: Rosemary Blacquier, Project Manager – CWMP Update
DATE: September 14, 2015
RE: Surfside WWTF Capacity Analysis and Areas of Sewer Planning from 2014 Comprehensive Wastewater Management Plan Update Report.

The Comprehensive Wastewater Management Plan (CWMP) Update completed in 2014, updated the Town's state-approved 2004 CWMP. The CWMP Update provides the Town with a 20-year wastewater planning document. The 2014 Update Report reviewed current and future conditions on Island with regards to wastewater to identify areas of the Town that were not long-term sustainable with on-site wastewater disposal systems. All areas from the 2004 CWMP were re-evaluated in 2014 to address a decade of changes. Together with physical attributes of the land, opportunities and constraints of soils, groundwater conditions, size of properties, updated Board of Health records noting on-site issues and environmental impacts, the areas determined to need an off-site wastewater solution (sewer) were identified with a capacity for 4.0 mgd flow at the Surfside WWTF. These are detailed in the 2014 CWMP Update as the eight *Needs Areas* as follows:

Madaket	Warren's Landing
Somerset	Hummock Pond North
Hummock Pond South	Miacomet
Monomoy	Shimmo

The areas identified and approved in the 2004 and the 2014 CWMP Update as sustainable with on-site systems include the following *Study Areas*:

Pocomo	Polpis
Quidnet	***Surfside****
Tom Nevers High Density	Tom Nevers Low Density
Wauwinet	

106 Surfside Road is within the Surfside Study Area

A major portion of the state-approved 2014 CWMP Update included a complete capacity analysis of the Surfside Wastewater Treatment Facility (WWTF) and its associated Groundwater Discharge Permit. The results of the 2014 CWMP Update identified a need for 4.0 million gallons per day (mgd) of wastewater capacity at the WWTF to treat and discharge effluent within the required permit limits. This 4.0 mgd includes existing wastewater from the Town Sewer District, approved Needs Areas and projected Infiltration and Inflow. The attached Figure 2-20 identifies all of these and totals 4.0 mgd. Figure 2-20 also identifies those areas shown in the CWMP Update as being able to support on-site wastewater systems. Also attached is Section 2.14.3 and Table 2-16 from the CWMP Update Report with the total projected flows and loads-both existing and future based on the identified Needs Areas.

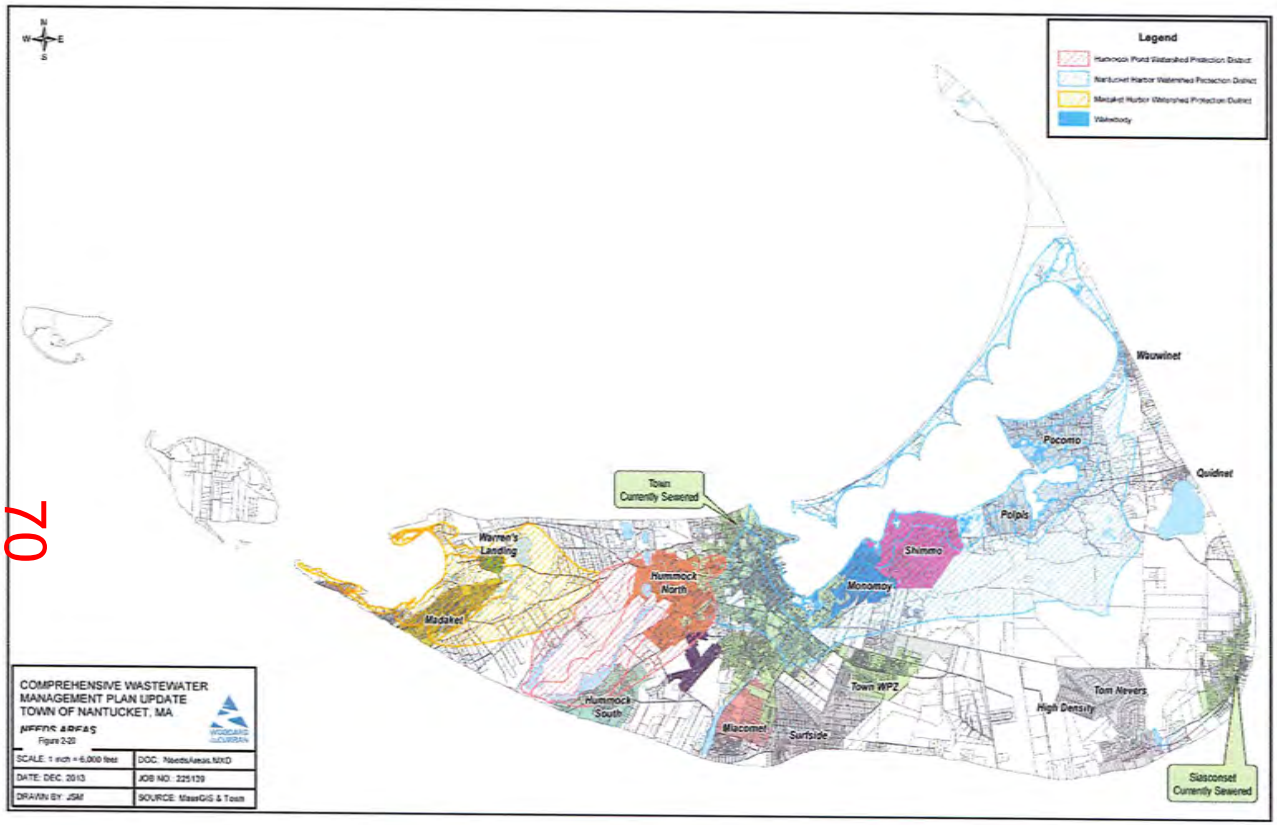
The Town's current Groundwater Discharge Permit was previously set at 3.5 mgd. The CWMP Update identified a need to modify the existing permit to 4.0 mgd. A comprehensive hydrogeological evaluation was completed at the Surfside site and concluded that the discharge beds could handle up to 4.0 mgd, but no more. An application to modify the existing Groundwater Discharge Permit was filed with and approved by the Massachusetts Department of Environmental Protection (MassDEP) in 2014, setting the new permit total at 4.0 mgd. A comprehensive WWTF evaluation showed a need to update various WWTF processes to support the 4.0 mgd. Annual Town Meeting in spring 2015 approved the plan and is working towards these improvements at

Exhibit 5

this time. The 4.0 mg is fully accounted for in the above noted Needs Areas and areas currently included within the delineation of the Town Sewer District.

The property in question, 106 Surfside Road, is within the Surfside Study Area, which was deemed suitable for on-site wastewater and not included in a sewer plan. This is clearly shown in Figure 2-20 from the 2014 CWMP Update Report and is attached hereto for reference.

Town of Nantucket CWMP Update



AREAS RECOMMENDED FOR SEWER SERVICE

MADAKET

Drivers:
- Draft TMDL – Water Quality
- Madaket Harbor Watershed
- Small, Dense Lots
- Severe Soils
- Severe Groundwater
- Inability to Meet Title 5
- Inability to Meet Local BOH Regs
- Private Water Supply

Recommendation:
Municipal Sewer at Surfside WWTF

HUMMOCK POND SOUTH

Drivers:
- Pending TMDL – Water Quality
- Hummock Pond Watershed
- Small, Dense Lots
- Severe Soils
- Inability to Meet Title 5
- Inability to Meet Local BOH Regs
- Private Water Supply

Recommendation:
Municipal Sewer at Surfside WWTF

WARRENS LANDING

Drivers:
- Draft TMDL – Water Quality
- Madaket Harbor Watershed
  - GW Flow Towards Hither Creek Water Quality
- Small, Dense Lots

Recommendation:
Municipal Sewer at Surfside WWTF

MIACOMET

Drivers:
- Water Quality
- Small, Dense Lots
- Severe Soil and Groundwater Conditions

Recommendation:
Municipal Sewer at Surfside WWTF

HUMMOCK POND NORTH

Drivers:
- Pending TMDL – Water Quality
- Hummock Pond Watershed
  - Head of Hummock

Recommendation:
Municipal Sewer at Surfside WWTF

MONOMOY

Drivers:
- TMDL – Water Quality
- Nantucket Harbor Watershed
  - Polpis Harbor TMDL
- Severe Soil and Groundwater Conditions

Recommendation:
Municipal Sewer at Surfside WWTF

SHIMMO

Drivers:
- TMDL – Water Quality
- Nantucket Harbor Watershed
  - Polpis Harbor TMDL
- Severe Soil and Groundwater Conditions

Recommendation:
Municipal Sewer at Surfside WWTF

SOMERSET

Drivers:
- Small, Dense Lots
- Severe Soil and Groundwater Conditions
- Inability to Meet Title 5
- Private Water Supply

Recommendation:
Municipal Sewer at Surfside WWTF

AREAS RECOMMENDED FOR SEPTAGE MANAGEMENT PLAN

Polpis
Pocomo
Wauwinet
Quidnet
Surfside
Tom Nevers High Density
Tom Nevers Low Density

SPECIAL AREAS RECOMMENDED FOR SEWER

TOWN WPZ

Drivers:
- Town's Wellhead Protection

Recommendation:
Municipal Sewer at Surfside WWTF IF IMPACTED

TOWN SEWER DISTRICT UNSEWERED

Drivers:
- TMDL – Water Quality
- Nantucket Harbor Watershed
  - Polpis Harbor TMDL

Recommendation:
Municipal Sewer at Surfside WWTF

December 2013

Exhibit 5

Exhibit 5

2.14.3 Wastewater Flow and Loads Update

In order to update the assessment of the Town's wastewater disposal needs and recommend appropriate wastewater disposal solutions for each Need Area and Study Area, W&C estimated the wastewater flows and waste loads that would be generated in the Areas. A key component of these updates was reflecting the revised zoning and extent of the Town Sewer Districts.

A defined methodology was utilized to calculate these estimates as described below.

W&C revised the flows and loads for the Need and Study Areas by updating counts of developed and undeveloped residential and commercial parcels in each Area, and verifying land use, zoning, and sewer status for each parcel using the Town's Assessor's Database, State Land Use Codes, and the Town's Sewer Districts, sewer users, and zoning mapping in GIS.

After these updates were made, we assigned the following rules to parcels:

- All developed single-family residential parcels were assumed to have at least one wastewater connection.
- All developable or potentially developable residential parcels that met zoning were assumed to have at least one wastewater connection.
- We assumed any parcel that meets zoning could have a second dwelling. For example, single-family residential parcels that met zoning were assumed to have two wastewater connections. However, based on discussions with the Town Planner and the fact that approximately only 12% of residences on the island currently have second dwellings, overall to be conservative we assumed only 25% of the second dwellings could be built.
- All developed commercial parcels were assigned a flow based on acreage.
- Developable and potentially developable commercial parcels that met zoning were also assigned a wastewater flow based on acreage.
- Based on discussions with Nantucket Assessor, we assumed all multi-family parcels in the Areas are equal to two residential wastewater connections.

Average Daily Flow estimates for both summer and winter were developed using the above described parcel count methods and applying the unit flows consistent with the previous CWMP work. In the Phase I CWMP, wastewater flows from 1999 at the Surfside Wastewater Treatment Facility were analyzed in conjunction with the number of residential and commercial units connected to the system to estimate unit wastewater flows. Population data were used to determine the average number of people per residential household. Table 2-13 presents the results of this analysis from the Phase I CWMP. These values were used in wastewater flow calculations for this CWMP update.

Table 2-13: Phase I CWMP Wastewater Winter and Summer Wastewater Unit Flows

Season	Average Number of People per Household	Gallons per Capita Per Day	Residential Wastewater Flow (GPD)	Commercial Wastewater Flow (GPD)
Summer (June – September)	4.5	71.1	320	345
Winter (December – March)	2.5	74	185	260

Note that wastewater is typically composed of residential, commercial and industrial sources. As was the case in both the Phase I CWMP and the 2004 CWMP/EIR, industrial sources continue to be absent in Nantucket and therefore to

Exhibit 5

be representative of current conditions and consistent with these reports, only residential and commercial flows are developed for this update.

Infiltration and inflow (I/I) was estimated assuming 250 gallons per day-inch-mile (gpdim) for new pipe in accordance with MassDEP I/I standards. Infiltration/inflow was not estimated for any low pressure sewer. The length of gravity sewer in Somerset presented in the 2004 CWMP was included in these calculations. The 2004 CWMP identified Madaket and Warrens Landing as being sewered with 100% low pressure. For the remaining Areas, to determine the total length of sewer, the approximate length of streets within each area was extracted from GIS mapping.

To be consistent with the Phase I CWMP, wastewater loads were calculated by applying industry standard factors from the New England Interstate Water Pollution Control Commission Guides for the Design of Wastewater Treatment Works (TR-16) and from Table 3-15 of Wastewater Engineer Treatment and Reuse, 4th Edition, by Metcalf & Eddy, to the estimated average daily wastewater flows. Table 2-14 presents a summary of the wastewater load factors.

Table 2-14: Wastewater Load Factors

Parameter	Residential (lbs/capita/day)	Commercial/Industrial (mg/L)
BOD	0.22	250
TSS	0.25	300
Total Nitrogen	0.04	40

In the Phase I CWMP, "Peak Hourly Flow" and "Maximum Daily Flow" were estimated using peaking factors from TR-16. However, for this CWMP update, to better represent actual conditions experienced at the WWTF, ratios from existing treatment plant data were utilized to estimate maximum month, maximum day, and peak hourly flows, as well as the maximum month loads. Table 2-15 shows these ratios.

Table 2-15: Wastewater Flow and Load Ratios Based on Existing WWTF Data

Parameter	Ratio
Max Month Flow	1.07
Max Day Flow	1.37
Peak Hourly Flow	2.65
BOD Max Month	1.17
TSS Max Month	1.32
TN Max Month	1.15

Detailed calculations are included in Appendix F and a summary of the wastewater flow and loading estimates are presented in Table 2-16.

Table 2-16: Average Daily Flow and Peak Hour Flow

	Flow (MGD)				BOD_5 Load (lbs/day)		TSS Load (lbs/day)		Total Nitrogen Load (lbs/day)	
	Average Daily - Summer	Maximum Monthly	Maximum Daily	Peak Hourly	Average Daily	Maximum Monthly	Average Daily	Maximum Monthly	Average Daily	Maximum Monthly
Projected by Study / Need Area										
Madaket	0.16				490		560		90	
Warren's Landing	0.03				100		110		20	
Hummock Pond South	0.07				200		230		40	
Hummock Pond North	0.09				290		330		50	
Somerset	0.10				320		360		60	
Monomoy	0.08				260		300		50	
Shimmo	0.06				190		220		30	
Town	0.59				1,800		2,050		330	
Nantucket PLUS	0.07				230		260		40	
Miacomet	0.07				210		240		40	
Subtotal Projected	1.33	1.42	1.82	3.52	4,090		4,660		750	
Projected Infiltration/Inflow (Future)	0.06	0.06	0.06	0.06						
Total Projected	1.39	1.48	1.88	3.58	4,090	4,790	4,660	6,150	750	860
Existing Conditions at Surfside WWTF	1.53	1.64	2.10	4.06	4,990	5,630	3,490	4,610	530	610
Total Projected and Existing (Future Conditions)	**2.9**	3.1	4.0	7.7	**9,100**	10,600	**8,200**	10,800	**1,300**	1,500

Total projected flow under Max Day conditions is 4.0 mgd per Groundwater Discharge Permit

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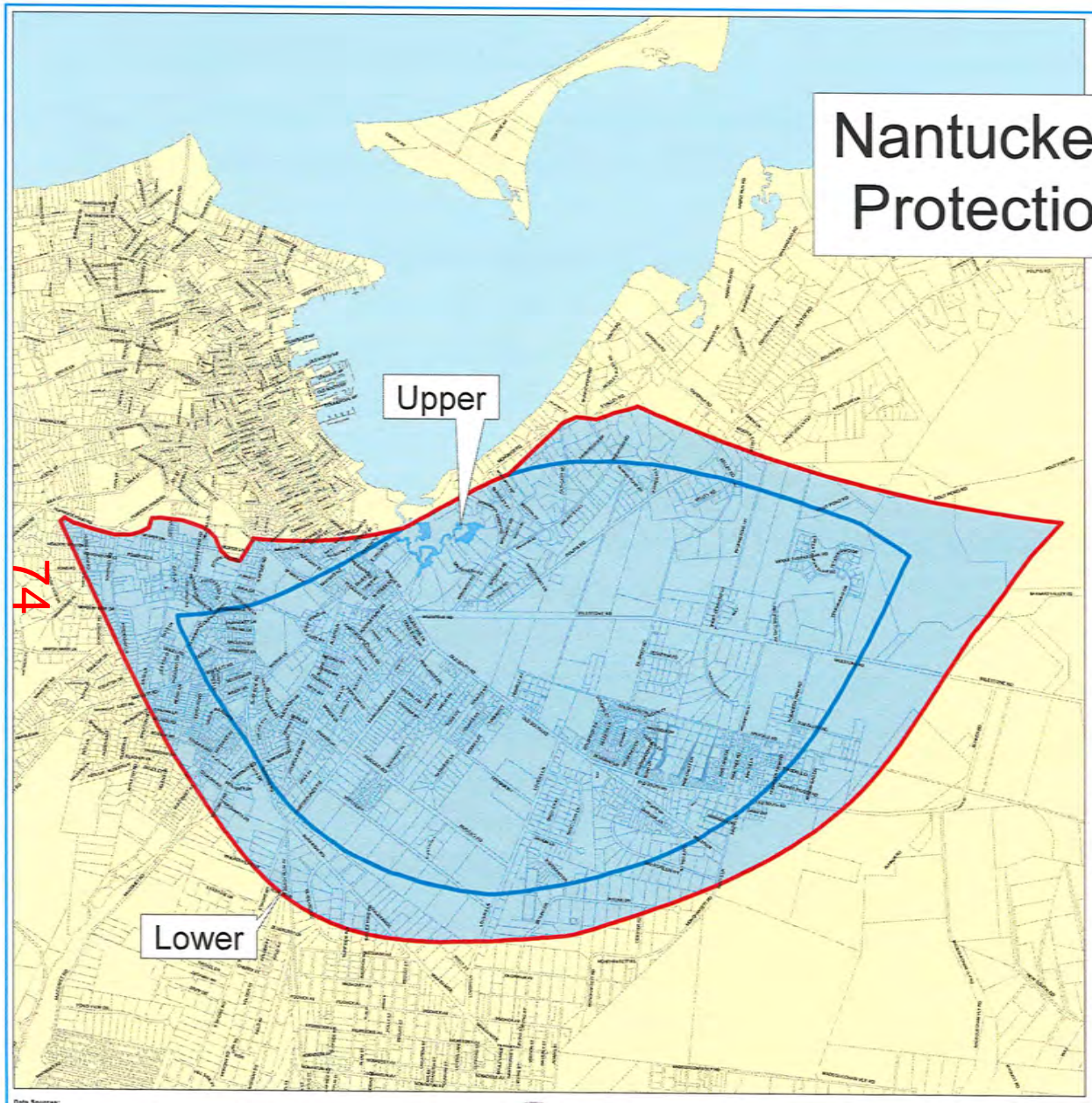
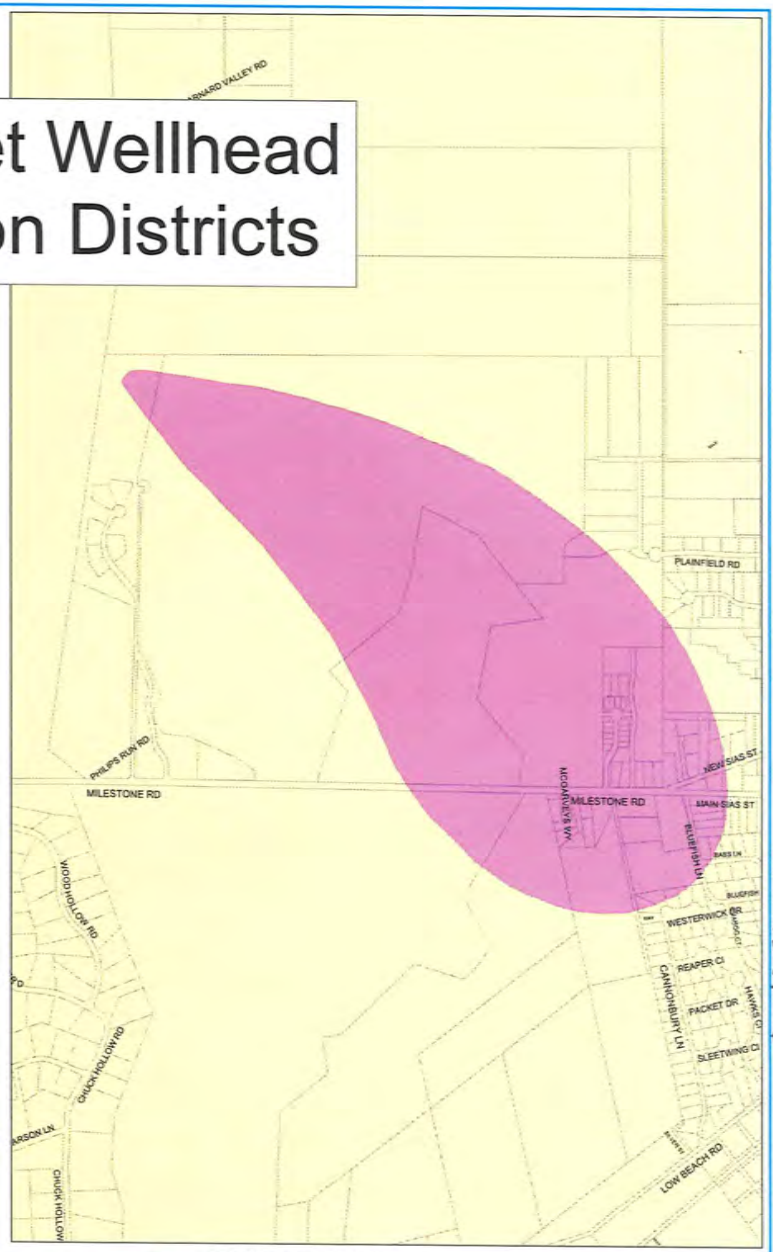
Exhibit 5

Nantucket Wellhead Protection Districts





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GIS Coordinator
Town of Nantucket
22 Fairgrounds Road
Nantucket, MA 02554

July 17, 2012

Exhibit 6

Letter referenced on pg. 10 of BOS comment letter

Nantucket Land Council, Inc.

Six Ash Lane
Post Office Box 502
Nantucket, Massachusetts 02554

508 228-2818
Fax 508 228-6456
nlc@nantucketlandcouncil.org
www.nantucketlandcouncil.org

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James W. Sutherland, Ph.D.
David Troast
Peter Watrous
Jon Wisentaner

Honorary Directors

Jean Haffenreffer
Suzanne Mueller

Staff

Cormac Collier
Executive Director

Emily Molden
Resource Ecologist

Ema Johnson
Development Director

October 29, 2015

Robert DeCosta Chair
Nantucket Board of Selectmen
16 Broad Street
Nantucket, MA 02554

RE: "Surfside Commons", Nantucket, Massachusetts

Dear Members of the Nantucket Board of Selectmen:

Please accept this letter on behalf of the Nantucket Land Council ("NLC") in reference to the application for project eligibility/site approval submitted to the Massachusetts Housing Partnership ("MHP") by Surfside Commons, LLC (the "Applicant") for a development of sixty (60) units off of Surfside Road, Nantucket, Massachusetts ("Development"). For the reasons set forth in detail below, we respectfully advise that the Applicant's request for project eligibility/site approval cannot be granted under the standard of review employed by MHP. Accordingly we urge the Board of Selectmen to likewise urge MHP to deny the Applicant's request for project eligibility/site approval.

In summary, our recommendation is based on our review of the Application, our personal knowledge of the locus and the immediate neighborhood, including the history of the site; of relevant environmental and infrastructural constraints; and of Nantucket's robust and documented planning for affordable housing and growth management to reach two conclusions:

First, the Application fails to satisfy threshold requirements and policies of MHP designed to protect the public's interest and properly promote affordable housing. Second, and most importantly, the Application fails to address substantive issues particular to the site in a manner that would give the Board of Selectmen any confidence of the appropriateness of this project. Presenting the "bare minimum" in its application for project eligibility/site approval to MHP, the Board of Selectmen and the public is not sufficient or acceptable.

As we discuss in detail below, there is no rational support for issuing project eligibility approval for this project at this location given both threshold technical and substantive deficiencies readily apparent. The proposed project for this locus is anything but sustainable, smart or appropriate and we ask the Board of Selectmen to request MHP to reject the application for project eligibility approval now, before additional private and public resources are expended.

1. The development does not qualify for the program under which it has applied, nor does it have any eligible federal or state subsidy as required under GL. c. 40B

The Applicant has ostensibly filed an "Information Form for Project Eligibility Letter". On the Application form, the Applicant has identified in "Section IV: Project Financing" (page 7 of the Application Form), that the proposed program subsidy is "MHP Fixed Rate Permanent Financing or 5 + 5 Program".

With regard to the proposed project's "affordability", the requirements of both the "Fixed Rate Permanent Financing" and "5 + 5 Program" are the same: where the project will not provide dwelling units at 50 percent of median income—which this project does not—or at least 50 percent of the dwelling units at 80 percent of median income—which this project does not—no less than 25 percent of the dwelling units must be available to households earning *less than* 80 percent of the median area income.

As included in the applicant's "project financing" information (see pages 34 and 47 of the Application), the proposed below market rate dwelling units are to be rented *at—not below*-80 percent of the median area income.

Moreover, and anticipating a response from the applicant that it reserves the right to pursue project financing from others, there is no letter of interest from a current FHLBB member bank confirming that NEF funds will be used for the project. Where the Applicant has filed for project eligibility approval that violates the unambiguous requirements of MHP and has not submitted even the fig leaf of a federal subsidy, certainly no approval of this Application can be forthcoming where MHP must find (as required by 760 CMR 56.04 (4)) that the Proposed Project is "eligible under the requirements of the housing subsidy program...".

The Applicant has submitted no evidence of any other federal or state subsidy, without which the project does not qualify for *any* approval by MHP. The Application should be denied on this ground alone.

2. The Deed to the Locus Prohibits the Uses and Structures Being Proposed

As a second threshold deficiency for project eligibility/site approval, the Applicant also failed to demonstrate site control. Absent evidence of site control, MHP should deny further review of the Application, and certainly cannot grant approval.

The purchase and sales agreement identifies the locus as identified on the Plan of Land found at Plan No. 2015-43 with the same referencing Book 1410, Page 205 (Nantucket Registry of Deeds). The application identifies the locus as containing 108,533 square feet of land. The Plan of Land identifies three additional parcels (7, 8 and 10) that, when added to the land referenced in the above noted deed, comprise 108,533 square feet[1].

Parcels 7, 8 and 10 were acquired from the Town of Nantucket on or about June 25, 2015 and recorded in a deed recorded at the Nantucket Registry of Deeds at Book 1488, Page 213. The deed conveying the three parcels—7, 8 and 10—contains unambiguous restrictions and was premised upon the "Grantee's warranty and representation to the Grantor that such Parcels shall be used for residential purposes only and shall, for all intents and purposes, be combined with and considered as one parcel with the abutting lot at 106 Surfside Road…(collectively with the Parcel, the 'Combined Premises')".

Most notably, the deed states, "[t]hat no part of such Parcels or the Combined Premises shall hereafter be use for non-residential purposes…" and second, that the Parcels "[a]re conveyed subject to permanent restrictions…forever restricting the Parcels and Combined Premises to residential use…".

A review of the application makes clear that the proposed uses for the locus as contain non residential uses and structures—the "clubhouse" and the "pool"—and the proposed principal use—"apartment" buildings—violate the deed's clear prohibitions and the "Grantee's warranty and representations that the assembled land would be used for a single family dwelling unit. The proposed use of the locus as contained in the application before MHP violate the express conditions and restrictions imposed on the locus and, accordingly, the applicant lacks the requisite site control to pursue this matter with MHP.

The NLC and the Board of Selectmen are aware of the low evidentiary bar applied by MHP during the project eligibility/site approval process. Yet we assume that the deed upon which the applicant relies must permit the application before MHP. It does not. Hence, as there is no support in the Application for a finding that the Applicant controls the site, as required by 760 CMR 56.04 (4), the Application must be denied.

3. <u>The Initial Capital Budget contains unsupported and contrived costs that serve to disguise the true costs of the project and profit to the developer</u>

As a related threshold matter, the project financing/capital budget provided by the Applicant includes vague and unexplained expenses, which intentional or not, serve to obscure the true costs of the project, and the profit to the developer. The hard costs portion of the pro forma include a $601,071 contingency cost, and an additional $1,751,000 cost for unidentified "Site Improvements". The soft costs portion of the pro forma contains a $116,357 contingency, $140,000 for "Owner's Rep" and $120,000 for "marketing" among many other development soft costs." The "Gen'l Condition, OH Profit" value of "11%"

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[1] Discussed further below, 60 dwelling units on 108,533 square feet results in a development density of 24 dwelling units/acre.

appears to violate MHP's rules governing maximum developer's fee. In addition, the claimed land acquisition value of $1.5M is unsupported (note that the purchase and sales agreement contains conflicting sales prices of $1.5M and $1.475) and accordingly appears to violate MHP's "Allowable Acquisition Cost".

Simply stated, we respectfully suggest to the Board of Selectmen that many of the included costs within the capital budget, including the proposed contingency costs, are nothing other than a means to increase the project's costs on paper, so as to justify an increased number of units "needed" for the project to be financially feasible. In this case, the pro forma's contingency and unidentified costs serve no more than to disguise developer profits for which comprehensive permit projects are renowned.[2] In sum, where the Application at best reflects a lack of transparency on site control, land valuation, and budgeting, we trust that MHP can appreciate that each these threshold deficiencies individually and collectively merit denial of this Application.

4. The proposed development is entirely inconsistent with Nantucket's Master Plan, Open Space Plan and Affordable Housing Plan

Nantucket has an extensive history of master planning for growth and development through a robust public process, including a specific area plan for Surfside. The Nantucket Master Plan balances residential and commercial growth with preservation of natural resources and open space, according to sound planning principles and in consideration of Nantucket's existing development patterns. Even the Housing Appeals Committee has recognized the legitimacy of such planning efforts. See 28 Clay Street v. Middleborough Board of Appeals, No. 08-06, September 28, 2009.

The Master Plan designates certain areas of Nantucket appropriate for increased or intensive housing development. The proposed site is decidedly not one of them. The proposed site is not located within or near an existing area of concentrated development, nor is it within or near any area designated in the Master Plan as appropriate for future concentrated development. To the contrary, it is a parcel located significantly distant from any commercial activity. This is directly *contrary* to numerous goals and strategies of the Comprehensive Plan not to mention the April 2015 RKG Report on "Workforce Housing Needs Assessment". While the Application goes to great length to include the entirety of the RKG Report, it fails to make any logical connection to the same and the Application itself contradicts the very goals articulated in the Report[3].

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[2] As MHP is aware, any profit in excess of that allowed by the subsidy program is required to be returned to the municipality, not retained by the developer. We advise the Board and ask the Board to remind MHP, that the Town of Grafton was recently successful in settling a $54M lawsuit regarding the retention of excess profits from a developer in a comprehensive permit project.

[3] Among the many conflicts with the RKG Report, the current proposal, with below market rate units at 80% of median income, proposes development pursuant to G.L. c.40B, s.20-23 whereas the Report unambiguously recommends pursuant of other mechanisms.

The proposed project entails the crowding of buildings, parking, and related development on too small a parcel and it proposes a virtual wall of buildings at a density totally inconsistent with rational planning techniques or objectives. Together with its location remote from existing development, the project manages to speak negatively to *every factor* MHP purports to consider in the site approval process.

Although MHP is no more a planning agency than the Housing Appeals Committee, surely the agency recognizes that consistency with a municipal comprehensive plan is a means to measure a project's compliance with 760 CMR 56.04(4)(c): "that the conceptual project design is generally appropriate for the site on which it is located, taking into consideration factors that may include proposed use, conceptual site plan and building massing, topography, environmental resources, and integration into existing development patterns." Inconsistent with Nantucket's Master Plan, Open Space Plan and Affordable Housing Plan, this project fails such measure and the Application must be denied.

5. <u>The proposed development is wholly out of character with its neighborhood with respect to density, scale, massing and height of buildings</u>

The Applicant proposes a 60-unit project (recently revised to 56 units) on a buildable parcel of slightly over two acres, yielding a density, of 24 units per acre. This density is entirely out of character with the adjacent single-family neighborhood, with no context or justification other than maximizing developer profit. There are areas of Nantucket with existing dense development, or targeted by the Town for such dense development. The project site is not one of them.

There are no large-scale residential or commercial buildings proximate to the site. The project introduces into the existing single-family neighborhood massive, wall-like buildings that are also wholly out of scale and character with adjacent homes and streetscape. The four main monolithic buildings stretch across the width of the property, to heights over forty (40) feet. The massing, scale and height of these buildings dwarf neighboring residences and is completely out of scale with the neighborhood's and Nantucket's historic character, notwithstanding the application's insulting—and wrong—comparisons to "some of the most desirable and expensive neighborhoods on the Island such as Town and Sconset" (Application page 2).

Unless MHP has concluded that the character and fabric of existing neighborhoods are irrelevant; that visual impacts on a streetscape and neighboring residences are irrelevant - in short, that the context of a proposed project may be ignored in its entirety - this Application must be denied. See 760 CMR 56.04(4)(c)("that the conceptual project design is generally appropriate for the site on which it is located, taking into consideration factors that may include proposed use, *conceptual site plan and building massing, topography, environmental resources, and integration into existing development patterns*")(emphasis supplied).

6. <u>The Project Scores Zero (0) on the Commonwealth's "Sustainable Development Principles" or MHP's and MassHousing's "Smart Growth" Criteria Scorecard</u>.

Contrary to the Applicant's tepid and cynically unsupported claims found at pages 60 and 61 of the application, this project does not represent "Sustainable Development." Instead, it fails to meet each of MassHousing's "Smart Growth Criteria," which incorporate the Commonwealth's "Sustainable Development Principles."

- The project does not "contribute to revitalization of town center"
- The project does not "preserve and reuse" historic structures;
- The project does not have a "letter of support from the Chief Elected Official";
- The project cannot be said to "concentrate development" - unless by "concentrate" is meant "*cover the entire area with buildings, parking lots and infrastructure*";
- The project does not "restore and enhance the environment";
- The project is not "fair"; it does not "improve the neighborhood" or include a "concerted public participation effort";
- The project does not "conserve resources";
- The project provides no realistic "transportation choice[s]"; the project is isolated from commerce and car-dependent; and a bike trail is not a realistic year-round transit option
- The project does not "increase job opportunities";
- The project does not "foster sustainable businesses"; and
- The project does not "plan regionally".

With a score of zero (0) on Commonwealth's and MHP's own "Scorecard," we assume that the agency cannot but reject this Application. If approval is granted notwithstanding the project's failure to conform to the criteria, we ask the Board of Selectmen to ask why MHP bothers to have criteria at all.

For all the reasons noted above, we see no rational means of MHP issuing a project eligibility letter for the proposed project. Assuming *arguendo* that MHP is willing to ignore its own regulations, policies and normative guidelines for land development and issue a project eligibility letter for this proposal, we request that the Board of Selectmen ask that the following minimum conditions be imposed:

1. The Applicant should be required to provide evidence that the deed for the locus permits the use and construction of the proposed structures proposed;

3. The applicant should be required to submit supporting documentation for its development budget, and submit a revised pro forma without inclusion of contingency costs or unidentified "other" costs;

4. The Applicant should be required to submit a revised project application consistent with the Town's Master Plan, Open Space Plan and Housing Plan;

5. The Applicant should be required to submit a revised project application with a proposed density, scale, massing and height consistent with the context of the project site;

6. The Applicant should be required to submit a revised project application that is consistent with the Commonwealth's "Smart Growth Criteria"

7. The applicant should be informed that the Town of Nantucket will not grant waivers from local regulations without strict and audited proof that waivers from these regulations is required to keep the project from becoming uneconomic.

Conclusion

Any first year planning student, any credible developer and any competent site designer knows that developing a site requires as a first—*not as a final step*—the determination of a site's constraints and limitations. Outrageously, in this case, the Applicant has done the opposite. They have proposed a massive project first—without even a rudimentary evaluation of the site's constraints—and now seek local, state and federal endorsement of the same and its attendant drain of taxpayer resources.

We ask the Board of Selectmen to suggest that MHP prevent any further waste of public and private dollars reviewing this poorly conceived and cynical application.

We know, that MHP knows, that once a project eligibility letter is issued, the Applicant has little incentive to work with the host community and little incentive to do anything but wait out the hearing process for a chance to appear before the Housing Appeals Committee. We have little doubt that such a harsh and sad conclusion is accurate in the present case. MHP has an opportunity to end this process now for this ill fated and wholly inappropriate project.

We ask that MHP reject this application as the agency must—it violates every requirement, policy and standard the agency has established. Granting project eligibility approval for this project would make clear to the Commonwealth's 351 cities and towns that no project eligibility application would ever be bad enough to warrant disapproval.

Thank you for your time and consideration of our letter.

Sincerely,

Cormac Collier
Executive Director

Cc:
Nantucket Planning and Land Use Department
Massachusetts Housing Partnership
Nantucket Zoning Board of Appeals

Massachusetts
Housing
Partnership

160 Federal Street
Boston, Massachusetts 02110
Tel: 617-330-9955
Fax: 617-330-1919

462 Main Street
Amherst, Massachusetts 01002
Tel: 413-253-7379
Fax: 413-253-3002

www.mhp.net

October 8, 2015

VIA CERTIFIED MAIL

Mr. Bob DeCosta
Chairman
Nantucket Board of Selectmen
16 Broad Street
Nantucket, MA 02554

Re: Surfside Commons, 106 Surfside Road, Nantucket, Massachusetts (the "Property")

Dear Mr. DeCosta:

Please be advised that Massachusetts Housing Partnership ("MHP") has received a request for a determination of Project Eligibility from Surfside Commons, LLC, c/o Atlantic Development ("Surfside") for the subject Property. As currently proposed, the development will consist of fifty-six (56) residential rental units, fourteen (14) of which would be affordable to households at or below eighty percent (80%) of median income.

Surfside has requested this determination of Project Eligibility as it relates to MHP's Permanent Rental Financing Program (PRFP) or our Fannie Mae Program, which provide for up to a 20-year fixed-rate first mortgage loan and require the owner of the development to execute an Affordable Housing Restriction, filed with the Nantucket Registry of Deeds, which would remain in effect for a minimum of 30 years. The affordability program proposed by the applicant would meet MHP's minimum affordability requirements. Other funders, or the Town of Nantucket, may require that the affordability requirements remain in effect after the initial 30-year term.

We would appreciate any comments that you may have with regard to this proposed development that would assist us as we consider the applicant's request. The comprehensive permit regulations require subsidizing agencies such as MHP to make findings as set forth on the attachment to this letter in order to make a determination of Project Eligibility; any written comments you can provide relevant to these matters would be especially helpful. Please direct any comments that you have, if possible within the next thirty (30) days, to me at MHP's address listed above.

Furthermore, I would like to remind you that in the event an application is made to the Zoning Board of Appeals (ZBA) for a comprehensive permit, technical assistance is available to the ZBA to review the permit application. MHP's Chapter 40B Technical Assistance Program administers grants to municipalities for up to $10,000 to engage qualified third-party consultants to work with the ZBA in reviewing the Chapter 40B proposal. For more information about MHP's technical assistance grant visit MHP's website, www.mhp.net or contact Carsten Snow at 617-330-9944 ext. 252, CSnow@mhp.net .

I also want to make you aware that I will conduct our official site visit with Laura Shufelt, our Community Assistance Manager, on October 28, 2015 at 11:00 AM should you or others wish to join us.

Sincerely,

Richard A. Mason
Deputy Director of Lending

760 CMR 56.04(4) Findings in Determination of Project Eligibility

(a) that the proposed Project appears generally eligible under the requirements of the housing subsidy program, subject to final approval under 760 CMR 56.04(7);

(b) that the site of the proposed Project is generally appropriate for residential development, taking into consideration information provide by the municipality or other parties regarding municipal actions previously taken to meet affordable housing needs, such as inclusionary zoning, multifamily districts adopted under M.G.L. c.40A, and overlay districts adopted under M.G.L. c.40R, (such finding, with supporting reasoning, to be set forth in reasonable detail);

(c) that the conceptual project design is generally appropriate for the site on which it is located, taking into consideration factors that may include proposed use, conceptual site plan and building massing, topography, environmental resources, and integration into existing development patterns (such finding, with supporting reasoning, to be set forth in reasonable detail);

(d) that the proposed Project appears financially feasible within the housing market in which it will be situated (based on comparable rentals or sales figures);

(e) that an initial pro forma has been reviewed, including a land valuation determination consistent with the Department's guidelines, and the Project appears financially feasible and consistent with the Department's guidelines for Cost Examination and Limitations on Profits and Distributions (if applicable) on the basis of estimated development costs;

(f) that the Applicant is a public agency, a non profit organization, or a Limited Dividend Organization, and it meets the general eligibility standards of the housing program; and

(g) that the Applicant controls the site, based on evidence that the Applicant or a related entity owns the site, or holds an option or contract to acquire such interest in the site, or has such other interest in the site as is deemed by the Subsidizing Agency to be sufficient to control the site.

Abutters' Letters

From: rojackbenj@rcn.com
To: Eleanor Antonietti
Subject: 106 Surfside Rd---Addendum Comments--
Date: Thursday, January 07, 2016 2:34:30 PM

Nantucket Zoning Board of Appeals

Since we first became aware of this proposed 40B plan for 106 Surfside, we have been actively involved in various personal efforts to do everything in our powers to prevent this absurd development from actually occurring. We spent two Saturdays collecting petitions in front of the Stop & Shop.Please note of the two hundred signatures which we collected personally,
most of those signees expressed a desire for more low-income housing in Nantucket.However, all of
them were shocked & dismayed ,not only of the apartment concept, but the location itself.

As stated in our earlier written comments, we have been residents of Nantucket for almost
thirty years. we believed that by supporting the well-conceived Sachem's Pass Development, we
(Surfside) had done our part in increasing the low-income housing in Nantucket.

No doubt, considering all of the various "clusters" of low-income housing focused in Surfside, the Zoning Board of Appeals should come to the proper conclusion that there must be better, more logical, & more far-minded ways of developing low-income housing throughout Nantucket, other than allowing this dense,out-of-character 40B at 106 Surfside.

Sincerely,

Jack & Roberta Benjamin
20 Gladlands Ave
Nantucket,MA

From: barbara white
To: Eleanor Antonietti
Subject: 40 B on Surfside Road
Date: Monday, January 04, 2016 6:25:45 PM

I am writing in opposition to the 40B development submitted by Atlantic Development on Surfside Road on Nantucket. While it appears that we cannot stop the development entirely, I hope that it will be considerably altered and downsized. It is, quite simply, way out of proportion for the size of the lot and completely out of character for the mostly rural Surfside neighborhood. The impact will be huge from the traffic to the sewage. Traffic is already saturated on Surfside Road and Sachem's Path has not yet opened. Surfside Beach is one of the island's most popular beaches and this huge development will negatively impact this popular tourist route. This is not a question of "not in my neighborhood" because the Surfside area already has a number of 40 B's. Please reduce this development to some single family dwellings similar to Sachem's Path and reject the huge city-like apartment complexes as presently contemplated.

Sincerely,

Barbara A.White
year round resident at 75 Pochick Avenue

To: ZBA
From: Will Willauer
101 Surfside Road
Date: January 4, 2016
Re: Addendum to email from October 19, 2015

Requested Waivers:

1. 'Payment for use of drains and sewers' – if this is waived it essentially means that everyone else is subsidizing a for profit organization.
2. 'Sewer Privilege' – again if this is waived it essentially means that everyone else is subsidizing a for profit organization.
3. 'Sign' – if this is waived what is to stop the installation a sign the size of a highway billboard?
4. 'Roof Line' – if this is waived it will be almost 2 ½ longer than ANYTHING in the neighborhood.
5. 'Construction conditioned on approval' – The Sachem's path developer had the courtesy to work closely with the HDC and Richmond Development is willing to go before the HDC. If Atlantic Development is allowed to ignore the HDC a dangerous precedent is set for the preservation of Historic Nantucket. The same holds true for razing the existing building.
6. 'Chapter 136-3' – while there does not appear to be a wetlands issue, Atlantic Development has already destroyed the vegetation on the property without any regard for the potential of rare/significant wildlife and/or fauna.
7. 'Section 139-7 B' – again there are No apartment complexes in neighborhood and would set a dangerous precedent if waived.
8. 'Section 139-12 B' – if this is waived how can it be guaranteed that the water runoff will not impact the surrounding properties and private wells on those properties?
9. 'Section 139-17' – Atlantic Development has stated that it wants to build structures 45 feet tall which is 50% taller that the current height of 30 feet hence making it visible from great distances amplifying the sight, light and noise pollution and the total destruction of privacy. If the waiver is granted as it what is to stop Atlantic Development from going even higher?
10. 'Section 139-18 (6)' – even if this is waived according to their plan there will not be enough parking spaces for the number of proposed residents. The plan also does not address residents that own more than one vehicle like multiple work trucks for a contractor.
11. 'Section 139-19' – again no screening for parking adds to the sight, light and noise pollution.
12. 'Section 139-20.1' – by not requiring a driveway access permit from the DPW how is safety going to be guaranteed if this is waived?
13. 'Section 139-23' – how is health and safety going to be guaranteed if site plan review is waived?
14. 'Section 139-26' – if waived the existing structure can be simple be demolished.
15. 'Section 139-28' - how is health and safety going to be guaranteed if occupancy permits are waived?
16. 'Section A301-4 HDC' – again waiving HDC reviews damages Historic Nantucket.
17. 'Section A301-12' – 106 Surfside in not in the municipal sewer district and according to town counsel ZBA does not have jurisdiction here.
18. 'Application for Water Service' – if waived again the 'For Profit' Atlantic Development will be subsidized.

1. Does not take into consideration added traffic from Sachems path.
2. Does not take into consideration traffic added because of the Richmond Development project.
3. Does not take into consideration not using the bike path in inclement weather.

5. Nothing in the study to indicate what percentage of year round people ride bikes to get to work, etc.
6. Assumes that residents are going ride the NRTA in the summer just because it is near.
7. Figure 5 had the morning observations from 8:00am to 9:00am not 6:00am to 9:00am as stated in "2.2.1 Traffic Counts". The same issue includes the mid-day observations and evening observations. Figures 7, 9 & 10 display the same issue with their respective time frames. The data can't tell the whole picture as it did not capture early morning and afternoon school traffic partially due to the fact it was performed on only two days in August but mostly due to the fact it was not performed when that traffic is moving.
8. Figures 6 & 8 can't tell the whole picture as well because it was conducted 10:45am to 11:45am not 10:00am to 2:00pm as stated in 2.2.1 again only on two days in August.
9. The statement that "A year round apartment complex will draw many occupants from the current residents on Nantucket…" suggests that traffic will not be added but the fact remains that the residents of the apartment complex are going to be concentrated in one small area year round as opposed to now where they are spread all over the island.
10. Only one intersection was observed there are many other intersections that will be impacted especially given the current Sachem's path 40b development and the Richmond Development plan.
11. The whole report is not objective as there are statements that promote 40B developments.

Low Income Inventory:

1. Does not include Sachems Path currently under construction.
2. Does not take into consideration Richmond Development project.
3. Does not take into consideration of existing subsidized employee housing which is another flaw in the 40B law.

General Comments:

1. This project can hardly be deemed affordable as most of the apartments are market rate with the 25% being mid-level affordable.
2. It is clear that Atlantic Development is exploiting a flawed State law which helps it get around local laws designed to protect Nantucket against such developers otherwise it would be impossible.
3. Donald MacKinnon doesn't appear even own a house on Nantucket other than 106 Surfside Road so again I do not understand his motive other than to again exploit 40B and Nantucket's housing problems to make money under the guise that he is helping Nantucket with no regard for the neighborhood or Historic Nantucket.
4. People don't come to Nantucket to see off Island style apartment complexes in rural like residential neighborhoods on their way to the beach, they come to see historic Nantucket, open space and pristine beaches.

5. It is clear that Atlantic Development has no interest is building with Nantucket in mind as evidenced by the waivers requested, plans put forth, etc. At least with Sachem's Path they made an effort to build with Nantucket in mind and it appears that Richmond Development is trying to do the same.

7. In a multi-page letter the Board of Selectman voted unanimously to tell the Massachusetts Housing Partnership that the project was not appropriate and why. As you know the Massachusetts Housing Partnership essentially ignored all objections as they deemed the property 'generally eligible'. This means they only consider what it is not where it is which further displays the flaws with 40B. Donald MacKinnon knows this and he has chosen to ignore the Board of Selectman as well which is very telling in his lack of concern for unique Historic Nantucket so I hope the ZBA resists this project strongly.

JOSEPH M. GUAY
ATTORNEY AT LAW

Telephone (508) 825-9099
Facsimile (508) 825-9199
E-Mail: JosephMGuay@aol.com

108 Surfside Road
P.O. Box 1294
Nantucket, Massachusetts 02554-1294

John C. Cartwright, Esquire
Ann E. Rascati, Esquire
of Counsel
Hyannis, Massachusetts

November 5, 2015

VIA EMAIL (rmason@mhp.net)
and FEDERAL EXPRESS

Richard A. Mason, Deputy Director of Lending
Massachusetts Housing Partnership
160 Federal Street
Boston, Massachusetts 02110

RE: 40B Project Eligibility Letter
Surfside Commons
106 Surfside Road, Nantucket, Massachusetts

Dear Mr. Mason:

This office represents Brian F. Davis and Linda M. Davis ("Davis"), owners of the real estate known and numbered as 108 Surfside Road, Nantucket, Massachusetts ("Davis Property") and Mary Beth Ferro ("Ferro"), owner of the real estate known and numbered as 104 Surfside Road, Nantucket, Massachusetts ("Ferro Property").

The Massachusetts Housing Partnership ("MHP") is in receipt of an Application for a Massachusetts General Laws, Chapter 40B Project Eligibility Letter dated August 19, 2015, submitted by Surfside Commons, LLC, c/o Atlantic Development ("Applicant") and a subsequent submission by the Applicant entitled an Amended Application dated October 7, 2015 (the "PEL Application"), for a proposed 40B housing development complex to be constructed on an approximately 2 - 2.5 acre parcel of real estate located at 106 Surfside Road, Nantucket, Massachusetts ("Site"). The 40B development project is referred to by Applicant and known as Surfside Commons ("Surfside Commons"). The PEL Application, as amended, proposes the construction of four (4) housing structures containing fifty-six (56) residential rental apartment units (with 14 rental units qualifying as affordable), a clubhouse and pool, and one hundred (100) parking spaces and seeks a Comprehensive Permit under Massachusetts General Laws, Chapter 40B Guidelines.

The Davis Property and the Ferro Property are the adjoining residential parcels of land situated on either side of the Surfside Commons Site. Davis and Ferro, as direct abutters to Applicant's Surfside Commons Site, will suffer a significant and adverse impact by the proposed 40B housing development. Davis and Ferro are vehemently opposed to the Surfside Commons PEL Application and set forth below the following concerns and objections relative to the Applicant's PEL submission with particular and specific objections highlighting the inappropriateness of the designated Site and design features of the proposed 40B housing development and related traffic and safety issues.

1. Site and Infrastructure:

The proposed Surfside Commons 40B housing development project is sited in a zoning district designated under the Nantucket Zoning Bylaw as Limited Use General - 2 (LUG-2) that requires a minimum area of 80,000 square feet to qualify as a buildable lot. The LUG-2 Zoning District regulations permit a primary single family residential dwelling and a secondary single family residential dwelling with accessory structure and a maximum 4% ground cover ratio. Commercial buildings and commercial uses are not permitted. The Site of the Surfside Commons 40B housing development is located within a neighborhood comprised of single family homes on 2+ acre lots and the Site location and surrounding area is rural in character. Although a Chapter 40B Comprehensive Permit overrides applicable zoning regulations, the four (4) structures housing 56 rental apartment units, plus clubhouse and pool, as proposed to be built under the PEL Application, significantly exceed the number of residential dwellings permitted per lot within the LUG-2 Zoning District, eliminates or substantially reduces open space and buffer areas from the adjoining Davis Property, Ferro Property and Surfside Road and is completely and entirely inappropriate for the rural residential Surfside area.

Furthermore, the 40B development Site is not presently serviced by Town of Nantucket municipal sewer and water. The homes in the surrounding residential area are serviced by private water wells and private sewage (septic) disposal systems. The intense housing density proposed by Applicant will necessitate significant and substantial infrastructure engineering and water and sewer utility installation to an area of Nantucket Island that does not have municipal water service and within a designated Nantucket Wellhead Protection District.

2. Design:

A Master Plan was accepted by the Nantucket Board of Selectmen and adopted in 2009 by the Town of Nantucket. The Master Plan was endorsed by the Nantucket Planning Board and has been referenced and relied upon by the Nantucket Planning and Economic Development Commission in regard to land use planning, regulations and requirements for the designated and defined residential and commercial Zoning Districts created and established on Nantucket Island and the concepts of the Town and Country Overlay Districts under the Nantucket Zoning Bylaw. The Surfside Area Plan prepared in connection with the Master Plan provides a land use plan for the Surfside neighborhood and contains certain goals and objectives taking into consideration the unique neighborhood characteristics of the Surfside area on Nantucket Island. The Surfside Area Plan recommended that the area remain residential with no commercial zoning districts and any development should be consistent with existing patterns and styles of the single family residential neighborhood. The four (4) structures, at least three (3) stories and possibly four (4) stories above grade, housing fifty-six (56) rental units proposed to be constructed by Applicant are not in scale and entirely out-of-character with the Surfside neighborhood. As proposed, (i) the structures would be at least forty-four (44) feet in height and one of the structures would have a height greater than fifty (50) feet in an area that limits the height of residential dwellings to thirty (30) feet, (ii) the structures would have substantial bulk and massing and create an

excessive housing density by providing fifty-six (56) units calculated to be 24-28 housing units for each acre in the approximate 2 – 2.5 acre Site, (iii) the development includes a clubhouse and pool in size sufficient to accommodate 120 – 130 residents, plus guests and visitors that is commercial in scale and design, and (iv) the structures, as shown on the Application, are not architecturally designed in size, dimensions and building features that are considered appropriate under the Nantucket Historic District Commission guidelines set out in *Building with Nantucket in Mind* and specifically for the Surfside residential neighborhood.

3. Traffic and Safety:

The Surfside Commons 40B development project proposes to build four (4) large scale housing structures containing fifty-six (56) rental apartment units intended to accommodate approximately 120 - 130 residents on a 2 to 2.5 acre parcel of land. Further, the Applicant proposes to designate one hundred (100) parking spaces which is not even adequate to provide parking for at least two (2) occupants per unit, not to mention guests of the apartment owners and visitors to the Site. The apartment owners, guests and visitors will all be utilizing, for vehicular access, the sole public way fronting the Site, namely Surfside Road. The Town of Nantucket downtown commercial center is approximately two (2) miles from the Site and the Mid-Island commercial area is approximately one (1) mile from the Site. The Nantucket High School and Elementary School and the Nantucket Cottage Hospital are also located approximately one (1) mile from the Site. Although there is a shuttle service at the intersection of Surfside Road and Fairgrounds Road, the closest shuttle stop is at a distance of approximately ¼ mile from the Site and the shuttle service only operates seasonally during the months of May through October. Under the circumstances, the majority if not all of the residents, guests and visitors to the Site will rely upon private vehicles for transportation to and from the Site. The walking accessibility and convenience of the Site to the downtown and mid-Island commercial centers and the hospital and schools on Nantucket Island has been seriously misrepresented by the Applicant.

Moreover, the four way traffic stop at the Surfside Road and Fairgrounds Road intersection is located between the proposed Surfside Commons 40 development Site and the downtown and mid-Island commercial centers and the hospital and schools. All vehicles including emergency vehicles, taxis, tour buses, school buses, commercial trucks and private automobiles will necessarily pass through the Surfside Road and Fairgrounds Road intersection and such intersection has been the subject of traffic studies that, to the best of my knowledge, give the intersection a "failed" rating. The proposed 40B development would significantly increase the traffic congestion on Surfside Road in the area of the Site, compounded by increased seasonal tourist traffic, and add to the already existing congested intersection at Surfside Road and Fairgrounds Road.

For the foregoing reasons, my clients respectfully request that the Massachusetts Housing Partnership reject the Application by Surfside Commons, LLC and deny issuance of a Project Eligibility Letter.

Thank you for your cooperation and attention.

Very truly yours,

Joseph M. Guay

JMG:lmd
cc: Nantucket Board of Selectmen
Nantucket Zoning Board of Appeals
Nantucket Planning and Land Use Department
Timothy R. Madden, State Representative

From:	Will Willauer
To:	albacor@comcast.net; rickatherton@comcast.net; snatural@nantucket.net; integrity@gmail.com; Dawn Hill Holdgate
Cc:	Libby Gibson; gtivan@nantucket-ma.gov; Andrew Vorce; Leslie Snell; Eleanor Antonietti; Mark Voigt
Subject:	106 Surfside Road - Atlantic Developement
Date:	Monday, October 19, 2015 2:55:10 PM

Greetings,

I live at 101 Surfside Road, Nantucket, MA and am writing to you to voice my strong opposition to Atlantic Development's proposed 56 unit apartment complex to be located on the 2.5 acre lot at 106 Surfside Road, Nantucket, MA. As you know Atlantic Development appears to be using the well-meaning 40B law to get around our local zoning, historic district, etc. laws and ordinances as otherwise in no way would the project ever be approved in this neighborhood under current zoning, historic district, etc. ordinances and laws.

106 Surfside road is in the middle of a residential single family dwelling, two acre zoned neighborhood and there are no other structures anything like what is being proposed anywhere near the intended location. Aside from the fact that it will be an eyesore way out of place for the surrounding neighborhood, if this project is allowed to go forward there will be negative impacts to the area.

The first negative impact that comes to mind is traffic congestion. Apparently there will be potentially up to 150 people living in this complex which means potentially every adult with a driver's license would need a car as there is no year round public transportation on Nantucket so it doesn't require a lot of contemplation to know traffic will be significantly increased. Further, this increased traffic will be added to the heavy traffic we already have going in and out of the heavily populated South Shore Road area, in addition to the traffic that is going to be generated by the new Sachem's Path development, the traffic currently using Fairgrounds road and the traffic currently using Surfside Road. Since the entrance to 106 Surfside Road is opposite the northern entrance to Gladlands Road there will be another busy intersection which as mentioned before is very close to the busy South Shore Road, Surfside Road and Fairgrounds Road intersection which again is very close to the entrance to Sachem's path that is opposite Hooper Farm Road that will of course will become another busy intersection once Sachem's Path is populated and is very close to the busy intersection of Miacomet Road and Surfside Drive and so on.

A second negative impact is light pollution. Obviously if you are going to have four large three story buildings with up to 150 people living in them along with a club house there is going to be a lot of light generated because everything will have to be well lit at night and that light will spill out over the neighborhood and into people's windows.

A third negative impact is noise Pollution. Again, if you have up to 150 people living in four large buildings on 2.5 acres they can't help but to make noise coming in and out of buildings, driving cars in and out of the complex, etc. This of course would be added to the noise that is created by the large apartment buildings HVAC systems, garbage collections, deliveries, building maintenance, the current noise of the neighborhood, the current traffic noise, with the correct wind the current airport noise, etc.

A fourth negative impact is that if you add up to 150 people to the neighborhood all on one 2.5 acre spot which is crowded by four large apartment buildings and a club house there is not a lot of room for the residents to be outside other than to disperse off the apartment complex property out into the neighborhood joining the people that are already out walking their dogs, biking,

jogging, etc. This becomes a safety issue as you will have a lot more people crossing in a concentrated spot what will be a much busier Surfside Road to get to what will be a much busier Surfside Bike Path and surrounding roads. Lastly since there are many more people out in the neighborhood people's privacy and security in the neighborhood will naturally be diminished.

I am sure there are several more negative impacts that I have not touched upon such as what are the potential environmental impacts of this project to the neighborhood but I think you get the idea of what I am try to say so I think I will close with a couple of comments about the situation in general as I see it. First of all I do not understand why a developer from Hingham, MA would be so concerned with the housing crisis on Nantucket. The only thing I can see is that Atlantic Development is exploiting the well-meaning 40B low income housing law to make money with no regard for how it may negatively impact the area. I say this because they are only designating 14 of the 56 units as "Affordable", the rest are "Market Rate". Further if Atlantic development were truly concerned about Nantucket's housing crises and not making money they would be doing a project similar to Sachem's Path which is being developed by the non-profit 'Housing Assistance Corporation' of Hyannis and the non-profit 'Housing Nantucket'.

The mention of Sachem's Path which I was very opposed to but for the most part my concerns were addressed as the developer respected the local zoning board's, etc. concerns and requests leads me to my second comment. Including Sachem's Path which is currently under construction there are already four 40B developments within very short distance of 106 Surfside Road. I think it is time that other neighborhoods share in the responsibility of hosting 40B developments to help solve Nantucket's housing crisis. In doing so Developers must be held accountable to take great care to protect the host neighborhood that is sharing in the responsibility from negative impacts caused by them potentially exploiting the well-meaning 40B law.

Thank you for your time,

Will Willauer

October 11, 2015

Zoning Board of Appeals
OCT 16 2015
RECEIVED

Mr. Edward Toole
Chairman
Zoning Board of Appeals
2 Faregrounds Road
Nantucket, MA 02554

I am writing in opposition to the Surfside Commons Development proposed to your office by Atlantic Development and DJ MacKinnon. I am an abutter to the proposed project were I have built a home and have resided since 1984 and provide a year round cottage to a couple who work on the island.. I purchased my property located at 104 Surfside Road after falling in love with the Surfside area which can be categorized by its beautiful beaches and rural characteristics. The vast majority of the cottages and homes are one or one and a half story dwellings which appealed to me with its timeless cottage style.

The following are the points I would like to present to you which are of great concern.

Scale.

The project named above is not in scale with our area. It is a massive group of four units on 2 ½ acres within an immediate area of small single family residential homes. In the application submitted to MHP, Atlantic Development have made inappropriate comparisons to large scale buildings that are located in the down town area of Nantucket, and the Sconset village which does not have any 2 ½ – 3 ½ story buildings.

Density, Traffic, Light, and Noise Pollution.

The density of this proposed project with its traffic, noise and light pollution and the strain of the land surrounding this area will do irrevocable damage.

The 60 units would house up to 180 people and 90 + cars next to quiet, single family homes . On any given weekend in the summer months there are multiple ambulance related trips to the end of the road were the most popular beaches on the island are located. With the added congestion on Surfside Road one can only guess the hindrance it could cause in a life or death situation. Also adding extra traffic to an area with the most popular bike path full of kids going to the beach could be very dangerous given the already busy intersection of Faregrounds Road and Surfside Road.

The other major damage is to our wonderful night sky. The glow from the parking lights alone will erase our milky way and star viewing forever. Along with this high density of people in a inappropriate area comes trash. Trucks emptying all of the garbage produced by all these residence on a daily basis will end quiet mornings listening to the birds that lived in our once wooded neighborhood.

Disregard for native species.

Atlantic Development had the property clear cut with disregard to the native endangered species that lived on the property. A large group of Lady Slippers resided in the north west corner of the property in close proximity to my cottage. We had a small path that went close to them. Also in the area were Indian Pipes which have been destroyed forever. No matter how much replanting Mr MacKinnon does he cannot replace these treasured woodland gems.

Saturation of existing housing developments.

A great concern is the proximity of Surfside Commons to the other housing developments in the immediate area. Within a mile of 106 Surfside Road exists Abrams Quarry, Sachams Path which is just getting underway, Rugged Scott or Beach Plum Village, Sherburne Commons, and Miacomet Village. All of these projects have strained the Surfside Road and Surfside bike path into a highly congested area. We do not need more traffic from 90 plus cars adding to this problem. One area of the island of Nantucket should not be responsible for all the housing projects. According to the 40B bylaws which state that developments of this kind should be spread out in a community.

I am in favor of the Town of Nantucket and its residences addressing the need for the housing needs of our community. I do rent my cottage to a year round couple and have for years. We all choose to live on our beautiful island for a reason. We as a community should be taking aggressive steps on planning the location of a development with Nantucket in mind and a location were it is appropriate. I am NOT in favor of Atlantic Development's plans

In conclusion I would like the MHP to deny Atlantic Development its request for permission to pursue this high density, overly saturated, excessive development and Save Our Surfside area from over development. I would like all town boards to actively vote against this project and come together for a more appropriate location. Surfside has done its share.

With Regards,

Mary Beth Ferro
104 Surfside Road
Nantucket, MA 02554

Mary Beth Ferro

NANCY AND DWIGHT HOLMES
3 Eagles Wing Way
Nantucket, MA 02554

RECEIVED
OCT 13 2015
Zoning Board of Appeals

September 17, 2015

Mr. Richard A. Mason, Deputy Director of Lending
Massachusetts Housing Partnership
160 Federal Street
Boston, MA 02110

Via email and U.S. Mail

Dear Mr. Mason and Mass. Housing Partnership,

We appreciate your time, and that of the M.H.P. members, in reading our concerns and serious opposition to Mr. DJ McKinnon's Atlantic Development proposed 40B "Surfside Commons" housing project on an approximate 2.5 acre lot at 106 Surfside Road in Nantucket, MA. We are year-round residents and nearly ¼ mile abutters to this proposed housing project.

As residents and small business owners we are well aware of the island's need for affordable housing and try to do our small part by providing housing for our seasonal and year-round employees. We also positively voted at our Annual Town Meeting several years ago to allow the development of 45-48 new affordable single dwelling homes on Surfside Rd., (Sachem's Path) which will be less than ½ mile from our home and ¼ mile or less from the proposed Surfside Commons. Within ½ mile of both our home and Atlantic Development's Surfside Commons at 106 Surfside Road there are already several affordable and 40B Developments: Sachem's Path (under construction now), Abrem's Quarry, Miacomet Village, housing units for senior citizens (Sherburne Commons), municipally owned townhomes for staff behind our elementary school, even a couple of free standing Habitat for Humanity homes. Most of these are free-standing homes or townhomes, none are near the intense density proposed for Surfside Commons. There is a wildly unfair oversaturation of affordable and communal housing developments in Surfside already! We are a small island, with more than 60% of our land estimated to be in permanent conservation. For all of these housing concerns to be placed in our small corner of the island is unfair and blatantly against the oversaturation recommendation of 40B placement in municipalities.

Surfside Commons proposes a height and density of housing units not seen anywhere on this island – most certainly not on a lot of this small size for the proposal. Atlantic's comparisons to downtown and Siasconset are ludicrous – these locations contain over 90% single-family, antique homes – sadly also largely unoccupied most of year. The proposed density of Surfside Commons is not fitting in any regard to this single family residential area, and does not provide an iota of the necessary parking as designed.

The traffic in the area around Surfside Road/Fairgrounds Road is already among the heaviest our island has – particularly to and fro the three schools located on Surfside Rd. This does not include the yet to be added traffic that will arise from the approximate 45 Sachem's Path dwellings being built on Surfside Road right now. Surfside Commons also does not meet distance requirements for the public school bus route.

Lastly, the proposed Surfside Commons at 106 Surfside directly abuts the 30 acres of land that Mr. McKinnon has informed he holds a purchase and sales agreement "ready to sign" on – if the Cape

Cod Boy Scout Council wins the right to sell it to him from our local Nantucket Council and our Civic League. This is currently still awaiting the judges' ruling in Barnstable. Virtually every Nantucketer is opposed to this greedy grab for what we see as our dedicated recreational scout land. We hope the local Boy Scouts and our Civic League prevail in keeping it such. The fact that Surfside Commons will be the entrance to this potential future development of our Boy Scout land was confirmed verbally by Mr. McKinnon. Therein lies another possibility of overdevelopment to our small area of a small island, which is currently comprised by vast majority of single family homes.

In closing, we are aware and supportive that more affordable housing opportunities are needed for our island and town. To allow one with such as Atlantic Development is proposing here at 106 Surfside, on the small lot proposed, would be a crippling blow to this neighborhood of the island. In fact, we don't see the likes of this density or height in housing units anywhere in this town or island. We implore you to deny the proposed development of Surfside Commons at 106 Surfside Road and stand with many of our fellow Nantucket neighbors in asking you to do so.

Sincerely,

Nancy and Dwight Holmes

Nancy Z Holmes D F Holmes

Cc: Board of Selectmen, Nantucket
Zoning Board of Appeals
Planning Board
Rep. Timothy Madden

Eleanor Antonietti

Zoning Board of Appeals
2 Fairgrounds Rd
Nantucket, MA 02554

James and Ann Dalzell
2 Gladlands Ave
Nantucket, MA 02554

October 13, 2015

Dear Ms. Antonietti,

We are writing to oppose Atlantic Development/DJ McKinnon's plans for the development of a 2.5 acre parcel of land in Nantucket, MA at 106 Surfside Road.

Our objections are as follows:

1. The proposed location, 106 Surfside Road, is in a residential neighborhood of 2 and 3 acre lots which house 1 or 2 single family residential dwellings with limited height and ground cover restrictions.
2. DJ McKinnon's proposal for two and three story apartment buildings is not in scale with any of the buildings in the area.
3. The scope of this project is excessive for this Surfside neighborhood exceeding local zoning for density and scale. The ability to accommodate parking for a development of this magnitude on such a small parcel of land would create a "cement jungle."
4. DJ McKinnon is trying to by-pass local zoning by-laws by including 14 40B units in the proposed 56 unit development.
5. 106 Surfside Rd and surrounding properties are not on town sewer and water. Property owners have wells and septic systems which would be negatively impacted by a development of this magnitude.
6. The current saturation of developments in the Surfside area which include several 40B's such as Abram's Quarry, Sachem's Path, Beach Plum, and Miacomet Village. Our interpretation of the 40B legislation is that no one neighborhood should house all 40B developments. Therefore, the town of Nantucket should be looking to develop a comprehensive, well thought out plan for meeting the housing needs on the island, and these developments should be located throughout the island.
7. Less than a block away, at the Fairgrounds Rd/South Shore Rd/Surfside Rd intersection there is already a great deal of traffic merging from our other 40B developments mentioned above and local neighborhoods, as well as two highly traveled bike paths merging. A development of this scale at 106 Surfside would necessitate large amounts of children and adults to cross Surfside Rd. to access the bike path, and to gain vehicle access into and out of the proposed development. This additional busy intersection at 106 Surfside would be too close in proximity to the above mentioned intersection.

Thank you for your attention to this matter.

Best Regards,

James Dalzell Ann Dalzell

Jack & Roberta Benjamin
20 Gladlands Ave
Nantucket, MA02554

September 17, 2015

Zoning Board of Appeals
SEP 25 2015
RECEIVED

Marcus Silverstein
Zoning Board-Buildings

Dear Mr. Silverstein,

We are writing this letter to you in regards to the proposed Plan 40B of Surfside Commons at 106 Surfside Road. We oppose the proposed plan for the following reasons:

I.SATURATION of 40B'S in the Surfside area.

Sachem's Path which is under construction now is less than 1/8 mile away.
Beach Plum Village is less than ½ mile away.
Abram Quarry is less than 3/4 mile away.

It is our understanding that the affordable housing plan of Nantucket was to be spread throughout the Island.

II. SCALE

The development is not in scale with any of the single family homes in the Surfside area. The proposal calls for buildings with heights as high as 60 feet. Presently the tallest buildings in the area do not measure more than 30 feet. Furthermore the locus is in a single family neighborhood.

III Economy- negative effects on Tourism

Surfside Road is the main road to one of the most popular beaches in Nantucket. People who travel this road both by bicycle and auto appreciate the natural beauty of the area. This proposed apartment complex would be inappropriate and an eyesore to all visitors and residents.

IV Safety

The development is already in a congested traffic area. The proposed number of vehicles per unit would create a safety hazard for not only every day living but would also hinder emergency vehicles when needed.

We have lived here at 20 Gladlands for 28 years in peace and serenity. Please allow us to continue.

Thank you

Jack and Roberta Benjamin

Jack Benjamin
Roberta Benjamin

Joseph R. and Sandra M. Benotti
8 Gladlands Ave.
Nantucket, MA 02554

Zoning Board of Appeals
SEP 17 2015
RECEIVED

Mr. Edward S. Toole
Chairman
Zoning Board of Appeals
2 Fairgrounds Rd.
Nantucket, MA 02554

Dear Mr. Toole:

We write in strong opposition to the proposal by Atlantic Properties, Inc. to construct 60 units of 403B housing on 2-1/2 acres at 106 Surfside Rd. on Nantucket

The Surfside area of Nantucket, residentially zoned for one or two single family dwelling on 2 acre lots, has already absorbed three 403B housing projects and a senior housing development; all of which are exempted from existing zoning laws. These developments are all located within 1/2 mile of the proposed affordable housing development at 106 Surfside Rd. This neighborhood is already saturated with housing exempted from existing zoning restrictions. Surfside residents have already done more than their fair share to satisfy the affordable housing needs of Nantucket Island.

The concentration of rental apartment-style units proposed at 106 Surfside Rd. is extreme and totally out of character for the Surfside neighborhood. The existing 403B housing developments and senior housing units in the Surfside area, clustered dwellings on small individual lots, retain some of the neighborhood character as owner-occupied single residences. The 40 units proposed for 21/2 acres at 106 Surfside Rd. are apartment rentals with relatively short-term tenants and an absentee landlord; neither party would feel obligated to preserve the character of the Surfside neighborhood as would a single family home owner.

The 40 units proposed for 2 x1/2 acres at 106 Surfside Rd. will necessitate at least 60 parking places with additional paved or graveled surfaces for apartment parking, deliveries, trash collection etc.. This leaves little or no green space or setback protection for abuters.

The additional traffic burden resulting from high density apartment housing will make nearby strategic intersections (Surfside and Fairgrounds Rd., Bartlett and Surfside Rd., Airport and Fairgrounds Rd., Surfside, South Prospect and Sparks Avenue), already congested during the vacation season, extremly difficult for first responders to negotiate in a timely fashion. This jeopardizes Public Safety on the entire Island by increasing the response time of police, fire and medical first responders all dispatched from the combined police and fire stations on Fairgrounds Road. This would necessitate construction of satellite police and fire stations. A safer, more equitable and economical solution for the Surfside region and the Town of Nantucket would be to redirect further 403B housing projects away from the Surfside area to other regions of the Island.

Atlantic Properties Inc., the Developer of the proposed 403B housing at 106 Surfside Rd. , has been disingenuous in describing the maximal 45 foot height of the proposed apartments as comparable to the height of many residential and commercial buildings in the Downtown and Sconset regions of the Island. These structures, located approximately 2-3 miles and 7-8 miles away are geographically and dimensionally remote from the Surfside neighborhood and they were built long before building codes or zoning laws.. The 45 foot height of the apartment complex at 106 Surfside Rd. surrounded by single-family residences with a 35 foot height restriction would be out of character.

We are concerned that Atlantic Properties Co, the Developer of the affordable apartment project at 106 Surfside Rd, already in litigation to purchase the adjacent Boy Scout Reservation could be in a position to extend 403B housing to this contiguous property.

The approval of Atlantic Properties to construct apartment-style 403B housing on a single 2-1/2 acre acre lot at 106 Surfside Rd. sets a dangerous precedent; any property owner could convert a residentially-zoned lot into a similar apartment style housing development, further compromising the residential character of the neighborhood.

Thank you in advance for your serious consideration of these important issues.

Sincerely,

Joseph R. Benotti

Sandra M. Benotti

From: Galen Gardner
To: Eleanor Antonietti
Subject: 106 Surfside Road (NOT IN FAVOR OF)
Date: Tuesday, September 15, 2015 8:59:43 PM

To all Zoning Board of Appeals members:

I am writing to oppose Atlantic Development/DJ McKinnon's plans for the development of a 2.5 acre parcel of land on Nantucket located at 106 Surfside Road. I am also in vehement opposition to his proposed plans to develop 30 acres of the boy schout camp, should current litigation be resolved in his favor. This 30 acre parcel abuts the 2.5 acre parcel of land at 106 Surfside Road.

My objections are as follows:

1. The saturation of developments in the Surfside area which include several 40B's such as Abrem's Quarry, Sachem's Path, BeachPlum, and Miacomet Village-all of which are accessed directly from Surfside Road or Fairgrounds/South Shore Roads. On the opposite side of the boy scout camp, antoher developer is trying to put in massive amounts of housing, to dated, approximately 460 units of housing are being proposed by Richmond Group. As I read 40B Legislation, it is designed for towns to take care of their own rental housing/low income housing. Nantucket really is a microcosm of the rest of the state, and therefore, we should see 40B proposals in Tom Nevers, Sconset, Polpis, Pocomo, Wauwinet, Town, Cliff, Madaket, Cisco, and as of this date, there is not one 40B proposal for any of these neighborhoods. Each of these neighborhoods provides many jobs for landscapers, tradesmen, and in some cases retail, restaurant and hotel work. To claim, as Mr. McKinnon did, that this 106 Surfside development was chosen because it was "close to jobs" and infrastructure is a weak interpretation of the 40B legislation. In the winter on Nantucket, there are more jobs in the outlying neighborhoods than town, in summer just as many-with landscape/retail/hotel etc!

2. DJ McKinnon's proposal for two and three story apartment buildings is not to scale with any of the buildings in the Surfside area.

3. Atlantic Development's "comps" for this current proposal at 106 Surfside are: Sconset Village and Nantucket Town. However, in meeting with Mr. McKinnon, he was not able to name any specific Sconset or Town property that they were using as "comps". Sconset has no three story or two story apartment dwellings, I am not sure Town does either.

4. The proposed location, 106 Surfside Road, is in a purely residential neighborhood of 2 and 3 acres lots. On these lots are single family residential dwellings.

5. The scope of a project this large, is excessive for Nantucket period. It is most definitely far to big and tall for the Surfside neighborhood.

6. The development is planned for an already congested neighborhoood. 300 yards from 106 Surfside Road, lies "Sachem's Path, where 40 homes will soon go online-adding 100 cars to the currently congested Surfside Road. Taffic is ery slow at the intersection of Surfside and Fairgrounds/South Shore is very slow and slower still at Micaomet Village, and again at the elementary, middle and high schools.

7. The plan for 60 units on 2.5 acres precludes the ability to park 120+ cars with no provision for groups/parties at the units.

8. The site of the development abuts 30 acres of teh boy scout camp. Currently the developer DJ McKinnon, is involved in litigation and has a P & S agreement to purchase the 30 acres should the judge rule in his favor.

Thank you for carefully considering the neighborhood opposition to this plan. It really will not make Nantucket a

Regards,

Galen Gardner

Barbara A. White
P.O. Box 1251
75 Pochick Avenue
Nantucket, MA 02554

Zoning Board of Appeals
SEP 11 2015
RECEIVED

Edward S. Toole, Chair
The Zoning Board of Appeals
2 Fairgrounds Road
Nantucket, MA 02554

Dear Mr.Toole and other members of the Board:

I am writing in opposition to the application for a 40B development submitted by Atlantic Development on Surfside Road on Nantucket.

While there is clearly a need for affordable housing on the island, this development should be denied for a variety of reasons. For one, it is way out of scale and suitability for our rather rural neighborhood with its single unit dwellings. Surfside already has several 40B developments as well as other affordable single-family units. In addition, the Essex Road area of dense housing and Miacomet Village also empty onto Surfside Road. Traffic is saturated on the Surfside Road and Sachem's Path has not even been built yet. So, this is not a question of "Not in my Neighborhood" because we already have 40Bs in the neighborhood and on the road that serves our area.

The 40Bs should be located properly and dispersed around the island with an eye to congestion, noise and public safety. We need to work hard to get to the magic 10% so that developers cannot come into the island and put them wherever they please. Please deny this application.

Sincerely,

Barbara A White

Barbara A. White
bw_cps22@yahoo.com

September 8, 2015

Dear Mr. Toole,

I am writing in opposition to Atlantic Development plans for a 60-unit apartment complex at 106 Surfside Road, Nantucket MA.

I purchased my home at 16 Gladlands Avenue in 1998 and moved here to live year round in 2011. **The quality of my life and the value of my property will suffer significantly if this project moves forward.**

The Surfside area has a concentration of 401b developments that is unmatched on island. This development, cramming 60 units in approximately 2 acres, defies logic and common sense. The scale of the buildings proposed far exceeds what is common in this area – the fact they compare their structures to commercial properties in town and density in Sconset is laughable and dangerous. **If Atlantic Development's strategies and tactics are successful on Surfside Road, what is to stop them or someone else to propose and build the same type of development on Baxter Road, Cliff Road or Eel Point Rd?**

Surfside already has a high concentration of similar developments in varying stages of construction or completion. The Developer's interest in the adjacent Boy Scout property is also a red flag as to a larger scheme that will further erode the quality of life and real estate values of our neighborhood. The addition of 120 or more cars in such a tight space will exacerbate an already busy intersection – Surfside and Fairgrounds Roads – causing additional disruption and traffic.

Putting this development of 60 units on approximately two acres in an established and settled residential development is unconscionable. Allowing this development to move forward under the smoke screen of the island's housing crisis is wrong and obscene.

I am in favor of the Town taking a leadership position in addressing the housing needs of our island community. I am in favor of appropriate development that complements the areas they are located to address our housing needs.

I am not in favor of Atlantic Development's plans for 106 Surfside Road.

Yours truly,

Louis A. Borrelli, Jr.
16 Gladlands Ave
Nantucket, MA 02554

Zoning Board of Appeals
SEP 08 2015
RECEIVED

From:	Lou Borrelli
To:	Eleanor Antonietti; avorde@nantucket-ma.gov; Leslie Snell; Mark Voigt; Steve Butler; Mike Burns; DPW; rsantmaria@nantucket-ma.gov; Art Crowley
Subject:	Opposition to Atlantic Development"s Proposal for 106 Surfside Road, Nantucket, MA.
Date:	Tuesday, September 08, 2015 10:30:51 AM
Importance:	High

Good Morning -

I am writing in opposition to Atlantic Development plans for a 60-unit apartment complex at 106 Surfside Road, Nantucket MA.

I purchased my home at 16 Gladlands Avenue in 1998 and moved here to live year round in 2011. The quality of my life and the value of my property will suffer significantly if this project moves forward.

The Surfside area has a concentration of 401b developments that is unmatched on island. This development, cramming 60 units in approximately 2 acres, defies logic and common sense. The scale of the buildings proposed far exceeds what is common in this area – the fact they compare their structures to commercial properties in town and density in Sconset is laughable and dangerous. If Atlantic Development's strategies and tactics are successful on Surfside Road, what is to stop them or someone else to propose and build the same type of development on Baxter Road, Cliff Road or Eel Point Rd?

Surfside already has a high concentration of similar developments in varying stages of construction or completion. The Developer's interest in the adjacent Boy Scout property is also a red flag as to a larger scheme that will further erode the quality of life and real estate values of our neighborhood. The addition of 120 or more cars in such a tight space will exacerbate an already busy intersection – Surfside and Fairgrounds Roads – causing additional disruption and traffic.

Putting this development of 60 units on approximately two acres in an established and settled residential development is unconscionable. Allowing this development to move forward under the smoke screen of the island's housing crisis is wrong and obscene.

I am in favor of the Town taking a leadership position in addressing the housing needs of our island community. I am in favor of appropriate development that complements the areas they are located to address our housing needs.

I am not in favor of Atlantic Development's plans for 106 Surfside Road.

Lou Borrelli
16 Gladlands Avenue
Nantucket, MA 02554

508-825-2178 residence
508-825-2179 office
651-538-8565 eFax

From:	Greg Hinson, MD
To:	Matt Fee; Libby Gibson; Erika Mooney; albacor@comcast.net; rickatherton@comcast.net; Eleanor Antonietti; integrity11@gmail.com; Dawn Hill Holdgate
Cc:	Cormac
Subject:	106 Surfside
Date:	Wednesday, September 02, 2015 9:04:04 PM

From what I understand, DJ MacKinnon has applied to MassHousing for Project Eligibility/Site Approval for his monster of a development planned for 106 Surfside Rd. This simply has to be stopped.

According to masshousing.com there should be a 30-day comment period during which MassHousing is supposed to do a site visit and ask for comments from the municipality. "**MassHousing will consider any relevant concerns that the municipality might have about the proposed project or the developer**."

The application (http://www.masshousing.com/imageserver/CompPermitApp_HO.pdf) also says:

"In order for a project to receive Site Approval, MassHousing must determine that (i) the applicant has sufficient legal control of the site; (ii) the applicant is a public agency, non-profit organization or limited dividend organization; and (iii) the applicant and the project are generally eligible under the requirements of the MassHousing program selected by the applicant, subject to final eligibility review and approval. **Furthermore, MassHousing must determine that the site of the proposed project is generally appropriate for residential development ... and that the conceptual project design is generally appropriate for the site**."

Given the pending litigation involving the adjacent Camp Richard land, and Atlantic Development's filed P&S Agreement to obtain th0se 30 acres, there is certainly reason for our municipality to have "relevant concerns" about the developer. 106 Surfside could end up just being the entrance to the 40B he plans to develop on that hallowed ground. It would be prudent for no other reason for MassHousing to deny his application pending the outcome of the Camp Richard court case.

Secondly, given the building height and density he is planning for these two acres, how out of character it is for the area; given the substantial local opposition to his plans; given traffic concerns about adding 90-120 cars having to drive by the Bartlett Rd and Sparks Ave intersections every morning and the safety issues this could present to school foot traffic; given our present sewer concerns; given the minimal impact on our affordable housing needs this will have (adding 15 moderate level affordable rental properties); given the results of our recent housing needs assessment that warned against concentrating all of the affordable housing in the same part of the island… it is also reasonable, even expected, that the town to say that the "conceptual project design is generally NOT appropriate for the site."

If we as a community not just comment, but firmly stand in opposition to these absurd plans, perhaps MassHousing can help stop this project before it even gets started, limiting his damage to the disgraceful clear cutting he has already done.

Please let me know if there is any role for a concerned, local citizen in adding to the comments our town submits to MassHousing.

From: Gardner, Galen
To: Eleanor Antonietti
Cc: "galenanne@comcast.net"
Subject: "Surfside Commons"
Date: Friday, August 28, 2015 10:03:42 AM

Dear all,

I am writing to express my exasperation at the recent revelation of another new plot to create "affordable housing" here on Nantucket, by development of a less than 3 acre parcel of land into 60 units of apartment housing at 106 Surfside Road, which is currently an ugly clearcut of what once was a nice home and pool, in what has clearly been established as a purely residential neighborhood where people who chose to buy in this neighborhood bought here because it was residential and zoned in larger lots.

It seems to me that the intent of 40B was for communities to take care of their own housing needs. However, it also seems to me that the INTENT of this law, was to spread out housing within individual communities so that each town had some housing that might have been lower cost or rental stock. No town could send their lower income citizens to the next town over hoping that the less affluent towns would absorb this group. In Nantucket, it seems that we are putting all sorts of high density in the Surfside neighborhood: BeachPlum, Abrems Quarry, Sachems Path, DJ McKinnons' lovely idea of 60 plus on two acres plus the desecration of the Boy Scout Camp (God help all of us) and then whatever Pastan decides to do on the opposite side of the boy scout camp which at last reporting was 500+ houses of some sort and that's not even touching the commercial aspects of the property he bought. My point being that just as towns across the state have to make their own housing choices, and spread it all around, so do we, and we aren't doing that.

I seriously ask all of you if you really think Nantucket's infrastructure and sole source aquifer, water and sewer will be able to handle all of this proposed development? And who is going to pay for all the upgrades that will be needed? (and they WILL be needed). Essentially, Surfside has become a dumping ground for high density housing here on Nantucket. With little thought for the people both year round and also summer residents, who pay a lot of taxes, keep their properties in good condition, and may run small home businesses or provide rental stock for tourists. We have had our property devalued almost overnight, and we also will suffer a lack of business in the rental season if all of this proposed development becomes a reality. The saddest thing I have done this summer is to attend the neighborhood meeting for Surfside residents who just learned about McKinnon's plans. My heart and mind are bent beyond repair when thinking about the Davis and Farro families who have really been decimated by this action-people who have worked a lifetime to provide for their families and communities now own half of what they once did. It's unconscionable.

I stand now as a conservation seller, along with many members of my family who have likewise been conservation sellers all over the island as currently being labeled "part of the housing problem"!!! It's stunning that as an island community we were so hell bent on saving the island from overdevelopment in the 80's and 90's to become an island approaching buildout

than they can possibly bear?? Town meeting this year was quite something-I witnessed zoning articles designed to down-zone many places on the island be defeated by very narrow margins. What has happened to us? How can we possibly not kill the goose that laid the golden egg here?

My proposal is twofold: to ask that you do whatever is legally possible to ensure that "Surfside Commons" never gets built, if that cannot be accomplished, then please do everything in your power to make it as small as possible and as good looking as possible and, to open up Land Bank for some housing, or to ask the town to look for parcels all over the island that it may contribute to housing. If this idea is untenable to you, then try to find some way to bring everyone to the table and walk in the shoes of a Surfside resident such as the Davis or Farro families and just sit with that mentally. See how it feels. Ask yourself what you would do if it were your property?

I ask this because I am sick to death of one island neighborhood being abused for housing. While I would actually hate the NLB land to be used for this, because when my family sold, we held dear the idea that passive recreation and preserving environmental habit for flora and fauna were the two most important things to us. However, I do expect the town to take care of ALL of us, and spread the density around as much as possible. People who live near conservation areas can just sit back and assume it won't happen to them. So they are essentially out of the debate, which is wrong. When you take action to make housing everyones agenda by using town or NLB land, you force everyone to the table. Which in my opinion, needs to happen. There is SO much money here, SO many good minds, I simply cannot believe we cannot solve this problem!

It's simply unconscionable for the town to sanction in any way, the demise of an entire neighborhood for what is essentially, private gain: developer wins, businesses with many employees who don't pay a living wage win, corporate wins such as NIR and others who pay small wages and have interest in cheap housing far away from their fancy venues. Outlier neighborhoods win because they don't even have to spend one single minute contemplating this. Surfside loses-how can you sleep at night?

I vote!

Galen Gardner

From:	Libby Gibson
To:	Bob DeCosta; Dawn Hill Holdgate; Matt Fee; Rick Atherton; Tobias Glidden
Cc:	Erika Mooney; Eleanor Antonietti
Subject:	FW: Proposed Development 106 Surfside
Date:	Thursday, September 17, 2015 8:52:21 AM

C. Elizabeth Gibson
Town Manager
Town of Nantucket
(508) 228-7255

From: lomoose@aol.com [mailto:lomoose@aol.com]
Sent: Wednesday, September 16, 2015 2:08 PM
To: Libby Gibson
Subject: Proposed Development 106 Surfside

Dear Town Manager Gibson,

As a home owner on 126 Surfside Road, Nantucket, I am herein expressing my strong opposition to Atlantic Development's proposed complex at 106 Surfside Road on Nantucket. This developer proposes to construct 5 buildings on a 2 1/2 residential parcel which will include 60 apartment units. There currently does NOT exist anything like the aforementioned complex in the Surfside area.

Surfside is an area which is mainly made up of single family dwellings. The proposal by Atlantic is totally out of synch with the Surfside area. It is extremely inappropriate for Surfside which is the gateway to a scenic, lovely series of beaches on the ocean. The development would be a scar on the face of this beautiful spot; a scar on the face of Nantucket.

Furthermore, it would add tremendously to traffic congestion on the northern part of Surfside Road and so many additional cars would further diminish the air quality there. Surfside Road is not equipped to handle such an increase in traffic volume.

How could so many units be allowed on only 2 1/2 acres? The development would disrupt the harmony of the area and change the face of this picturesque spot where residents live in peace. It doesn't seem fair to the current inhabitants to impose such a project upon their neighborhood. The northern part of Surfside already has the area's schools. Putting an apartment complex there seems incomprehensible and frankly alarming.

Please do not permit this to happen. This surely is NOT development but clearly OVERdevelopment.

Thank you for you attention to my concerns.

Respectfully,

Marianne Loffredo, 126 Surfside Road, Nantucket, MA

Materials provided by Staff to supplement Application

PESCE ENGINEERING & ASSOCIATES, INC.
451 Raymond Road
Plymouth, MA 02360
Phone: 508-743-9206 Fax: 508-743-0211
epesce@comcast.net

January 2, 2016

Nantucket Zoning Board of Appeals
Attn: Mrs. Eleanor Antonietti
Nantucket ZBA Administrator
2 Fairgrounds Road
Nantucket, MA 02554

RE: Engineering Review of the **Surfside Commons 40B Project**

Dear Mrs. Antonietti and Members of the Board:

Pesce Engineering & Associates is pleased to provide you this review of the proposed Surfside Commons Ch. 40B project located at 106 Surfside Road. We have evaluated the existing plans for consistency with the Town's Zoning Bylaw, the Nantucket Rules and Regulations Governing the Subdivision of Land, and general conformance with the Massachusetts Stormwater Management Regulations.

Along with a site visit conducted on 7 December, 2015, we have reviewed the following information to prepare this letter report:

- Surfside Commons Application for Special Permit, prepared by Atlantic Development, with attachments, dated December 17, 2015
- Project design drawings entitled “Concept Plan for Surfside Commons,” 7 sheets, prepared by Bohler Engineering, dated November 20, 2015.
- Stormwater Drainage Report for Proposed Surfside Commons, prepared by Bohler Engineering, dated December 15, 2015.
- Architectural plans and elevation drawings, 26 sheets, prepared by Sheskey Architects, dated October 9, 2015.

The proposed development is located on an existing parcel, consisting of approximately 2.49 acres of land off Surfside Road. This site is entirely upland area, and is located in the Limited Use General 2 & 3 Zoning Districts (LUG-2 & LUG-3), and also in the Wellhead Protection Recharge Overlay District.

The site contains an existing dwelling shed and pool, which will be removed. The applicant proposes to develop this site into a residential development consisting of 4 multifamily buildings (two 13-unit & two 15-unit buildings), with a joint parking area

consisting of one hundred (100) parking spaces (92 surface and 8 garage spaces). Also planned for this site is a neighborhood clubhouse, with pool and children's play area. Municipal water & sewer services are proposed for the site, including the use of a sewer lift station with force main connection to an existing sewer manhole on Fairgrounds Road.

The following are our review comments:

Site Plans/Site Layout & Utilities

1. If it has not already been received, we recommend that the applicant receive approval from the Nantucket Fire Department on the proposed neighborhood access for emergency vehicles (adequate vehicle circulation), and location of a new fire hydrant on the property.

2. We recommend that a proposed stop sign & stop line be added at the site access for the exit lane at the intersection with Surfside Road.

3. We recommend that signage be shown on the plan for each handicapped parking space.

4. We recognize that except for the drainage design, the current civil engineering design plans are not 100% complete. We recommend that the following comments be addressed with the final civil plan set when submitted:

   a. We recommend that design details be provided for the proposed sewer pump station and generator building, including, storage tanks/vaults, pumps, controls, alarms, etc.

   b. We recommend that the water service pipe size (and material) be shown on the plans, along with the locations (and size) of fire protection connections.

   c. <u>Lighting Plan.</u> We recommend that a proposed light plan, with the proposed lighting fixture detail, be submitted for review. The proposed site lighting should be in compliance with the bylaw calling for "dark sky" compliant design.

   d. <u>Engineering/Construction Details.</u> No engineering design construction details have been provided, except for the StormTech® infiltration system and proposed erosion controls. A plan(s) should be prepared to include the following design and construction details:

      1) Drainage and sewer structures such as catch basins & drain manholes, and sewer manholes & cleanouts

2) Water and sewer connections/piping (gravity and force main trench details, valves, thrust blocks, etc.)
3) Parking area pavement/gravel base cross-section, proposed curbing, and the sidewalk cross-section
4) Parking area line painting/striping, to include the recommended stop line
5) Signage (including community entrance sign if proposed)
6) Trash/dumpster pad and fencing/gate

Stormwater Management

This project proposes to mitigate post-development runoff for the site via the use of catch basins flowing to Stormceptor® water quality treatment units, which discharge to subsurface infiltration systems. This stormwater management system has been well designed, and will remove the Total Suspended Solids (TSS) in the stormwater, while recharging the treated stormwater to the aquifer. The proposed design also reduces the peak rate of runoff as compared to the existing conditions, and is additionally designed for the 100-yr. storm.

We have the following stormwater management comments:

1. The drain manhole locations at the header to the infiltration systems should be designated (identified as DMH-D, DMH-E, etc.), and rim and invert elevations should be added, in addition the inverts discharging to the rows of chambers.

2. The Underground Infiltration System #1 has two drainage manholes labeled as "DMH B" (the same label). These should be separately labeled for clarity during construction.

Thank you again for this opportunity to assist the Zoning Board in their review of this project. As always, please call if you have any questions.

Sincerely,

PESCE ENGINEERING & ASSOCIATES, INC.

Edward L. Pesce, P.E., LEED ® AP
Principal

cc: Ms. Leslie Snell, Nantucket Planning Board
Mr. DJ MacKinnon, Atlantic Development
Mr. Josh Swerling, P.E., Bohler Engineering

MEETING[1] called to order at 10:47
DJ Mackinnon and Josh Swerling arrive at 10:51

ATTENDING:

1. Eleanor W. Antonietti, Zoning Administrator
2. Leslie Snell, Deputy Director of Planning
3. Mark Voigt, Historic District Commission Administrator
4. Steve Butler, Building Commissioner
5. Mike Burns, Transportation Planner
6. Holly Backus, Land Use Specialist, PLUS
7. Paul Rhude, Fire Chief (NFD)
8. Robert Gardner, General Mgr., Wannacomet Water Co.
9. Bradley Bertolo, Pesce Engineering, Consultant for Town of Nantucket
10. Roberto Santamaria, Director, Board of Health
11. Arthur Reade, Local Attorney
12. Ilana Quirk, Town Counsel, Kopelman & Paige
13. Erika Mooney, Town Administrator (Board of Selectmen)
14. D. J. MacKinnon, Atlantic Dvpt., Developer
15. Josh Swerling, Bohler Engineering, Developer Engineer
16. Terry Norton, Town Minutes Taker

Mark Voigt Are they planning to skip the HDC process?
DJ Mackinnon Yes
MV So the procedure will be that the ZBA will ask for HDC input? Scale and massing would be biggest issues.
EWA Yes.

Steve Butler No comments. My code is technical in nature and you can meet those standards by proper engineering. Are these going to be modulars?
DJM Laid out to be Modular but they could eventually become panelized systems.

Fire Chief Paul Rhude No fire protection systems are shown on plans. We will comment when those systems are shown on the plans.

Robert/Bob Gardner Water main will be extended from Fairgrounds/Surfside. 12" water main. Each bldg. will be metered as opposed to each unit?
DJ Yes
BG Water bill would be paid by an assn. rather than property manager. Also see that it needs to get to the property line. You would have hydrant at the end. Beyond that would be about a length of pipe and a cap so it could be extended without shutting anyone off. Is there going to be a formal request for fee waiver? Needs to be a formal letter written Nantucket Water Commission and then they will consider that. Will bldgs. be sprinkled?
Paul Rhude They have to be.
Josh Swerling There will be a hydrant at driveway.
BG Will need an easement

[1] See attached Sign-in sheet for attendees contact information.

JS You will want hydrants within 100 feet of the FDC Fire Dept. connections (which are not detailed yet).
BG If there is a hydrant outside, we would like a 10 foot square – need easement. We need to discuss whether we want to maintain interior piping or not. Assume meters will be in the bldgs. As a rule we get an access around the hydrant. But we can have further discussion on that.
DJ Open to your preference.
PR Regular town maintained hydrant is what we would want to see.
BG 8 inch main is needed. 1,050 feet down there of 12" pipe. Will need dedicated sprinkler and dedicated domestic water systems.
JS Hydrants would be 6" off of the 8".
BG Give us a utility easement for everything up to where they enter bldg. (valve for sprinkler and domestic). Like to get 20 feet but 15 would be good.

Kara Buzanoski In terms of exemptions requested, permit for road opening and driveway, they have no cost. Privilege fee has only been granted to Habitat. We will recommend that that **not** be waived. We will also recommend that exemption for usage not be waived. There is no one that does not pay sewer bill. We are also not in agreement that sewer district may be waived without going to ATM. Usage from this dvpt. has not been calculated into the capacity. Other issue is design. We will only allow lower pressure main. Laterals have to be left for all adjacent properties. We will want to see a different design than that proposed. Also, in Traffic Study, there is an assumption that all possible residents are coming from existing citizens. That is not accurate. Town Staff has to look at that percentage. We need better assessment/prediction. Also, there is an existing guard rail in front of property which will need to be replaced all the way from Fairgrounds to property site, given that the increase in traffic will start at that Fairgrounds STOP sign.
Erika Mooney Kara, just to clarify, you are not recommending granting waivers for connection fee, usage, and sewer privilege fee? So in addition to being responsible for sewer connection fees and Sewer Privilege Fees, the Surfside Commons development would also be responsible for paying Capacity Utilization Fees?
KB Correct
Leslie Snell You are not recommending waiver across the board or just related tomarket rate units?
KB Across the board. HousingNantucket asked and we denied.

Roberto Santamaria General housing code and housing requirements have to be met. If you are doing laterals straight from bldg., you will need ejector pumps to be permitted by Bd. of Hlth. I recommend putting grease and oil interceptors with operation and maintenance plan that comes with it. We have been finding a lot of oil and grease in the laterals. Becoming an issue for Bd. of Hlth. & DPW.

Brad Bertolo for Ed Pesce You need to show full drainage design and a lot of detail is missing. Soil testing, ground water determination. Concerns on parking. Handicap areas may need to be van accessible (may need to be larger). We will provide more comments once we have more detailed plans.
EWA & DJM Soil tests were done with Ed Pesce and Staff present on 12/7/15 by someone from BOHLER Engineering.
Atty. Ilana Quirk asks for a set of full drainage calculations

RS The pool will fall under "semi-public" pool so that requires permitting plan review and operation and maintenance plan thru Hth Dept. Drainage needs to be more specific. Who is certified pool official? CPO needs to be available on site whenever the pool is open. Also each individual bldg. needs placard with 24 hr. phone number and name of Bldg. Manager. This is in Bldg. Code.

Atty. Ilana Quirk ZBA Staff will need to send each Waiver request to each individual TON Dept. in order to elicit specific comments with respect to specific waivers. Looking through these waivers, they need to be more specific. The exact height waiver is not indicated and several other situations need more precision. I would recommend that you do it for each of the bldgs. Also there was a request for a waiver from the bldg. permit requirement. This is a state permit. There was a request for waiver from prohibition against use of trailer. Need more clarification. Maybe you meant for bldg. trailers. Also want to make sure there are funds for peer review.
KB. Asks that they number the waivers.

Leslie Snell I was hoping for an overview of the project from DJ. I have concern about trash. Is 1 rubbish bin enough for all of these units? Also want clarification on how it will be contained (smells, seagulls). Parking calculations and space size. Our standard size is 9 X 20, (not 9 X 18 as is more typically found on the mainland) due to predominance of SUVs and trucks used by island residents. PB will have comments. Screening is okay except on western side. Natural vegetation is on other property owner's property. You are responsible for installing your own vegetation. May be true for eastern side as well. To f/u on peer review, we will need funds to pay for Traffic Study. Hope you will agree to that. Want to know if pool will be restricted to occupants and their guests. Also need more specificity on waivers so ZBA is not guessing.

IQ asks Chief Rhude if he is satisfied with access to bldgs.?
PR We would like the walkway on Surfside Road side to be reinforced for a 3rd side and the same for each building to handle weight of truck.
Brad B Was there an auto-turn calculations for emergency vehicles in the Traffic Study? Might be tight, looking at the radii.
PR 24 feet should be adequate.

Erika Mooney The BOS had outlined 6 different concerns in their 11/5 ltr. to MHP. If they did a sewer main connection, would that require that the BOS issue a ltr.?
KB For a force main, yes but not for a low pressure system.

Mike Burns I encourage peer review Traffic Study. Aslo sidewalk access to public transportation. It is currently on a route dedicated for beach service which runs from 10am to late afternoon. To leave property and get to the nearest bus stop would require crossing at 3 locations (from site to Surfside Rd. bike path, and 2x at Fairgrounds Rd. and Surfside Rd. STOP sign.

DJ offers to give OVERVIEW, as requested by Leslie Snell.
Josh Swerling 3 residential bldgs. and Club House for residents and guests. Bldgs. are combination of 13-unit and 15-unit distribution. There are 92 surface parking and 8 garage spaces on lower side of property where you can drive under. DJ has some additional renderings. Drainage system is series of catch basins, manholes, underground

infiltration systems. Planting schematic will be further defined as project moves forward. We anticipate planting taller trees *vs.* street trees.
DJ shows 3D schematic. Discusses trees and how site will look from Gladlands (across the street). Then explains distribution of units (42 market *vs.* 14 affordable). Affordable income is currently btwn. $55,000 -85,000. Also - we have an onsite full time manager who will be living rent free in one of the market rate units.
BB Have you done calculations on cuts and fills that you need to bring in?
DJ & JS There may some surplus
BB wonders about bldgs. which are set 3 feet higher than others.
DJ They have full basement. Also, the driveway has already been relocated.
LS You are providing 100 spaces for 56 units and 122 bedrooms?
JS Yes
SB How many Handicap /Group B (kitchen and bathrooms) accessible units?
DJ All ground floor units.

KB asks where she can find rental rates.
IQ Who is in charge when Bldg. Mgr. is on vacation?
DJ We have a 3rd party management company, and they would be on call. Club House would have an office for rental purposes in the beginning which would then become more of a management office.

BB Is that a ramp next to HC spot?
Josh Yes

LS Are you proposing asphalt or pervious pavers for parking?
JS For paved areas, probably asphalt and pavers for sidewalks.
LS Be prepared that ZBA will ask for comments from HDC as to exterior architectural features.

IQ Is there an Operation & Maintenance plan?
JS Forthcoming. Also as to Fire Protection plans we will likely have those ready closer to issuance of Bldg. Permit.

BG We will have to issue a Certificate of Water Quality Compliance ltr. The request for that will have to come from either PB or ZBA.
EWA ZBA will issue that ltr.

Meeting adjourned at 11:40am.
Per DJM, Steve Schwartz will be 40B Consultant.

ACTION NEEDED BY STAFF:

- ☐ Send list of individual departmental waivers to each department head so they can comment on the waiver relevant to their jurisdiction.
- ☐ Send rents found in Pro Forma to attendees.
- ☐ F/U with DJM and Josh as to what was requested from various attendees.

MEETING SIGN-IN SHEET

Project: SURFSIDE COMMONS 40B – COORDINATED REVIEW	**Meeting Date:** January 6, 2016
Facilitator: Eleanor W. ANTONIETTI, Zoning Administrator	**Place/Room: 4 Fairgrounds Rd PSF - 2nd Floor Training Room**

	Name	Title	Department	Phone	E-Mail
1	MARK VOIGT	HDC ADMIN.	PLUS	508 325-7587	mvoigt@nantucket-ma.gov
2	Paul Rhude	Fire Chief	Fire	508 2746086	prhude@fire.nantucket-ma.gov
3	BOB GARDNER	GEN. MGR	WANNACOMET WATER CO	508 228-0022	rgardner@wannacomet.org
4	KARA BUZANOSKI	DPW Director	DPW	508 228-7244	KBUZANOSKI@nantucket-ma.gov
5	Roberto Santamaria	BOH Director	B.O.H	508 228 7200	RSantamaria@nantucket-ma.gov
6	Bradley Bertolo	Pesce Engineering	-	508-333-7630	epesce@comcast.net
7	Arthur Reade	Lawyer	(representing applicant)	508-228-3128	air@readelaw.com
8	ILANA QUIRIC	TOWN COUNSEL		617 556 0007	IQUIRK@IC-PCMW.COM
9	LSnell	Dep. Dir. Plan	PLUS	508 325 5385	lsnell@nantucket-ma.gov
10	Erika Mooney	Project Admin	Town Admin	508 228 7266	emooney@nantucket-ma.gov
11	D.J. Mockini	Atlantic Development		781 741-5009	DJM@AtlanticDevelopment.com
12	JOSH SWERLING	BOHLER ENG	SURFSIDE	508 480-9900	jswerling@bohlereng.com
13	Mike Burns	Transportation	Planning	508 228 7238	mburns@nantucket-ma.gov
14	HOLLY BACKUS	LAND USE PLANNER	PLANNING	508 325 7587	hbackus@nantucket-ma.gov
15	Eleanor Antonietti	Zoning Adm.	PLUS	508 325 7587	eantonietti@nantucket-ma.gov
16	Terry Norton	Town Minute	Town Admin	508-228	tnorton@nantucket-ma.gov
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COORDINATED REVIEW

2 Fairgrounds Road
Nantucket, Massachusetts 02554
www.nantucket-ma.gov

~~ MINUTES ~~

Wednesday, January 6, 2016

Public Safety Facility, 4 Fairgrounds Road, Training Room –10:30 a.m.

Called to order at 10:47 a.m.

Staff in attendance: Eleanor Antonietti, Zoning Administrator; T. Norton, Town Minutes Taker.

Department Heads: Bob Gardner, Wannacomet Water Company General Manager; Mark Voigt, Historic District Commission (HDC) Administrator; Erika Mooney, Town Administration; Roberto Santamaria, Health Department Director; Kara Buzanoski, Department of Public Works Director; Paul Rhude, Fire Chief: Mike Burns, Transportation Planner; Leslie Snell, Planning and Land Use Services (PLUS) Deputy Director; Steve Butler, Building Commissioner; Holly Backus, Land Use Planning.

Applicant Representatives: Arthur Reade, Reade, Gullicksen, Hanley, & Gifford LLP, for Atlantic Development; Donald MacKinnon, Atlantic Development; Joshua Swerling, Bohler Engineering.

Agenda adopted by unanimous consent

I. COORDINATED REVIEW – SURFSIDE COMMONS, 106 SURFSIDE ROAD

Introductions

Voigt – Asked if HDC would be involved in the process.

MacKinnon – That is on the list of waivers submitted.

Voigt – The Zoning Board of Appeals (ZBA) can ask for a HDC review.

Antonietti – They have done that in the past.

Voigt – He's certain the HDC would have comments about the scale and massing.

Butler – He has no comments. Asked if they will be modular.

MacKinnon – Modular or panelized. They are laid out to be modular but from there can go to panelized

Rhude – Fire protection systems aren't on the details yet. He will comment when those are provided.

Gardner – In the conceptual plan, the 12" water main will be extended from Fairgrounds/Surfside water main. Each building will be metered as opposed to each unit. The water bill would be paid by the association or management.

MacKinnon – The hope is that the main will laid out such as to be able to extend it down Surfside Road in the future.

Gardner – It needs to get to the property line. Beyond the hydrant on the road would be a valve and cap. Asked if there will be a formal request for fee waivers submitted to the Water Commission. It would have to be a formal letter requesting the waiver, which the Nantucket Water Commission would then consider.

Rhude – The buildings have to have sprinklers. There should be a hydrant interior to the property.

Gardner – There would need to be an easement so the water company can maintain the interior hydrants.

Swerling – They are looking at placing hydrants within 100 feet of FDC Fire Department connection; those aren't detailed yet. The suppression system will be added to the plans.

Gardner – There will have to be discussion as whether or not the Water Company maintains the interior piping. The meters will be in the buildings. As a rule the company get an access around the hydrant. There will be further discussion once details and metering is finalized.

Swerling – Asked if there could be a hydrant that the Town wouldn't maintain.

Rhude – His department can depend better on a Town-maintained hydrant.

Gardner – The main going down would be 12" and the main going in would be 8". There would separate pipes: one 4" for sprinklers and one 2" for domestic water. The simplest way to handle it is a utility easement for everything up where it goes into the buildings.

Buzanoski – In terms of exemption, the permits for road opening and driveway permits have no cost; so the recommendation will be that those fees not be waived. The other exemption is from the privilege fee which has only been granted to Habitat for Humanity; Housing Nantucket has not been granted that; will recommend that not be waived. There is also a request for exemption from payment for sewer usage; that has not been waived in the past. We are not in agreement that the Sewer District can be waived without going to Town Meeting. This is not an area included in the Comprehensive Wastewater Management Plan (CWMP); the usage from this development has not been calculated into the capacity. The full capacity is allocated in the CWMP, so there's no additional capacity for this development. The design is an issue; we do not allow private force mains in the public

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way; it will have to be a low pressure main and laterals will have to be left for all adjacent properties. In the traffic study, there seemed to be an assumption that all residents are coming from existing citizens; she doesn't believe that is accurate. There needs to be a determination or agreement made between Town staff and the developer to do a traffic plan as to what the potential will be to predict accurately what the increase in traffic will be on Surfside Road. In front of the property, there is a guardrail that needs to be replaced from Fairgrounds Road to the property site.

Mooney – Asked if the developer did go to Town Meeting and get inclusion into the district, would they still have to pay the capacity fee.

Buzanoski – Yes.

Snell – Confirmed whether or not the recommendations to not waive fees is across the board.

Buzanoski – Yes. Housing Nantucket asked for a waiver of their affordable units and did not get that.

Santamaria – A lot of his data is technical and based upon codes; those requirements will have to be met. If they are doing a lateral straight from building, it might have to use an ejector pump, which have to be permitted through the Health Department as well. Due to issues with water, he recommends installing oil and grease interceptors at each building before the water enters the laterals with an operation and maintenance plan.

Bertolo – Their review is more technical; these conceptual plans do not have the level of details they would look at. Would like a full drainage design with the groundwater determination and soil testing. There are concerns on sizes of parking and handicap (H/C) spaces; the H/C areas need to be revamped to be larger. Once they have more definitive and detailed plans, they will provide more comments.

Reade – Ed Pesce, Pesce Engineering, did a soil test about a month ago.

Swerling – The storm water drainage design, the guts of the system are on the plans if not the details. He was told they are going in the right direction in regards to infiltration and sediment removal.

Quirk – Asked to have the drainage calculations provided for everyone.

Santamaria – The pool will fall under semi-public pool regulations and requires permitting, planning review, and operation and maintenance through the Health Department. The pool will also have to go through the Building Department. The Health Department will look into where the drainage is, who will take care of it, and who will be the certified pool official/operator (CPO); The Health Department requires a CPO be on site at all times the pool is open. In the housing code, each building has to have a placard with a 24-hour phone number for contacting the building manager.

Quirk – They should have the ZBA take the requested waivers and send them to each agency prior to the public hearing. Looking through the waivers, one issue is that they need to be as specific as possible and that each building should have separate waivers. There is a request for a waiver from the building permit; that is a state permit. There is a request for waiver for prohibition of trailers for residential purposes; that needs more clarification as to whether or not that is for the duration of construction only. In respect to peer review, don't know if applicant put in a deposit fund.

Snell – She is concerned about the trash at the northwest corner and whether or not one is enough and how that would be contained. The parking waiver for 9X18 spots might be an issue; generally parking is 9X20. The screening waiver works okay except on the western side; that could be enhanced and maybe on the eastern side. There should be peer reviews; they need to establish and account for legal and engineering review; there is concern about traffic and she hopes there will be a peer review of traffic. Would like clarification as to whom may use the pool: restricted to occupants and their guests. Agrees the waivers should be more specific.

Quirk – Asked Mr. Rhude if he's satisfied with the access to the building right of the entrance.

Rhude – The walkway on the Surfside Road side should be reinforced to support the fire vehicles if necessary.

Bertolo – Asked if there were any auto-turn calculations to ensure the trucks can get in and out of there.

Rhude – The plans show a 24-foot wide driveway going all the way around; that is plenty of room for fire vehicles. The building to the left near the pool has only two sides available; the third side needs to be accessible with a reinforced walkway.

Mooney – The Board of Selectmen (BOS) have several concerns detailed in their letter. Suggested the applicant refer to that letter.

Antoniette – Noted that the applicant will meet with the ZBA on Thursday, Jan. 14. The detailed waivers and additional information should be sent to her by Friday, January 8 to allow time for them to be transmitted to the pertinent departments.

Burns – Agreed for the need of a peer review of traffic. In regards to the comment in BOS letter about sidewalk to public transportation, the bus currently on this route is dedicated to beach service with a small window of operation time. The pedestrian access to the bus stop for the Miacomet Loop requires crossing the road; that should be relocated for easy pedestrian access.

Swerling – Reviewed the project: 40B development for residential with amenities. The three buildings contain 13 to 15 units. There are 92 surface parking spots proposed and 8 garage spaces. Drainage consists of manholes and underground filtration systems. There is a planting schematic.

MacKinnon – Reviewed the streetscape from Surfside road; there will be trees across the front along Surfside Road. There are 56 units proposed; 14 will fall under moderate income guidelines; the others will be market rate.

MacKinnon – The affordable units would targeted at people with 80% medium incomes, which is currently families with incomes between $55,000 and $80,000 a year and their affordable income certified yearly. They have submitted a PEL application which shows the costs for the market-rate units. The other piece is that one of the market-rate units is dedicated to a full-time live-in manager with family; it shows no income because the manager would live there without paying rent.

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Snell – The plan shows a total of 100 parking spaces for 56 units totalling140 bedrooms; the regulations require apartments have one space per bedroom. Asked about the garage spaces.
MacKinnon – They haven't yet identified for whom the garage parking would be available; usually people pay for them. All accessible units are at ground level.
Butler – The accessible units should be completely accessible to include the interior.
Quirk – Asked what happens when the manager is on vacation.
MacKinnon – In addition to the on-site manager, there would be an on-call staff with offices in the clubhouse.

Swerling – For the paved surfaces, they are planning asphalt; the sidewalk and other amenities would be pavers.
Snell – She's certain the HDC will ask for the opportunity to comment on the architectural features; suggested the developer be prepared for significant comments from that commission on the exterior architectural features. The narrative for the drainage said there is a plan provided but she didn't see any.
MacKinnon – That is a separate document which is very large; he would be happy to provide it for posing on line.
Quirk – Asked if there is an Operation and Maintenance plan.
Swerling – That is forthcoming. In regards to the Fire Protection plan, they should have those ready closer to issuance of Building Permit.
Gardner – The water company will have to issue a Certificate of Water Quality Compliance letter. The request for that will have to come from either Planning Board or ZBA.
Antonietti – The ZBA will issue that letter.

II. ADJOURNMENT

Motion to Adjourn: 11:40 a.m.

Submitted by:
Terry L. Norton

PROPOSED

OFFICIAL

CORRESPONDENCE

COMMENTS
FROM TOWN & LOCAL BOARDS, COMMISSIONS, DEPARTMENTS, & MANAGEMENT

Town and County of Nantucket
Board of Selectmen • County Commissioners

Robert R. DeCosta, Chairman
Rick Atherton
Matt Fee
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C. Elizabeth Gibson
Town & County Manager

April 6, 2016

Nantucket Zoning Board of Appeals
2 Fairgrounds Road
Nantucket, MA 02554

Re: Surfside Commons 40B Comments

Applicant: Surfside Commons LLC c/o Atlantic Development
Project: Surfside Commons in Nantucket/56 rental units on 2.5 acres
Location: 106 Surfside Road, Nantucket, MA
Subsidizing Agency: Massachusetts Housing Partnership

Dear Members of the Zoning Board of Appeals:

On April 6, 2016, the Board of Selectmen reviewed the pending application by Surfside Commons LLC for a comprehensive permit for 2.5 acres of land at 106 Surfside Road ("Property") to construct 56 rental units (with 14 affordable units) in 4 residential buildings, with 122 bedrooms,100 parking spaces and a clubhouse with a pool on (the "Project"); and the Board of Selectmen voted 4 to 0 to recommend to the Zoning Board of Appeals that any grant of a comprehensive permit shall be conditioned upon the following requirements:

(1) **Sewer District Issue**. Since the Property is not in a municipal sewer district, legislative action, which the ZBA has no jurisdiction to take, would be required to include the Property, and any comprehensive permit relief should be conditioned upon the requirement that the necessary legislative action shall be taken before any connection is made.

The Zoning Board of Appeals should carefully review the following documents:

- St. 2008, c.396, special legislation that provides for creation and alteration of municipal sewer district only through legislative action;

- Nantucket Code, Chapter 41-3, which established municipal sewer districts using St. 2008, c.396 in 2010 (i.e., 2010 ATM approval of Article 31 on June 17, 2010);

- Nantucket Sewer Districts Town and Siasconset Map, as amended through April 2015, which shows the municipal sewer districts and that the Property is outside the municipal sewer districts; and

- Nantucket CWMP, the Town's 20-year wastewater planning document, which does not include the Property.

As the Zoning Board of Appeals is well aware, in 2008, the General Court enacted legislation (St. 2008, c.396) that authorized Nantucket to create municipal sewer districts through Town Meeting legislation. In 2010, Nantucket Town Meeting used St. 2008, c.396 to adopt a by-law that created municipal sewer districts that can be altered only through Town Meeting Action. The Property is not in a municipal sewer district.

Since the 2010 adoption of the sewer district by-law under St. 2008, c.396, Nantucket has undertaken extensive sewer planning and now has a 20-year comprehensive wastewater plan The careful and comprehensive planning undertaken by the Town has resulted in sewer districts that are carefully aligned with Town Overlay District properties, past 40B developments, and needs areas that were identified in the Comprehensive Wastewater Management Plan approved by the Town. The Property is not currently in a sewer district and there is no plan to extend a municipal sewer district to the Property within the next 20 years.

St. 2008, c.396, §1 expressly provides that, once Town Meeting establishes sewer districts, "No other sewers shall be constructed in any public roads or ways of the town which are not within the limits of such designated sewer districts and which are not under the control of the sewer commission." As a result of the enactment of St. 2008, c.396 (Exhibit 1) and the establishment of municipal sewer districts by Town Meeting (Exhibit 2), the ZBA does not have jurisdiction to extend a municipal sewer district to the Property as the ZBA cannot take the Town Meeting action that is mandated by the General Court as required in order to extend a municipal sewer district. Zoning Board of Appeals of Groton v. Housing Appeals Committee, 451 Mass. 35, 41 (2008)(G.L. c.40B provides no authority for the Housing Appeals Committee to override the requirement for town meeting authorization as established by the Legislature.)

Since the Property is not located in a municipal sewer district or a needs area and the ZBA does not have jurisdiction to take the legislative action necessary to include the Property within a sewer district, the Project cannot connect to municipal sewer without future legislative action. Since the Project proposes to site 4 residential buildings, a pool, a clubhouse, 100 parking spaces and access

ways on 2.5 acres of land, the Property is not feasible without access to municipal sewer, so any grant of a comprehensive permit should be conditioned upon the requirement that the Applicant seek and obtain the necessary legislative action to add the Property to a municipal sewer district.

(2) **Sewer Costs.** If the Property obtains the legislative action needed to be included in a sewer district, the Applicant should be required to pay attendant sewer connection costs and fees.

(3) **Water Infrastructure.** The Property is not served by municipal water and an on-site well appears not to be feasible and if municipal water infrastructure is extended to the Property to serve the Project, the Applicant should be required to pay all attendant water connection costs and fees.

(4) **Wellhead Protection District Issues**. The Property is located in the Lower Nantucket Wellhead Protection District (DEP Zone II) and, during the public hearing, all of the requirements in Zoning By-law ("ZBL") §139-12B should be carefully examined and the Project and any waivers requested for the Project should be specifically and carefully peer reviewed.

The Board of Selectmen urges that the Zoning Board of Appeals not grant any waiver of any requirement that is designed to protect local and municipal water supplies.

- **ZBL §139-12B.2(q)**:

Since the Project proposes impervious surfaces for 70% of the Property, the Zoning Board of Appeals must carefully review this proposal in light of the prohibitions and requirements set forth under ZBL §139-12B.2(q), which prohibits any land use in this district, including all buildings and accessory structures, that would result in impervious surfaces of more than 2500 s.f. or 15% of a lot, whichever is greater, unless an a system for artificial recharge of 95% of annual precipitation is provided that will not result in the degradation of groundwater quality.

Specifically, under ZBL §139-12B.2(q), the Zoning Board of Appeals may and should require the Applicant to provide evidence of groundwater protection, including the history of treatment effectiveness of the proposed design/treatment technology proposed and may require monitoring of on-site, pre-and post-development ground water quality for potential pollutants.

- **ZBL §139-12B.3(a)**:

A determination must be made as to whether the Project triggers the thresholds would result in the requirement for a water compliance finding under ZBL §139-12B.3. That determination should be made in consultation with the Wannacomet

Water Company. If the Project triggers the requirement for the finding, then the finding must be made, either by the Zoning Board of Appeals under G.L. c.40B, in consultation with the Wannacomet Water Company, or, if the applicant agrees, the Applicant could go directly to the Wannacomet Water Company for the review.

- **ZBL §139-12B.3(c)**:

Since the Project proposes a new nonconforming use for the Water Protection District, the Project should undergo the review required under ZBL §139-12B.3(c), with the Zoning Board of Appeals acting for the Planning Board, to make the finding that Project shall be constructed and managed in a way that will eliminate threats to the aquifer through the proposed life of the use and structures proposed. While the special permit requirement does not apply under G.L. c.40B, the Zoning Board of Appeals should impose any conditions that are reasonably necessary to protect the integrity of the aquifer..

(5) Public Safety Issues:

A. Police Issues

All of the safety design issues raised by the Police Chief must be carefully considered. A peer review consultant trained in Crime Prevention Through Environmental Design should be hired to review the design of the Project to make sure that appropriate measures to protect the safety of the future residents and area residents. A copy of the Chief's comments is attached hereto.

As noted by the Chief, landscaping should be carefully designed to provide appropriate screening for the Project, which proposes great density, without creating opportunities for acts of violence to occur. Similar, all entrances and all internal hallways should be carefully designed to promote the safety of the future residents.

In particular, each common element of each residential unit (i.e., floors, ceilings and walls that are shared with an adjacent unit) should be carefully designed and built to provide noise and vibration controls, to protect the quality of life of the residents and prevent conflicts between and among the residents in such a dense development.

In particular, the parking requirement under ZBL §139-18. of one space per bedroom should not be waived as inadequate parking can and will create public safety issues, as noted by the Chief. We note that the Project proposes to devote a large amount of ground area to an outdoor pool, which will reduce the available space for parking. Modifications to the Project must be required to provide for the required parking.

In particular, there must be on site recreational opportunities for children. The main form of recreation is a large outdoor pool area that will be available for recreation purposes only during a short portion of each calendar year. Only a very small play area is proposed. As noted by the Chief, the Project needs to provide areas where effective year-round recreation can take place. The children at the Project will need to be able have paved areas where balls can be bounced and grassy areas where balls can be tossed and a safe area for bike riding.

B. <u>Fire Issues</u>

As noted by the Fire Chief, the Zoning Board of Appeals must make sure that all of the requirements of the new fire code (i.e.,527 CMR 18) are fully peer reviewed and fully satisfied. A copy of the Chief's comments is attached hereto.

Proper access for fire safety vehicles absolutely must be provided in order to protect both the future residents of the Project and the Town's public safety personnel. Failure to provide proper access to buildings will increase response time and allow dangerous conditions to develop that otherwise would be avoided.

The following issues must be carefully peer reviewed and the Project must be carefully conditions to address those issues:

- Public Emergency Access to the Project and the individual buildings must be provided and confirmed through computer modeling. All of the Chief's concerns about access to the Projects and the individual buildings must be fully satisfied. A copy of his comments is attached hereto.
- All Fire Code requirements shall be adhered to.
- Each parking space must be 22 feet long to avoid overhanging vehicles, as overhanging vehicles impair and slow emergency response efforts.
- There must be appropriate storage for residents' boats, either on site or off site, otherwise storage must be prohibited.
- Trees that will grow to block vertical access for emergency vehicles must be prohibited.
- Internal hydrants must be provided as recommended by the Chief. These hydrants must be required to be in place and charged with water when the framing of buildings begins.

(6) **<u>Design Issues</u>.** As designed the Project is inappropriate

A. Density.

The Town is well aware that 40B's typically exceed local zoning standards; however, the Project is entirely out of character with the surrounding

neighborhood. The Project proposes to cover the majority of the Property with buildings, parking areas, access areas, and a swimming pool (which will be unusable for the majority of the year). The application cites 30% open space, the majority of which is unusable as thin strips of ineffective buffer around the perimeter of the property or land shadowed by the bulky buildings. These factors, combined with the lack of buffers for the Project from adjacent residential properties and the massive bulk and height of the buildings proposed, the Project is completely incompatible with its setting. It's worth noting that the proposed scale of the Project, in a more appropriate location, could be acceptable with further design refinements.

The Project is wholly inconsistent with the development concepts established in the Town's 2009 Master Plan, as adopted and in active implementation by the Planning Board, Nantucket Planning & Economic Development Commission, BOS and Town Meeting.

The Applicant asserts (Application p. 32) that the "living space per acre" proposed by the Project is 28,921 s.f. per acre and that this density compares favorably with other "sustainable compact neighborhoods on the Nantucket, as illustrated in Exhibit F to the Application. The neighborhoods, however, that are illustrated in Exhibit F are all located within the Town Overly District and within the Town Sewer District, so they are connected to municipal water and sewer, and are more closely situated to high-density residential and commercial areas, including the downtown and mid-island.

The density for the LUG-2 zoning district in which the Property is primarily located requires a minimum lot size of 80,000 s.f. of area, allows up to two full-size dwellings and one accessory dwelling not exceeding 550 s.f., and a maximum ground cover ratio of 4% is permitted. Assuming full build-out of the Property under existing regulations, there would be three (3) dwelling units totaling 4,341 s.f. of ground cover, and containing approximately 10,853 s.f. of living space (4,341 x 2.5) equal to 1,736 s.f. of "living space per acre." The Project proposes 56 dwelling units totaling 24,676 (22.7%) s.f. of ground cover, and containing approximately 72,303 s.f. of living space, equal to 28,921 s.f. of "living space per acre". The Project includes <u>53 more</u> dwelling units, <u>5.68 times</u> as much ground cover, <u>6.66 times</u> as much living space, and <u>16.66 times</u> as much "living space per acre" as would be allowed under existing LUG-2 regulations.

Furthermore, only 100 parking spaces are proposed for 122 bedrooms, which is insufficient; and 122 are required and needed. The Project proposes a large area of the Property to be devoted to an outdoor pool area that would provide no benefit during most of the year to the residents. The Project needs to be redesigned to provide more parking and increase reasonable, year-round recreational, on-site opportunities and the density should be reduced.

B. Height.

The height of the buildings proposed for the Project is wholly inappropriate for a rural Nantucket setting.

The Zoning Bylaw provides that no building (with limited exceptions in very specific and limited sections of Nantucket that are reserved for dense development) shall exceed 30 feet.

The Project proposes 4 residential buildings with a height of 44 feet and a fourth building with a height of 55 feet. This is totally out of character for Nantucket, generally, and should not be allowed. With the exception of utilitarian structures such as municipal or airport or other institutional buildings, fuel tanks, radio towers, and lighthouses, the only examples of commercial or residential buildings that are similar in scale are located within the downtown and mid-island commercial areas.

C. Aesthetics.

The Project design is historically and contextually inappropriate and inconsistent with the well established guidelines of the Historic District Commission entitled "Building with Nantucket in Mind".

The Project design resembles a dated, oversized resort that would typically be located in a highway oriented commercial strip on the mainland, accented with an oddly located pool at the center. In fact, it is exactly the type of development that the Country Overlay District specifically seeks to discourage and is contrary to the vision articulated throughout the Master Plan. The Project maximizes the use of three story balconies, a design feature which is unprecedented on Nantucket; and, furthermore, the balconies are located in such a way that they loom over adjacent residential properties and the Boy Scout Camp. There is no historic precedent for such a grouping of large scale buildings at an inland location.

In addition, two buildings would be within 10.6 feet of the front yard lot line and this is inappropriate in a location where the required front yard setback is 35 feet. The minimum side yard setback required is 15 feet; however, the proposed setback is as close as 5 feet and the dumpster appears to be located less than five feet from the lot line and in many places the setback from paved areas is less than five feet.

D. Town and Country Overlay District and 2009 Master Plan.

The Project is wholly inconsistent with the Town's Zoning and 2009 Master Plan.

Nantucket's 2009 Master Plan was adopted by the Planning Board pursuant to MGL Chapter 41 section 81D. It was accepted by the Nantucket Planning & Economic Development Commission, Board of Selectmen and Town Meeting

(Article 26). The Master Plan was intended to be a 10 year document and it is actively referenced in over 100 zoning articles presented to Town Meeting over the past 6 years. There has been an effort to coordinate utilities with the zoning districts and to focus development around commercial nodes identified in Figure 15 of the 2009 Master Plan (page 46).

The Town and Country Overlay District concept was adopted by Town Meeting in 2001. In 2006 it was the subject of a survey distributed with the Annual Town Census. A total of 86% of respondents supported the creation of standards consistent with the Town and Country concepts. A non-binding 2006 ballot question was supported by 72% of the voters to "work to adopt additional standards consistent with the Town and Country concept". In 2009, as part of the Master Plan, zoning was re-structured for consistency with these organizational principles which affect the long-term physical development of the island.

The Country Overlay District, under Section 139-12F of the Zoning Bylaw, has the following purpose:

"The purpose of the Country Overlay District is to discourage development and to preserve areas characterized by traditional and historic rural land use patterns; to discourage the spread of disperse development patterns that promote automobile dependency, and are costly to maintain. The purpose of the Country Overlay District shall be considered by the Planning Board or Zoning Board of Appeals when determining the character and extent of site and infrastructure improvements to be required in a decision on an application for site plan approval…"

Conversely, the purpose of the Town Overlay District is to limit the spatial extent of growth by encouraging development where existing infrastructure exists or can be extended without undue expense and to create affordable housing opportunities through infill development, and to create development patterns that are conducive to alternatives to the automobile.

The Project location is wholly out of character for Nantucket, generally, and the Zoning Board of Appeals needs to work with the Applicant to have the Project redesigned and reduced.

(7) <u>Other Important Issues</u>.

The Applicant must be required to analysis of pre and post-construction conditions and pre and post-construction drainage calculations and that a qualified professional engineer provides a report that compares and analyzes the pre and post construction conditions for the Property and all adjoining land and all relevant watershed areas.

The Applicant must be required to provide full stormwater drainage calculations (pre and post construction) to the ZBA and they shall be subjected to peer review at the Applicant's expense.

If the Applicant proposes to use pervious pavement for walkways and parking areas, then that, of course, could mitigate stormwater runoff concerns; however, if that approach is contemplated, there must be a proper operation and maintenance plan that provides for maintaining the pervious pavement, which would be a significant annual expense.

The Applicant must be required to provide drainage information for peer review that shall:

a) be supported by adequate testing of the Property's soils, both as to percolation and permeability rates, and the location of seasonal high ground water levels;

b) be required to undergo peer review by a drainage consultant hired by the Town at the Applicant's expense;

c) be confirmed through peer review, before any approval can take place, to result in no net increase in the volume and rate of stormwater runoff from the Property, based upon drainage calculations that compare pre-construction and post-construction conditions;

d) be confirmed, in particular, through peer review, to not result in any increase in the rate or volume of stormwater runoff from the Property or any change in the runoff from existing adjoining properties, when pre-construction and post-construction conditions are compared;

e) include water control runoff from roofs of the dwellings and any accessory structures that are separate from and not combined with stormwater runoff from paved areas and not be introduced into any stormwater drainage basin;

f) include operation and maintenance and replacement requirements for the access ways and stormwater drainage infrastructure; and

The Project must be required to include a sidewalk (at the Applicant's expense) to allow the future residents to reach the nearest bus stop to allow safe access for residents.

The Applicant must be required to provide a detailed trash removal and recycling plan that identifies the frequency of trash pickup, the dumpster locations, all trash policies and enforcement procedures. Any dumpsters must be located so as to not disturb any adjacent residential property.

The Applicant must be required to obtain and provide a report that provides an estimate of the anticipated school aged children in the Project, so that the Town can plan ahead to serve the children.

The Project must be conditioned so as to eliminate all balconies, which are entirely inappropriate.

If a connection to the water system is allowed, the Applicant must be required to perform all water capacity tests to verify and demonstrate that the Project will not adversely impact the public infrastructure or reduce the water pressure available to existing water users.

The Project should be designed and built so as to maximize energy efficiency in terms of building materials and heating and other infrastructure. That would reduce the cost to the residents and should not greatly increase the Applicant's costs to undertake the Project.

The Project must include internal and off-site sidewalk improvements so as to facilitate pedestrian access to nearby neighborhoods and public transportation facilities. Sidewalks should be constructed of brick, concrete or asphalt (or a combination thereof) and meet AASHTO standards where appropriate.

The Project must have adequate snow storage areas and a snow removal policy that provides for removal in the event of large or repetitive snow events.

We understand the Project will have sprinklers.

The Applicant must perform a traffic infrastructure study, which includes sight distance assessments, to evaluate any improvements that would be required to serve the traffic the Project proposes. This study, given the number of residents proposed to reside in the proposed development, must include an assessment of access to nearby commercial, community, and public transportation facilities. The Traffic Study must take the high tourist seasons into account and include the conflicts that arise from the high number of vehicles, pedestrians and bikers that compete for use of Nantucket's ways and the impact of proposed access points on existing residents and commercial property owners. The Applicant must be required to pay for traffic peer review.

The Applicant must provide a lighting plan, to provide safe lighting for residents, but without light intrusion onto adjacent properties.

The Board of Selectmen thanks the Zoning Board of Appeals for its hard work on this important matter. The Town reserves the right to comment on site control if information comes to its attention that merits additional comment.

Very truly yours,

Robert R. De Costa, Chairman

Matt Fee, Vice Chairman

Rick Atherton

Tobias Glidden

Dawn E. Hill-Holdgate

cc: Police Chief
Fire Chief
Director of Planning and Land Use Services
Town Counsel
Surfside Commons, LLC c/o Atlantic Development

WANNACOMET WATER COMPANY

Nantucket Water Commission
Nelson K. Eldridge
Allen Reinhard
Noreen Slavitz

Robert L. Gardner
General Manager

1 Milestone Road
Nantucket, MA 02554

Telephone (508) 228-0022
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Memorandum

To: Eleanor Antonietti, Zoning Administrator **Via E-mail**

From: Bob Gardner, General Manager

RE: Proposed Surfside Commons 40B, 106 Surfside Road

Date: March 30, 2016

Eleanor, Thank you for providing the relevant materials for the above referenced project and arranging for the site visit yesterday. After reviewing the materials submitted by the Applicant Wannacomet Water Co. offers the following comments to the Zoning Board of Appeals.

1. **Water Service:** As the Applicant has stated, to provide water service to the site the water main will have to be extended from the intersection of Surfside and Fairgrounds Road. Wannacomet will require that the design of this water extension as well as the design of the water supply system within the project be submitted to WWCo for approval. However, at a minimum the new water main to be installed on Surfside Road shall be sized at 12" with fire hydrants every 500 feet. Although, the Fire Chief should be consulted on the number and location of hydrants particularly within the site. The new water main must be extended to the southerly property line and a valve left to facilitate any future extension without interrupting water service to the existing customers. All materials must be approved by Wannacomet Water Company before installation.

2. **Metering:** Wannacomet has looked at several different metering scenarios for this project as well as other similar projects and we have decided on the following metering scheme. We will require that each building have a single master meter owned and maintained by WWCo. We re requesting that the developer provide a suitable location within each building to house the meter. That will be the meter from which the monthly billing will is arrived at. The responsible party for the bill shall be either the developer or a homeowner's association. Should the developer wish to install sub-meters to determine the water use by individual unit we have no objection to that. However, those meters will not be owner or maintained by WWCo.

3. **Wellhead Protection District:** This project is within the Wellhead Protection District as defined in §139-12 of the Town of Nantucket Zoning By-laws. Therefore, upon request, and only upon request, from the ZBA the WWCo will be required to issue or deny a Certificate of Water Quality Compliance (CWQC). I have reviewed the drainage

calculations provided by the Developer and concur with their findings. However, prior to the issuance of a CWQC we will need to review the stormwater collection, treatment and recharge structures. I also, reviewed the inspection and maintenance plan for the stormwater system and find it to be acceptable and commend the applicant on including it with his submittal.

4. **Fees and Waiver Requests:** The Nantucket Water Commission has reviewed the requested waiver to local regulations as outlined in the submittal to the ZBA. The Applicant has requested the following two waivers from the Water Commission.

    a. **Relief from Zoning By-law §139-12:** This Zoning By-law established the Wellhead Protection District and requires the Nantucket Water Commission acting through the Wannacomet Water Company to issue a Certificate of Water Quality Compliance when so requested by a permitting agency when the application triggers the threshold requirements outlined in the By-law. Therefore, the Water Commission cannot waive the requirements that trigger the need for a CWQC. However, The Wellhead Protection District Zoning By-law is one of the most significant tools for protecting the aquifer and should the ZBA waive that requirement the Water Commission will certainly exercise whatever options are available to the Commission to contest such a waiver.

    b. **Waiver of the Water Connection Fees:** The conne4ction fee to the existing system is $5,000 and will not be waived by the Water Commission. The current connection fee for a 1" meter installed inside the living unit is $1,600.00. Thus, the connection fee for the 56 living units and the single connection for the Clubhouse would units would be $91,200.00 plus the $5,000 for connecting to the existing system for a total fee of $96,200. However, under the meter scenario that we described in Number 2 above the connection fee would still be $5,000 for connecting to the existing system but the connection fees for the living units and clubhouse would be $7,600 per building (5) for a total connection fee of $38,000. Thus the total connection fees for the living unit buildings and the clubhouse would be $43,000.

The bottom line is that the Water Commission is not going to waive any of the current fees regardless of the methodology used to compute the fees. All fees must be paid before the connection is made to the existing system.

Thank you for the opportunity to submit these comments and the Water Commission and Wannacomet Water Company will be present at the hearings.

NANTUCKET HISTORIC DISTRICT COMMISSION
2 FAIRGROUNDS ROAD
NANTUCKET, MA 02554
508-325-4150

RECOMMENDATION TO THE NANTUCKET ZONING BOARD OF APPEALS
106 SURFSIDE ROAD 40B APPLICATION

At a duly posted public meeting on Thursday, March 31, 2016 held at 1:00 PM in the training room of the Nantucket Police Department at 2 Fairgrounds Road, the Nantucket Historic District Commission ("HDC") reviewed in detail the architectural plans and landscape site plans for the above noted Surfside Commons 40B application ("Application") before the Nantucket Zoning Board of Appeals ("ZBA"). After members of the public made comments, the HDC discussed and reviewed the matter and rendered the following recommendations and concerns related to this application:

1. The public expressed concerns about the scale and density of the proposed structures, dramatic grade changes, rural large-lot context, fundamental incongruity of the design with the basic principles of our design guidebook *Building With Nantucket In Mind*, negative visual impact on the immediate surrounding area and the community as a whole, lack of open space, and proximity to the street of structures and pool. This does not reflect every concern voiced at our meeting.

2. Nantucket is listed in the National Register of Historic Places. It was also added to the endangered list in 2000 by the National Trust for Historic Preservation due to threat of over development and density of said development. With the entire island included in the Historic District, the subject property is situated within the Historic District, a formally recognized, designated area of particular historic value and status. The impact of the project must be considered as having an impact on the island as a whole and its architectural history.

3. After review of the 40B statute as it relates to architectural features, the HDC finds that this project is not consistent with the 40B statute. According to 40B guidelines, the design and density of the proposed project must take into account the surrounding context, referencing and blending into the typology of adjacent buildings and streets, as well as existing development patterns. (See *Handbook: An Approach to Chapter 40B Design Reviews* (January 2011), page 12, prepared for the Massachusetts Department of Housing and Community Development.) The officially required submittal materials for Site Eligibility are listed in 760 CMR 56.04 (2) and require a narrative description that explains the proposed approach to building massing, how the proposed project relates to adjacent properties, and the proposed exterior building materials. The Application does not contain such a narrative, nor any attempt at an evaluation of the project's compatibility with adjacent properties. In particular, the current proposal inadequately takes into account the existing rural context, the modestly scaled residential development, and the undeveloped wilderness refuge at Camp Richards in the areas that lie immediately to the south, west, north and east of the property. Many of these areas are omitted entirely from the submitted maps of the proposed project site. The impact and compatibility of the proposed design on and with these adjacent properties, all of which lie within state, National Register, and National Historic Landmark historic districts, are of particular concern.

4. **Height** – Applicant's proposed ridge heights, ranging from 44 to 55 feet, are grossly out of scale in a neighborhood of single story and story and a half houses which are generally 18 to 24 feet high.

5. **Density** – The property is situated in a large-lot 2 acre (80,000 SF) zoning district, aka Limited-Use-General-2 ("LUG-2"). The LUG-2 zoning district allows a maximum ground cover of 4%. This allows for a rural setting with a minimum of 96% of open space on a given lot. This area has been zoned in this manner since the 1972 enactment of the Nantucket Zoning By-law. The proposed ground cover is in excess of 22.7%, in addition to the removal of almost all remaining green space as a result of proposed paving and other "hard" landscape features such as a pool and walkways.

6. **Grading** – Applicant proposes to alter the grade on this relatively flat lot by as much as six (6) feet. Generally speaking, the HDC does not approve grade changes of this type on flat lots in order to get structures higher out of the ground. The grade change would be completely inconsistent with the surrounding lots.

7. **Siting** – Generally the placement of dwellings and ancillary structures in the Surfside area are set back from the travelled ways for privacy and to enhance open space and screening. For this reason, the required front yard setback is 35 feet. The applicant is proposing to site the closest structure only 10.6 feet from the front yard lot line along Surfside Road. The minimum side yard setback required is 15 feet. The closest proposed structure is about five feet. This further illustrates the applicant's wanton disregard for the neighborhood and its visual traditions.

8. **Scale/design** – As stated above the height is out of scale with the surrounding area and Nantucket in general for residential structures.

    - There is a long standing policy that residential structures cannot have an unbroken ridge line of more than 50 feet and the HDC generally requires much shorter unbroken ridge lines. The proposed structures are far in excess of that length overall and in all likelihood four times the length of a typical rural dwelling in the same area (up to 149 feet long on at least one building).
    - Monolithic massing.
    - The structure has three stories above ground, one below in some instances.
    - Inconsistent and extreme roof pitches, along with multiple decks on upper floors.
    - Inconsistent railing details.
    - Narrow 4/4 and 6/6 paned windows, chaotic window and door configurations/sizes.
    - Doors that are too high with inappropriate glass in sidelights, doors and transoms that are not approvable on any structure.
    - Half round windows, gable roof systems that are atypical, flat roofed elements, ganged windows/over fenestrated wall planes, conversely under fenestrated wall planes, multiple doors on one wall plane.
    - 15-unit building has three floors of exterior decks over a clearly visible fourth floor under them creating something that does not exist anywhere on Nantucket.
    - There is no clear lighting design and the HDC does have jurisdiction over lighting.
    - We also do not have a materials list and question what materials are proposed.
    - The HDC feels that the design is unworkable from an architectural standpoint.

The HDC is extremely concerned about this project. It is sited near a beach that still has one of the original lifesaving stations as well as older parts of the Surfside Beach community that was established before the turn of the last century. This project is impossible to screen and would be counter to the historic preservation efforts on Nantucket. The Applicant has clearly made no attempt to propose a design that would be integrated into the neighborhood no matter how many units this may be reduced to. Should the Applicant reduce and alter the design we are hereby requesting that the revised proposal be sent back to the HDC to comment further.

This development has the potential of ruining the historic character of not just the immediate neighborhood but the island in general as it is counter to everything that all other 40Bs and property owners have been made to conform to. The danger of the ZBA approving this proposal, which has no historic architectural integrity, would be catastrophic. The HDC was unanimous in its opinion that there was nothing to work with as proposed. Almost every aspect of the structures and hardscaping is contrary to *Building With Nantucket In Mind.*

For these reasons set forth above, the HDC is recommending that the ZBA deny the application.

Additional supplemental information the HDC would like to share with the Zoning Board of Appeals regarding the proposed application for 106 Surfside:

It is not clear whether the Applicant has presented this project to the Massachusetts Historic Commission ("MHC"), who must review all projects that require state permitting, funding, or licensing per Massachusetts General Laws Chapter 9, sections 26-27c, such as a 40B. Additionally, we question whether the applicant has had an archeological survey done on this property, as surrounding properties in the area have had to do. Though outside the jurisdiction of the local HDC, these issues were of great concern from an historic point of view. These regulations set up a process that mirrors the federal Section 106 regulations: identification of historic properties; assessment of effect; and consultation among interested parties to avoid, minimize, or mitigate any adverse effects. These regulations also make certain that government actions are studied and, that proposed undertakings be modified, if feasible, so that public funds are not used in ways that cause needless destruction of our heritage. In this case, Nantucket's heritage is the uniqueness of the architecture and settings.

State review will provide necessary guidance by evaluating the effect of the proposed development on the character of this particularly rural portion of the Nantucket historic district. The MEPA and MHC review process will also ensure that the site is properly evaluated by the state archaeologist's office for any unmarked burials and other subsurface archeological resources, which is of special concern given the close proximity of the proposed development to the Miacomet Burial Ground at 95 Surfside Road and other known Native American sites in the vicinity. State regulations require that this review process be completed before any state agency (such as Mass Housing) takes final action on the project. Nantucket ZBA may wish to forestall its review of the project until such time as the required MHC and MEPA review process is completed.

NANTUCKET HISTORICAL COMMISSION
16 Broad Street, Nantucket, MA 02554

April 27, 2016

Mr. Edward S. Toole, Chairman
Nantucket Zoning Board of Appeals
2 Fairgrounds Road
Nantucket, MA 02554

Dear Mr. Toole,

As chairman of the Nantucket Historical Commission, I have been asked to send a letter, by unanimous vote, regarding the proposed 40B project at 106 Surfside Road.

Our board is concerned about the impact the proposed project would have on the historic integrity of the island and its National Historic Landmark status. This project would adversely affect the Nantucket character and appearance that makes the island a unique and special place. Nantucket's historic integrity – its architecture, landscapes and neighborhoods – is a main draw for second-home owners and the tourist industry which is the backbone of our economy.

Nantucket Island's uniqueness is irreplaceable and must be protected by all stewards of this small island. The long-time preservation ethic of Nantucket has and remains an essential reason for the survival of its rich architectural heritage. In 2000 concern for the island lead The National Trust for Historic Preservation (NTHP) to name Nantucket as one of its 11 most endangered places in the United States. According to the NTHP website; "The list is used to raise awareness about the threats facing some of the nation's greatest treasures." The island in its entirety makes up the Historic District. Any new building, anywhere on the island, especially one of this magnitude, has the potential to greatly add to the erosion of the island's historic integrity and character.

Further, we are extremely concerned about potential archeological areas that might be on the site. This area was once a thriving Indian village, and this particular site is in close proximity to the Indian burial grounds.

This Commission, appointed by the Board of Selectmen, feels very strongly that this project should not move forward. Please do not hesitate to contact us should you wish to discuss this further.

Sincerely,

Deborah Timmermann,
Chairman

Cc: Eleanor Antonietti
Board of Selectmen

Memorandum on Sewer Issues Sent on 4/6/2016 by Applicant

goulston&storrs
counsellors at law

TO: Nantucket Zoning Board of Appeals

FROM: Goulston & Storrs PC

DATE: April 6, 2016

SUBJECT: Surfside Commons (the "Development")

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1. Background

On December 18, 2015, Surfside Commons LLC (the "Applicant") submitted to the Nantucket Zoning Board of Appeals (the "ZBA") an application (the "Application") for a comprehensive permit for a rental development consisting of 56 units (the "Project") pursuant to M.G.L. c. 40B §§20-23 and its implementing regulations at 760 CMR 56.00 et seq. (collectively, "Chapter 40B") on a site on Nantucket (the "Town") located at 106 Surfside Road (the "Site"). The Project will be served by the Town sewer system and will involve the extension of the existing sewer line via a new force main to be installed along Surfside Road and Fairgrounds Road. The Site is not currently located in a Town "sewer district" established under Chapter 396 of Acts of 2008 (the "Act"). Among the waivers requested from the ZBA in the Application is a waiver of all requirements of the Act for extension of the Town's sewer district and approval of the Project's connection to the Town's sewer system (the "Waiver"). At the first hearing on the Application on January 14, 2016, the ZBA requested a memorandum from counsel for the Applicant and the ZBA regarding the ZBA's authority to grant the requested Waiver. This memorandum responds to that request on behalf of the Applicant.

2. Summary

Pursuant to Chapter 40B, the ZBA has the authority and the exclusive jurisdiction to grant the Waiver. Both Town Meeting and the Town's Board of Selectmen ("BOS") acting as the Town's Sewer Commission (the "Sewer Commission") are "local boards" as such term is defined in Chapter 40B. Moreover, the Act itself contemplates that projects proposed in the Town under Chapter 40B would not be required to seek either Town Meeting or BOS approval.

3. Summary of the Act's Relevant Provisions

Section 1 of the Act provides in pertinent part that the Town "acting by and through the Nantucket sewer commission may lay out, plan, construct, maintain and operate a system or systems of common sewers for a part or whole of its territory, as may be from time to time defined and established by adoption by town meeting of one or more by-laws as a designated

sewer district under the jurisdiction and control of the sewer commission .... No other sewers shall be constructed in any public roads or ways of the town which are not within the limits of such designated sewer districts and which are not under the control of the sewer commission."[1].

The upshot is that under the terms of the Act, in general, if a property in the Town is not located in a sewer district, in order for any improvements on that property to be connected to the Town's sewer system, two things need to happen: 1) the Town Meeting must vote to create a new sewer district or extend an existing sewer district to include the property; and 2) the BOS must approve the extension and connection of that property to the Town's sewer system.

However, Section 11 of the Act ("Section 11") reads as follows:

> "Notwithstanding anything to the contrary contained herein, the board having charge of the maintenance and repair of sewers may at any time permit extensions, new connections or increases in flow to the sewer system, subject to capacity, to serve municipal buildings or public restrooms or other public service uses as defined by the municipality; provided, however, that such uses may include, but shall not be limited to, affordable housing constructed pursuant to chapters 40B and 40R of the General Laws, without thereby creating any entitlement on the part of any person to connect to such sewer system, and subject to capacity, in order of application, may permit or if in the public interest, may require, extensions, new connections or new flow to the sewer system within such districts." (emphasis added)

The legislative history of the Act is instructive as to the meaning and intent of Section 11. As originally filed by the House, Section 11 did not include the clause: "or other public service uses as defined by the municipality; provided, however, that such uses may include, but shall not be limited to, affordable housing constructed pursuant to chapters 40B and 40R of the General Laws" (the "Language"). In an October 9, 2008, message to the House, the Governor stated that as originally written, "the bill raises concerns that affordable housing developments could be denied access to sewer connections". As a result, the final version of the bill included the Language, which amended version was approved by the House on December 4, 2008, and signed by the Governor on December 17, 2008.

4. Town Meeting and the BOS are "Local Boards" under Chapter 40B.

Under Section 21 of Chapter 40B, a zoning board of appeals has the exclusive jurisdiction to issue a comprehensive permit pursuant to a single application "in lieu of separate applications to the applicable local boards." The zoning board of appeals shall "have the same power to issue permits or approvals as any local board or official who would otherwise act with respect to such application."

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[1] It is our understanding that the Town has not established an independent sewer commission under the Act, and instead the BOS acts as the Sewer Commission.

Under 760 CMR 56.02, "local board" is defined as:

> "any local board or official, including, but not limited to any board of survey; board of health; planning board; conservation commission; historical commission; water, sewer, or other commission or district; fire, police, traffic, or other department; building inspector or similar official or board; city council or board of selectmen. All boards, regardless of their geographical jurisdiction or their source of authority (that is, including boards created by special acts of the legislature or by other legislative action) shall be deemed Local Boards if they perform functions usually performed by locally created boards." (emphasis added)

There is no language in the Act indicating that the legislature intended that the Act exclude either Town Meeting or the Town Sewer Commission from the definition of a "local board" under Chapter 40B, the definition of which includes boards of selectmen. As the Supreme Judicial Court found in Dennis Housing Corp. V. Zoning Bd. of Appeals of Dennis, 439 Mass. 71 (2003):

> "[t]he 'local boards' whose ordinary jurisdiction may be exercised by the [ZBA] under [Chapter 40B] are defined as 'any town or city board of survey, board of health, board of subdivision control appeals, planning board, building inspector or the officer or board having supervision of the construction of buildings or the power of enforcing municipal building laws, or city council or board of selectmen.'"

Town Meeting and the BOS acting as the Town's Sewer Commission, whose approval would otherwise be required to extend the Town's sewer district to include the Site and connect the Project to the Town's sewer system, are clearly "local boards" under Chapter 40B. This is true even though the Act specifically mandates approval by Town Meeting and the Sewer Commission, because in this regard the Act is a "special act of the legislature" under which the bodies in question are performing "functions usually performed by locally created boards". It follows that the provisions of the Act authorizing the Town Meeting to approve new sewer districts and extend existing sewer districts, and granting the Sewer Commission the power to permit extensions, new connections or increases in flow to the sewer system are "Local Requirements and Regulations", as defined in 760 CMR 56.02. These requirements are within the exclusive jurisdiction of the ZBA in the Chapter 40B context. See, e.g. Board of Appeals of Wilmington v. Wilmington Arboretum Apts. Associates Limited Partnership, 39 Mass. App. Ct. 1106, (Mass. App. Ct. September 8, 1995), with Judgment after Rescript dated October 24, 1995.

5. Specific Language of Section 11 of the Act

The language of the Act itself provides further support that the ZBA has the exclusive authority to grant approval for the sewer extension to serve the Project. As quoted above, Section 11 states that "the board having charge of maintenance and repair of sewers" may grant

approval for extensions to serve public service uses, specifically including "affordable housing constructed pursuant to chapter[] 40B". Based on the definition of "local board" and the relevant case law referenced above, there can be no doubt that the "board having charge of maintenance and repair of sewers" is a local board. Therefore, this board's authority is subsumed within the ZBA's authority under Chapter 40B. It inexorably follows that the comprehensive permit issued by the ZBA is the sole approval necessary to connect the Project to the Town's sewer system.

6. Conclusion

Under Chapter 40B, the ZBA has the exclusive jurisdiction and authority to allow the Project to connect to the Town's sewer system by issuing a comprehensive permit. No other approval is required, neither from the Town Meeting to create a new sewer district or extend the existing sewer district, nor from the BOS acting as the Sewer Commission to connect to the Town's sewer system. Nothing in the language of the Act conflicts with this, and in fact, Section 11 of the Act confirms this conclusion. Any other conclusion would result in the ability of the Town to stymie any Chapter 40B project proposed to be undertaken in the Town outside a current sewer district, which would be in direct conflict of the purposes of Chapter 40B "to reduce regulatory barriers that impede the development of [affordable] housing."

Memorandum in response to

comments & recommendations contained in Town/ BOS letter presented on 4/7/2016

Sent on 4/11/2016 by Applicant

goulston&storrs
counsellors at law

TO: Nantucket Zoning Board of Appeals

FROM: Goulston & Storrs PC

DATE: April 11, 2016

SUBJECT: Surfside Commons (the "Project")

Members of the Zoning Board of Appeals:

On April 7, 2015, Surfside Commons LLC (the "Applicant") received a copy of the letter from the Town of Nantucket Board of Selectmen ("BOS") to the Nantucket Zoning Board of Appeals (the "ZBA"), dated April 6, 2016, regarding "Surfside Commons 40B Comments" (the "Letter").. As the Letter was filed on the very last day that the ZBA had requested that comments be submitted for its consideration at the upcoming hearing on April 14, the Applicant did not have an opportunity to review it and submit a detailed response prior to the ZBA's deadline for comments. However, the Letter raises a number of very important issues and takes certain positions with which the Applicant firmly disagrees. Therefore, on behalf of the Applicant, we are taking the opportunity to submit this supplemental memorandum for the ZBA's consideration. Our intention is not to respond in detail to all of the specific points made in the Letter, but merely to respond on a general level to some of the issues raised therein.

1) **Sewer Issues**. At the ZBA's first hearing on this matter, the ZBA requested that each of counsel for the Applicant and counsel for the ZBA submit its legal analysis as to whether the ZBA has the authority to permit (i) the extension of the Nantucket municipal sewer system (the "Sewer System") and (ii) the connection of the Project to the Sewer System. This firm responded by memorandum to the ZBA dated April 6, 2016. To date, we have not seen any submission made to the ZBA by its counsel.

However, the BOS has set forth its legal analysis in the Letter, which reaches the conclusion that the ZBA does not have such authority and that the Applicant must seek "legislative action" (presumably meaning Town Meeting approval) to add the Project site to the Town's sewer district. In reaching this conclusion, the Letter does not analyze any aspect of the relevant statutes, ordinances or regulatory provisions, but cites only a single authority:

> "[T]he ZBA does not have jurisdiction to extend a municipal sewer district to the Property as the ZBA cannot take the Town Meeting action that is mandated by the General Court as required in order to extend a sewer district. Zoning Board of Appeals of Groton v. Housing Appeals Committee, 451 Mass. 35, 41 (2008) (G.L. c. 40B provides no authority for the Housing Appeals Committee to override the requirement for town meeting authorization as established by the Legislature)."

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The Letter totally misstates the holding of the Groton case. The issue in that case was whether the comprehensive permit granting authority "may require, as a condition to the grant of a comprehensive permit for an affordable housing development project, that a municipality convey an easement on its land to the project's developer." 451 Mass. at 36. The Supreme Judicial Court found as follows:

> "[Chapter 40B] does not authorize the committee, directly or indirectly, to order the conveyance of an easement over land abutting the project site of a proposed affordable housing development. On review of a board's denial of an application for a comprehensive permit, the committee has "the same power to issue permits or approvals as any local board or official who would otherwise act with respect to such application." G. L. c. 40B, § 21. See Dennis Hous. Corp. v. Zoning Bd. of Appeals of Dennis, 439 Mass. 71 , 77 (2003). An order directing the conveyance of an easement, however, cannot logically or reasonably derive from, or be equated with, a local board's power to grant "permits or approvals." The phrase "permits or approvals," read in the context of the entire Act, refers to building permits and other approvals typically given on application to, and evaluation by, separate local agencies, boards, or commissions whose approval would otherwise be required for a housing development to go forward .... To obtain approval to develop a site (whether for affordable housing or another use), a developer would not usually be required to obtain easements from abutters, and a local board would have no authority to direct an abutter to grant an easement." 451 Mass. At 40.

In the case of the Project, the Applicant does not require any approval by Town Meeting for an easement or any other real property right. Instead, what the Applicant requires is clearly a permit or approval to connect to the Sewer System. As demonstrated in our April 6, 2016 memorandum, in this regard, Town Meeting is nothing other than a "local board", whose authority is subsumed within the ZBA's exclusive jurisdiction as the comprehensive permit granting authority. Therefore, the Letter reaches an incorrect conclusion as to the ZBA's authority as a matter of law.

The authority of the ZBA to approve the Project's connection to the Sewer System is not a minor legal skirmish. It is, rather, a threshold issue that is at the heart of the viability of the Project. The Letter requests to the ZBA that "any grant of a comprehensive permit ... be conditioned upon the requirement that the Applicant seek and obtain the necessary legislative action to add the Property to a municipal sewer district." In other words, the Letter requests that the ZBA determine that the Project be made subject to an approval to be granted by Town Meeting, a result that is precisely what G.L. c. 40B ("Chapter 40B") was intended to avoid. Any decision by the ZBA to condition the Project on the requirement to obtain Town Meeting approval will be an illegal condition under Chapter 40B and its implementing regulations, and will result in the appeal of such decision by the Applicant to the Housing Appeals Committee.

2) Sewer Costs. The Letter appears to urge the ZBA to reject the Applicant's request for a waiver of sewer fees that might be applicable to the Project and states that the "Applicant should be required to pay attendant sewer costs and fees." The Letter, however, does not specify what these costs and fees should be. According to information received from the Project's civil engineer, the sewer connection fee as shown under Section 200-26 of the Town's Wastewater Systems Regulations Governing the Use of Common Sewers is $2,000 per unit. Based on this, the connection fee would be $112,000 ($2,000/unit x 56 units = $112,000). The Project's engineer also reports that the Town in some cases also imposes sewer privilege fees and capacity

utilization fees. If applicable, it is our understanding that these fees can typically take the form of a betterment charge and be paid over 20 years. We note that 760 CMR 56.05(8)(d) prohibits the imposition of costs that "are not generally imposed by a Local Board on unsubsidized housing" or that are "disproportionate to the impacts reasonably attributable to the Project." Accordingly, any imposition of sewer fees on the Project needs to be done in a manner which is fully consistent with the manner in which other non-Chapter 40B projects have been treated. Further, to the extent proposed sewer fees are not reasonably related to the Project's potential impacts on the Sewer System, the Applicant's waiver request must be granted. Such a waiver would be especially warranted in this case, where Section 11 of Chapter 396 of the Acts of 2008 treats Chapter 40B projects in the Town as "public services uses".

3) Water Infrastructure. The Letter similarly states that the "Applicant should be required to pay all attendant water connection costs and fees". The Applicant will be extending the Town's municipal water main to serve the Project and is prepared to provide stubs for water service for all other properties that abut the new water main extension. This is a significant public benefit for the Town as a whole, and justifies a waiver of water fees for the Project.

4) Wellhead Protection District Issues. The Project engineers have provided for a stormwater design that will comply with all applicable state standards and requirements. Lot coverage is consistent with many other Mid-Island developments undertaken in recent years that have been permitted The Project will not have any adverse impact on the Town's aquifer. Stormwater calcuations have been provided. Additional details as may reasonably be requested by the ZBA to demonstrate this compliance can be provided as the hearing progresses.

The Project does not require a water compliance finding under ZBL §139-12B.3, as the Project does not exceed the thresholds set forth in ZBL §139-12B.2(s).

5) Public Safety Issues:

a. Police Issues. Public safety has been at the forefront of the Project's design and the Applicant intends that an on-site manager will be available to prevent and address any issues. As "crime prevention" is outside the scope of the ZBA's review under Chapter 40B, the Applicant respectfully declines the suggestion that any peer reviewer be hired in this regard.

b. Parking. The Applicant is proposing a ratio of parking of almost 1.8 spaces per unit for residents and visitors, which in the Applicant's experience, is more than sufficient parking for residents and visitors.

c. Recreation. The Project provides onsite recreational opportunities for children and is easily accessible from the bike path, which provides access to numerous recreational activities on Nantucket.

d. Fire Issues. The Project will comply with all applicable state and local requirements relative to life safety and emergency vehicle access, and will be fully equipped with sprinklers.

6) Design Issues. Much of the Letter is spent decrying the appropriateness of the location and design of the Project. While the Town has not been at all successful in addressing the dire

need for multifamily rental development and for affordable housing of any kind, it has approved projects with comparable density in other areas within the Town.

With regard to the appropriateness of the site, the Applicant rests on the finding in the Project Eligibility Letter ("PEL") from the Massachusetts Housing Partnership:

> "The site of the proposed Project is generally appropriate for multifamily residential development. The location provides access to the mid-island commercial and municipal services area with significant employment opportunities. There is a seasonal bus route with a stop within walking distance of the site."

With regard to the Project's design, we again cite to the PEL:

> "The proposed conceptual Project design is generally appropriate for the site. The site design incorporates clustering of the buildings to the rear and sides of the site to minimize their visual impact. Building side yard setbacks from adjacent properties are 15', the same as required in the underlying zoning district. The buildings have been situated to present the programmed activity spaces visibly to the main road so as to create a welcoming, residential entrance. The building exteriors have features to visually reduce the mass and scale. The design incorporates projected bays, trim accents at the windows, and material and textures to visually reduce the mass of the building."

The BOS' general approach to the Project is revealed by its approvingly citing the following from the provisions of the County Overly District:

> "[t]he purpose of the Country Overlay District is to discourage development…" (emphasis added)

This demonstrates that the Board's issue with the Project is not really with the Project's design, but rather its very existence as a proposal. This is precisely the attitude and approach that Chapter 40B is intended to counteract.

106 SURFSIDE RD.

40B

Town Counsel Response to Applicant Memo dated 4/6/2016

FILE NO. 04-16

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April 13, 2016

Nantucket Zoning Board of Appeals
Nantucket Town Hall
16 Broad Street
Nantucket, MA 02554

Re: Surfside Commons 40B – Sewer Connection Authority of the ZBA under St. 2008, c.396

Dear Members of the Zoning Board of Appeals,

You requested an opinion regarding the April 6, 2016 Memo by counsel for Surfside Commons, LLC ("Surfside"). First, Surfside asserts the "Act Authorizing the Establishment of the Nantucket Sewer Commission and Sewer Districts in the Town of Nantucket" (St. 2008, c.396) ("Sewer Act") authorizes the Nantucket Sewer Commission ("Commission") to allow an extension of sewer infrastructure outside of the sewer districts established by by-law under the Act by Town Meeting, without any further Town Meeting action, if the extension is for affordable housing constructed under G.L. c.40B; and, therefore, the Zoning Board of Appeals ("ZBA") is authorized to approve such an extension under G.L. c.40B without any further Town Meeting action. Second, Surfside asserts that, even if Town Meeting action were necessary under the Sewer Act to approve a sewer extension, then Town Meeting is a "local board" within the meaning of G.L.c.40B, §§20-23; and, therefore, the ZBA may sit as Town Meeting under the authority granted under G.L. c.40B; and take action to approve an extension of sewer infrastructure outside of the established sewer district.

In my opinion, each of the two opinions asserted by Surfside is incorrect for the reasons set forth below.

First, in my opinion, the Sewer Act by its plain language does not authorize a local board to approve an extension to the sewer system for affordable housing constructed under G.L. c.40B, unless Town Meeting previously defined affordable housing constructed under G.L. c.40B as a "public service use," which Town Meeting has not done.

Section 1 of the Sewer Act authorized Town Meeting to create a sewer system by adoption of by-laws that designate sewer districts. Section 10 of the Sewer Act provides that "owners of land not within the sewer districts defined and established pursuant to section 1 … shall not be permitted to connect to the town's sewer system, except as provided for under this act." Section 11 of the Sewe4r Act (the section upon which Surfside relies) authorizes the Sewer Commission "to permit extensions to … the sewer system, subject to capacity, to serve … public service uses **as defined by the municipality**; provided, however, that such uses **may** include, but shall not be limited to, affordable housing constructed pursuant to chapter 40B … of the General Laws …." (Emphasis added.)

Surfside asserts that Section 11 requires that affordable housing constructed under G.L.c.40B ***shall*** be "treated as "public service uses;" however, Section 11 contains no such command. To the contrary, Section 11 specifically provides that the Town, through the definitions adopted by Town Meeting (whether under a duly promulgated by-law provision or a resolution), "***may*** include … affordable housing constructed pursuant to chapter 40B and 40R of the General Laws" within the definition of "public service uses." (Emphasis added.) If "shall" was intended, that word would have been used.

In other words, Section 11 of the Sewer Act does **not** state that "affordable housing uses "***shall*** be included" in the definition of "public services uses," only that such uses "***may*** be included" by Town Meeting within that definition; and there is not a duly promulgated by-law (or resolution) by which Town Meeting has included affordable housing constructed under G.L. c.40B within the definition of "public services uses" under the Sewer Act.

Certainly, the addition of language within the Sewer Act, to allow Town Meeting to define affordable housing constructed under G.L. c.40B as a "public services use" does allow Town Meeting to provide for a specific and exceptional category for such construction, but the language does not compel Town Meeting to take that legislative action and Town Meeting has not taken that legislative action.

Surfside argues that the "legislative history" for the Sewer Act (i.e., Surfside's assertion that the "public service use" language was added to the bill to address affordable housing issues) warrants a conclusion that the Sewer Commission and, so the ZBA sitting as the Sewer Commission, may extend the sewer district without further legislative action by Town Meeting. This is incorrect also, in my opinion,

The plain language of Section 11 of the Sewer Act provides that the Sewer Commission may "permit extensions to … the sewer system, subject to capacity, to serve … **public service uses as defined by the municipality**; provided, however, that such uses may include, but shall not be limited to, affordable housing constructed pursuant to chapter 40B … of the General Laws….." When the plain meaning of a statute is clear and unambiguous, as this language is, the interpretation of the statute does not turn on extrinsic sources, unless a literal construction would yield an absurd or unworkable result. Commonwealth v. Perella, 464 Mass. 274, 276 (2013). The statutory language itself is the" primary source of insight." Id (citing Commonwealth v. Millican, 449 Mass. 298, 300-302 (2007). The fact that the language added is discretionary in nature (i.e., the use of the word "may" rather than the word "shall") is all the legislative history necessary. Town Meeting has not defined the term "public services uses" as including affordable housing constructed under G.L. c.40B.

As a result, legislative action by Town Meeting is required under the Sewer Act in order to connect any property to the sewer system that is outside of the sewer districts already designated by Town Meeting.

Second, in my opinion, Town Meeting is a legislative body and is not a local permitting board for purposes of G.L. c.40B and, therefore, the ZBA may not sit as Town Meeting under G.L. c.40B and take legislative action that is reserved to Town Meeting to enact a by-law to extend the sewer district to Surfside's property.

Certainly, the ZBA sits, under G.L. c.40B, as any local board that has "supervision of the construction of buildings or the power of enforcing municipal building laws"; however, the legislative action that Town Meeting to adopt by-laws (such as the by-laws contemplated under the Sewer Act) is not an action that involves the supervision of the construction of buildings.

It is settled that Town Meeting has two functions: (1) to take part in the election process; and (2) to act "as the legislative arm " of the Town. Opinion of the Justices to the Senate, 358 Mass. 838 (1971). Town Meeting does not issue land use permits or approvals and is not a "local board" within the meaning of G.L. c.40B, §20. Zoning Board of Appeals of Groton v. Housing Appeals Committee, 451 Mass. 35, 38 (2008)(G.L. c.40B cannot be used to compel the grant of an easement by a municipality, which would require town meeting action). "The phrase "permits or approvals," read in the context of the entire Act, refers to building permits and other approvals typically given on application to, and evaluation by, separate local agencies, boards, or commissions whose approval would otherwise be required for a housing development to go forward." Id. G.L. c.40B, §20 and §21 refer to specific local boards that grant land use permits and the ZBA's jurisdiction under G.L. c.40B is "necessarily limited to the types of concerns and powers of these boards" and while the list of specific boards is not exhaustive, the jurisdiction of the ZBA is limited to the functions that local boards exercise when issuing permits in relation to the "height, site plan, size or shape, or building materials" of a project. See, Zoning Board of Amesbury v. Housing Appeals Committee, 457 Mass. 748, 755-756 (2010).

Finally, while it is true that, under 760 CMR 56.05(7), the ZBA may grant a waiver from "Local Requirements and Regulations, " that term, under 760 CMR 56.01, is defined as the existing legislative actions "which are more restrictive than state requirements;" but, here, the relevant by-law that created the existing sewer districts is **pursuant to a state law** and, so, the bylaw is not more restrictive than state requirements allows. Even more to the point, however, Surfside does not seek a ***waiver*** of the relevant by-law that Town Meeting adopted under the Sewer Act to create the existing sewer district, rather, Surfside is requesting the ZBA to take new legislative action that is necessary under the Sewer Act in order to extend the sewer district to include Surfside's property. The ZBA does not have that authority.

So, in my summary, it is my opinion that the Zoning Board of Appeals does not have the authority, sitting as the Sewer Commission, to extend the existing sewer district, which can be accomplished only by Town Meeting by by-law under the Sewer Act, to include Surfside's property; and, furthermore, G.L. c.40B does not confer Town Meeting's legislative power to enact or amend a by-law to extend the sewer district under the Sewer Act to include Surfside's property because Town Meeting is not a Local Board under G.L .c.40B, §20 or §21.

Very truly yours,

Ilana M. Quirk

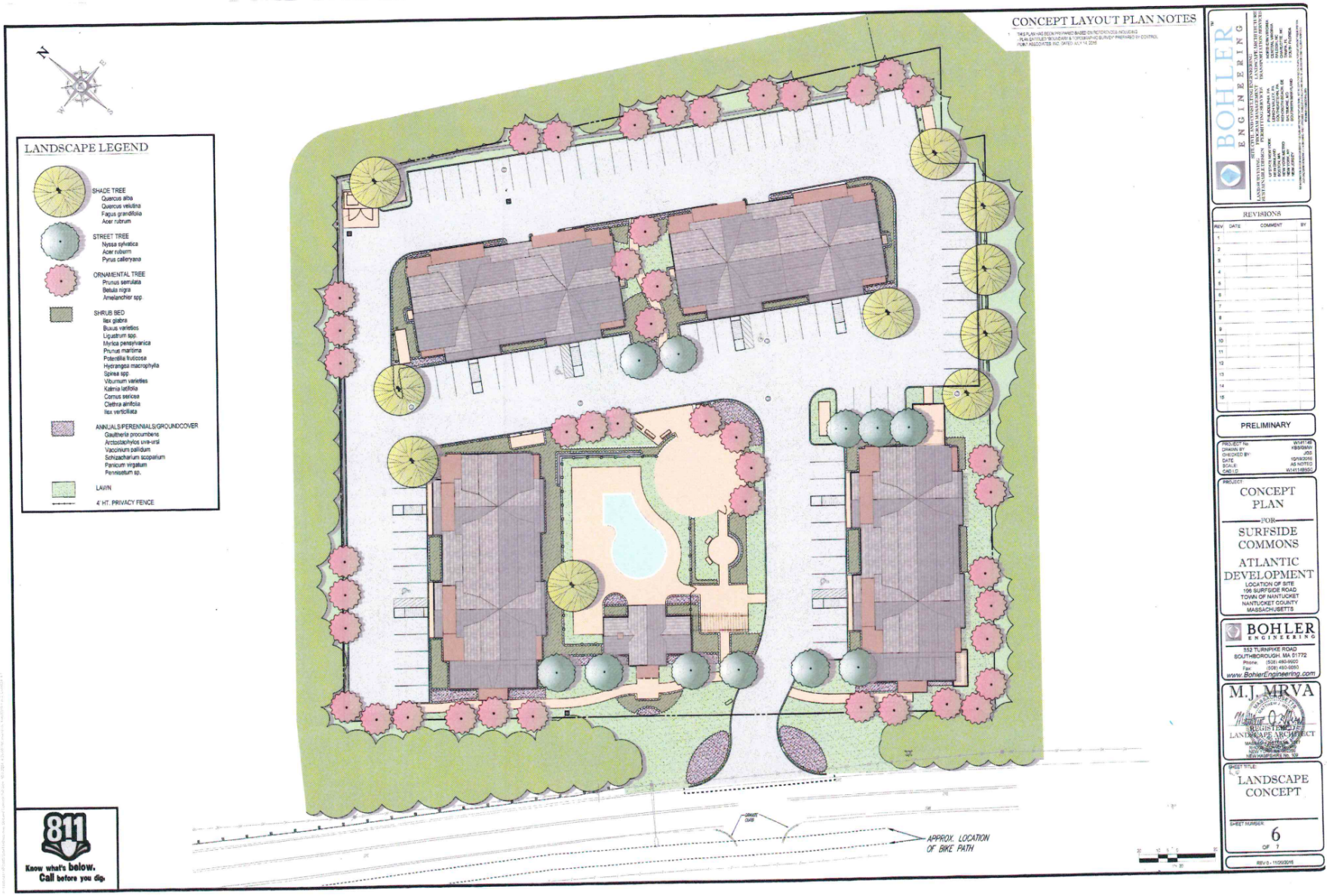
IMQ/ao
cc: Town Manager
552879//NANT40B/0005

Surfside Commons

July 14, 2016

Surfside Commons – Rendering

Surfside Commons – Site Plan



Surfside Commons – Plans Discussed at June 29, 2016 Work Group

- Nobadeer Meeting House
  - Aerial
  - Elevations (3)
- 32 Unit For-Sale – Concept A
- 32 Unit For-Sale – Concept B
- 52 Unit Rental
- 52 Unit Rental – Cliff Boehmer mark-up

Surfside Commons – Plans Discussed at June 29, 2016 Work Session

Nobadeer Meeting House - Aerial

Surfside Commons – Plans Discussed at June 29, 2016 Work Session

Nobadeer Meeting House – Elevation 1

Surfside Commons – Plans Discussed at June 29, 2016 Work Session

Nobadeer Meeting House – Elevation 2

Surfside Commons – Plans Discussed at June 29, 2016 Work Session

Nobadeer Meeting House – Elevation 3

Surfside Commons – Plans Discussed at June 29, 2016 Work Session

32 Unit For-Sale – Concept A – *For Discussion Only*

Modeled after Nobadeer Meeting House – 16 Duplexes, 32 unit total, 64 Parking spaces – 2/unit

Surfside Commons – Plans Discussed at June 29, 2016 Work Session

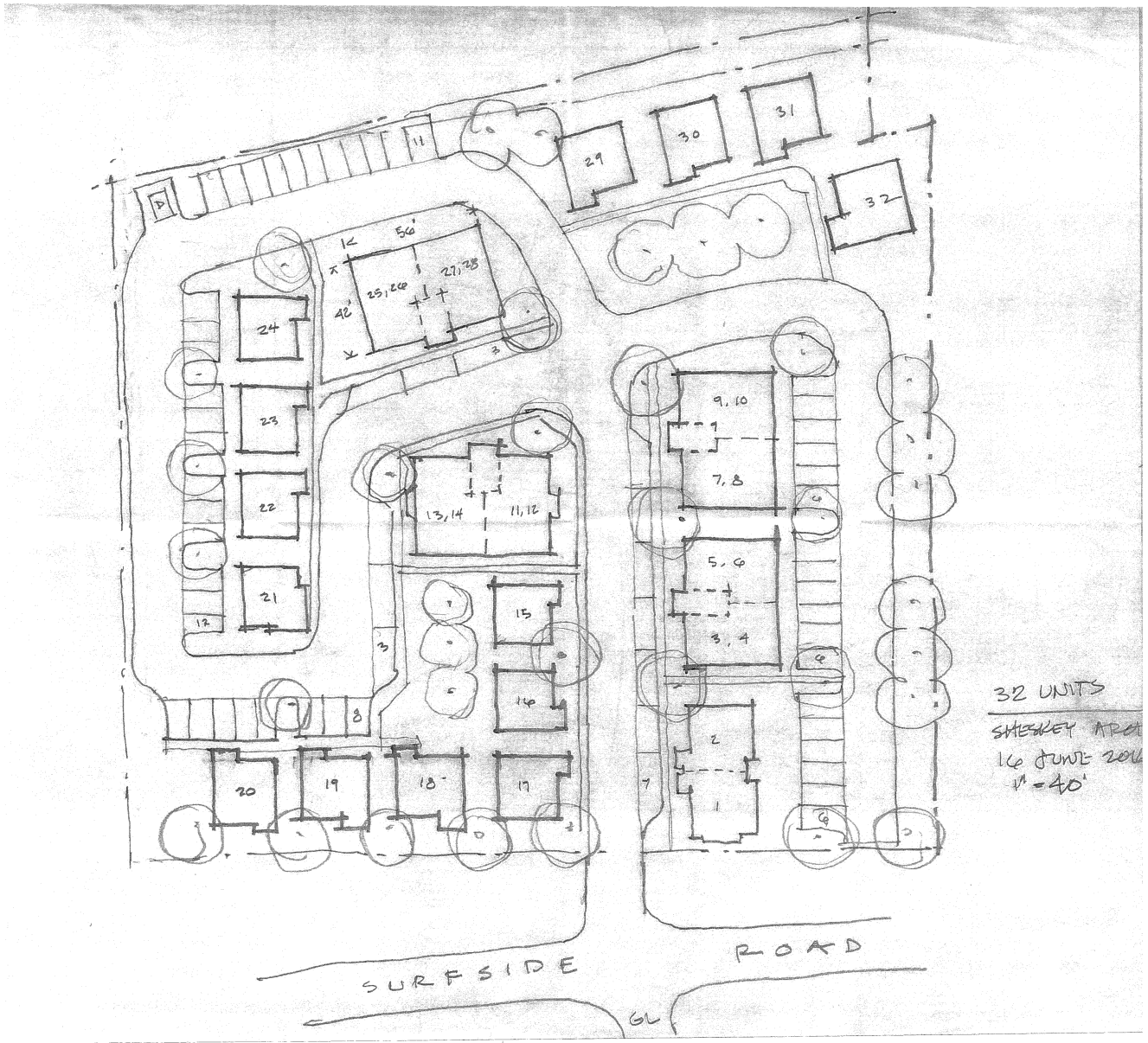
32 Unit For-sale – Concept B – *For Discussion Only*

16 Duplexes, 32 units total, 64 Parking spaces – 2/unit

Surfside Commons – Plans Discussed at June 29, 2016 Work Session

32 Unit for-sale – Concept C – *For Discussion Only*

4 4-plex, 1 Duplex, 14 single 32 units total, 59 Parking spaces – 1.84/unit



Surfside Commons – Plans Discussed at June 29, 2016 Work Session

52 Unit Rental – *For Discussion Only*

3 -12 unit, 4 - 4 unit, 52 unit total, 104 Parking spaces – 2/unit

Surfside Commons – Plans Discussed at June 29, 2016 Work Session

52 Unit Rental – *For Discussion Only* – Mark up by Cliff Boehmer, Davis Square Architects

Surfside Commons – Plans For Discussion July 14, 2016 ZBA Meeting

- **52 Unit Rental**
- **32 Unit for-sale – Concept D**
- **32 Unit For Sale – Concept E**

Surfside Commons – Plan For Discussion July 14, 2016 ZBA Meeting

52 Unit Rental – Modeled after Cliff Boehmer comments (6/29/2016)

2 -12 unit, 28 townhomes, 52 units total – 104 parking spaces 2/unit

Surfside Commons – Plan For Discussion July 14, 2016 ZBA Meeting

32 Unit for-sale – Concept D

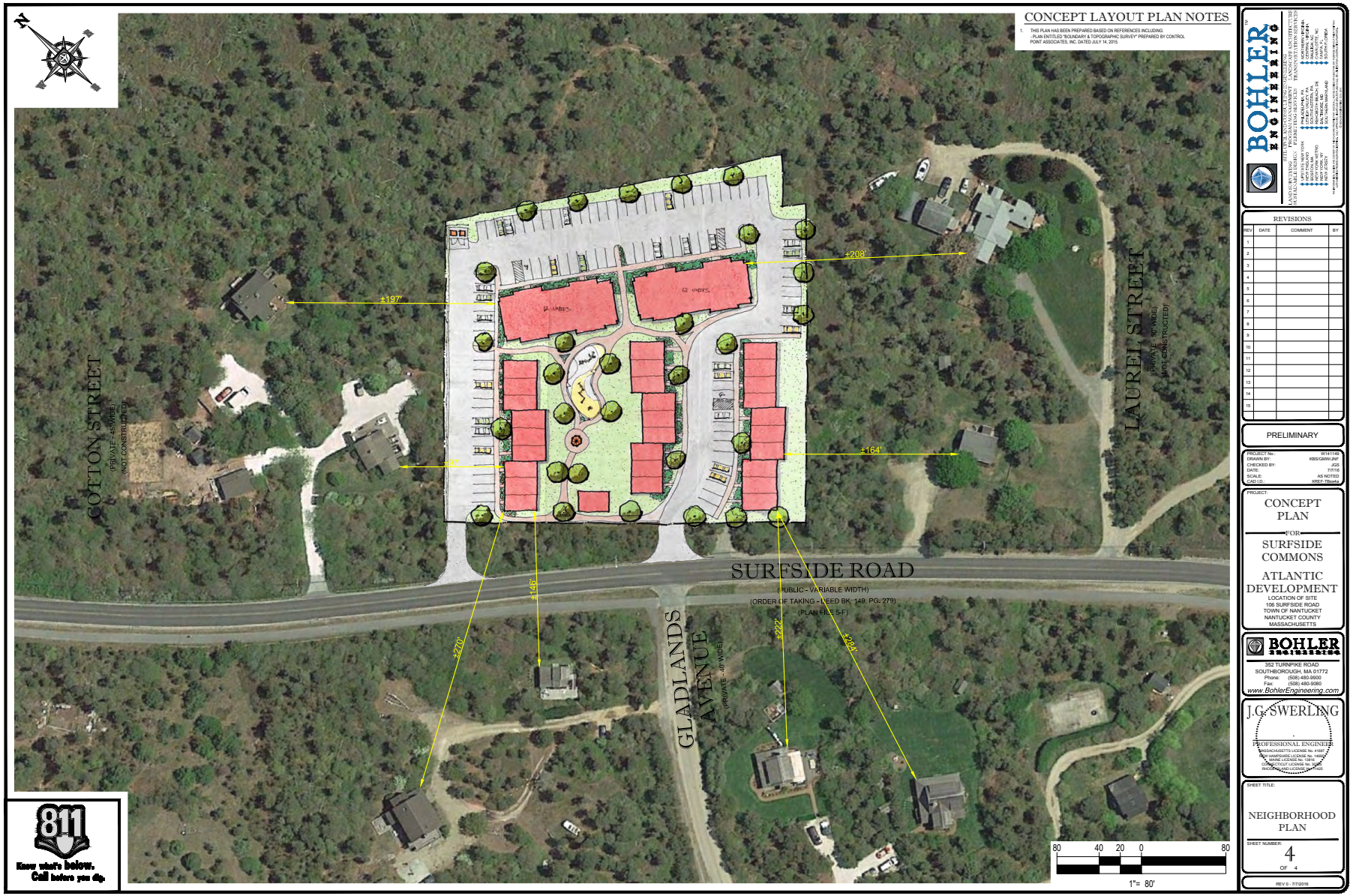
4 – 4 plex, 1 – duplex, 14 single, 32 units total, 64 parking spaces, 2/unit

Surfside Commons – Plan For Discussion July 14, 2016 ZBA Meeting

32 Unit for-sale – Concept E

16 – duplexes, 32 units total, 64 parking spaces, 2/unit

Surfside Commons – Distances to nearby homes



Zoning Board of Appeals

July 14, 2016

End of packet

Part II