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Memo to ZBA

From Surfside Crossing Applicants

4/10/19

Dear Chairman Toole:

Attached is the submission of materials relating to the so-called “92-unit Design Workshop Plan.”

We would like to review briefly our understanding of the process that has brought us to this point. There is understandable frustration all around with what has been an exceedingly difficult process that now has stretched to well over a year. However we do not agree that there has been “bad faith” as some have stated on occasion. Rather we think the frustration comes primarily from a basic disagreement about what level of development is appropriate for the Surfside Crossing site within the context of Chapter 40B and the goal of creating much needed affordable housing.

The following is a brief review of the steps we have gone through:

- We submitted our original application for 156 housing units in December 2017 to the State agency at which point the plan became public.
- Once we received the required preliminary state approval we submitted the project to the ZBA in April 2018.
- For a variety of reasons it then took nearly 5 months for the ZBA to request and to receive peer review reports from the relevant engineers.
- On July 24, 2018, we granted an extension of the time for the Board to close the public hearing from November 10, 2018 to December 13, 2018.
- Once these reports were received, the Applicant submitted a “potential modification plan” for 100 units in September 2018. We once again submitted an extension of the time for the Board to close the public hearing, this time until January 15, 2019.
- By January 2019 the Applicant and ZBA had come to what appeared to be a deadlock, and both parties acknowledged as much.
- It was then suggested by Ed Marchant, the ZBA’s 40B advisor, that an outside architect selected by the ZBA be engaged to hold a series of Design Workshops. It was agreed that there was little point in trying to work out technical details unless there was an agreement on both a site plan, and housing program. Both the Applicant and the ZBA clearly stated that each was entering into the Design Workshop with the sincere hope but no guarantee that such an agreement would be forthcoming.
- Prior to entering into the workshop sessions, we agreed to another extension of the time to close the public hearing, this time to March 15, 2019.
- A preferred site plan to the participating ZBA members emerged from the Design Workshop. This was a design conceived by Cliff Boehmer, the Town’s architectural consultant, which we agreed to consider.
- In an attempt to reach agreement, we adopted the overall design layout of the site plan, while preserving our minimum housing program. In that plan submitted to the ZBA on March 8th we proposed to reduce the total housing a bit further to 92 units. This was

done by a reduction in the multi-family condominium units targeted to year-round Nantucketers -- reduced from 60 to 40 -- with some offsetting increase in single family cottages and duplex homes. (It should be noted that there are 96 year-round condominiums in the original April plan.)

- We stated that we were prepared to work out and submit further detail on this plan if we had an agreement in principle with the ZBA.
- We were disappointed, however, that the ZBA stated at its March 11th meeting that it wished to see further significant reductions in the housing program. While some thought we were “close”, the request for an even further reduction in the year-round condos and further reduction in both the number and size of the single-family cottages are not things we will agree to.
- It was our clear understanding, and we thought yours as well, that if the Design Workshop did not result in an agreement then we as Applicant would ask for a decision on either of the complete packages we had submitted in April (156 units) or September (potential modification to 100 units). In the letter from our counsel on March 7th we clarified that we believed that our formal submission was complete (with two specific additions that were filed on March 21st).
- Notwithstanding our disappointment, we agreed to extend the time to close the public hearing to April 4, 2019.
- We were surprised that at the Boards’ March 26th, 2019 hearing that our request to close the public hearing and request for a decision, consistent with our letter of March 21, 2019, was viewed as unexpected by the ZBA and that somehow we were not following a fair process.
- On March 29, after consultation between our counsel, the Board’s counsel and the Board’s Chapter 40B consultant, in which the discussion was focused upon submitting sufficient information into the record to support a decision by the Board on any of the development concepts, we changed our position and agreed to provide more detailed information on the 92-unit Design Workshop Plan with the understanding that we would extend the hearing only until April 11th.
- We had previously stated our expectation that the ZBA might adopt conditions in your decision that reference the Design Workshop plan, and perhaps with this additional material you will be in better position to do that.

We understand, as Ed Marchant has said on a number of occasions, that every 40B is a negotiation. We have said repeatedly that our strong preference is for a local decision that we can live with. That is still the case. We would hope that the ZBA might recognize that we have reduced our project significantly from 156 units and will not go farther. Perhaps we would have been savvier to drag out the negotiation from 156 units by moving smaller stages. However, given the community controversy and the laborious process, we thought it was best for all concerned to go expeditiously in September to our bottom line in hopes that this would be recognized. We have accommodated the basics of the Design Workshop site plan while maintaining our housing program. We think the 92-unit plan works and we would live with it, although it is not our preferred plan. However, at a certain point it is time to stop the negotiation and make a decision. As we have been trying to say, after agreeing to more than 5 months of time extensions, we are now at that point. We believe that the information submitted herewith complies with the submittal requirements of 760 CMR 56.05(2), thus allowing a decision by the

Board on any of the development concepts to be supported by sufficient information in the Board's record.

Narrative Conceptual Description of Allocation of Common Charges to Each Housing Unit.

The following describes the methodology for dividing common charges among all units in the development.

There are two housing unit types in in two Housing Segments (Segments) in Surfside Crossing:

- Fee Simple, single-family dwellings units.
- Condominiums, with multiple residential dwelling units located within various structures

There will be budgets set each year for each Segment. Each budget will then be allocated among the units in its Segment. The process will be based on a Common Charge Share that will be established for each unit at the time that the Comprehensive Permit is finalized. The following describes the process for establishing each unit's Common Charge Share and the method for determining the Operating Budget for each Segment.

I. Establishing each housing unit's Common Charge Share.

As the Comprehensive Permit is being finalized a Common Charge Share will be established for each unit in the development. The methodology for establishing the Common Charge Share will be as follows:

Step 1: An Estimated Initial Sale Price (EISP) will be established for each unit in the development by the Developer, subject to approval by the Subsidizing Agency. The EISP will be based on the initial estimate of the sale price for each unit.

Step 2: The EISPs for each Segment will be totaled establishing a Total Segment EISP for each.

Step 3: Each unit will be assigned a Common Charge Share based on dividing each unit's EISP by the Total Segment EISP. For example, if an individual Condominium unit has an EISP of \$550,000 and the Total Condo Segment EISP is \$35,000,000, then that unit's Common Charge Share would be 1.57%. ($\$550,000/\$35,000,000= 1.57\%$)

Step 4: Once derived and approved as part of the final Comprehensive Permit, the Common Charge Share for each unit is permanently assigned and included in each unit deed.

Note 1: Once the EISP is established it will not be changed based on actual sale prices.

Note 2: The Common Charge Shares for each Segment each total 100%. In this way the operating Budget for each Segment can be allocated to the units in its Segment.

II. Establishing the Operating Budgets for each Housing Segments

There are two housing unit types in in two Housing Segments (Segments) in Surfside Crossing:

- Fee Simple, single-family dwellings units.
- Condominiums, with multiple residential dwelling units located within various structures

For the purposes of describing the structure, this description assumes that there are 40 units in the Single-Family segment and 60 units in the condominium segment. The actual allocation may vary depending on the final Comprehensive Permit.

Operating Budget for Each Segment-

Each Segment will have its own Operating Budget which will consist of its Direct Expenses and an allocation of Common expenses. There will be three sections of the operating Budget:

- Direct expenses of Single-Family Maintenance and Operations- including landscaping maintenance, irrigation, exterior building paint; property insurance; miscellaneous customer service and rule enforcement.
- Direct expenses of Condominium Maintenance and Operations- including landscaping maintenance; common area maintenance (hallways, etc.); irrigation; exterior building repairs and upkeep (such as painting, gutters, roofs, etc.); property insurance; miscellaneous customer service and rule enforcement.
- Common Expenses- including all street, sidewalk, park, site drainage, sewerage and other common utility maintenance; recreation building and operations; pool operations and maintenance; property management overhead; common area insurance.

Common Expenses will be allocated between the two Segment operating Budgets based on the ration between Total Single-Family Segment EISP and the Total Condominium Segment EISP. For example, assume that the Total Single-Family Segment EISP is \$65 million and the Total Condominium Segment EISP is \$35 million. The combined EISPs would then be \$100 million. The Single Family Segment allocation would then be 65% (\$65 million/\$100 million) and the Condominium Segment allocation would be 35% (\$35 million/ \$100 million.)

III. Owner Representation and Decision-Making

The entire development containing both Segments will be operated by the Surfside Crossing Owners Association. The Surfside Crossing Owners Association would be governed by a Board of Trustees selected by the owners of units in each of the two Segments. The number of trustees selected by each Segment will be established at the time Comprehensive Permit is finalized in accordance with the number of units in each segment. There would be provisions allocating trustee slots in a manner that assures fair representation for each Segment, for market as well as 40B eligible owners, as well as At-Large slots. HOA By-laws will require minimum approval levels for each Segment, as well as for market and 40B eligible owners so that the varying interests are protected. Decision making for the HOA will be controlled by the Developer until the last housing unit is transferred.

Memo to ZBA

Supplemental information for the 92 Unit Workshop Plan

From the Applicants of Surfside Crossing

April 10, 2019

The Board asked at the March 29, 2019 hearing that we provide certain supplemental information for the record. Please accept this correspondence as a response to that request. We have provided additional information where appropriate, and we have provided our reasoning where we have determined submittal of certain additional information is not appropriate.

Sprinkled Buildings: The Board had asked which buildings would be sprinkled. This will be done in accordance with MA Building Codes.

Garden / Utility Sheds: Every single-family lot is proposed to include a shed, either the 6'x8' or the 8'x10' version depending on final landscape design per parcel and available space. Plans have been submitted for these two versions of sheds.

Spas: 20 of the single-family market-rate lots will include an 8'x8' (or smaller than 64 sq/ft) in ground gunite spas. These spas will be located as a part of the final landscape design for the individual lots.

Site Lighting Plan: Street lights have been identified in the Landscape Plan dated 4.10.19, Drawing # L-1 and L-2. However, the technical data and specific fixture information, along with broader concept for lighting is detailed in the Light Insight plans dated 7/19/18 which were originally submitted for the 156 unit plan and were later resubmitted for the last ZBA meeting on 3/26/19, as part of the indexed documents in Attorney Freeman's Memo of 3/7/19.

Interior Finishes: These were requested, but are outside the jurisdiction of this board. The Board is prohibited from regulating the interior of single-family residential structures pursuant to G. L. c. 40A, s. 3, nor does the Town regulate the interior of market-rate residential structures as part of the Zoning Bylaws, thus imposing restrictions on the interior of the proposed structures would violate the unequal treatment prohibition of G. L. c. 40B, § 20. Furthermore, interior finishes are a matter within the jurisdiction of the Subsidizing Agency, and thus outside the Board's purview.

Phasing Plan: The phasing for this plan is as follows:

- 1st – Install all of the utilities, storm water management infrastructure, roadways and sidewalks.
- 2nd – Install the Recreation Building, maintenance barn and parks
- 3rd – Install the multifamily buildings and single-family cottages west of the Recreational Building
- 4th – Install the single-family homes east of the Recreational Building

Exterior Trim Materials:

Decking material – mahogany decking

Exterior Trim – Body Guard Pine or comparable and or red cedar

Siding – white cedar shingles and pine or cedar board and batten

Roofing – red cedar shakes for all single-family buildings and duplexes. The multifamily (except the duplexes) to have asphalt shingled roofs.

Property Management: These details will be further outlined in the HOA docs in the comp permit phase, but the intent is to have a fulltime, dedicated property management company which will have an office in the Recreation Building and exclusive use of the Maintenance Barn.

This property manager will be responsible for maintaining the landscaping of all properties in the HOA including the irrigation which will be served through common irrigation wells. They will oversee the pool maintenance and the exterior paint for the all buildings in the HOA.

Finally, they will have responsibilities relative to the enforcement and oversight of much of the HOA guidelines and regulations. We are willing to accept a condition requiring the submittal of the HOA documents for review and administrative approval prior to the issuance of any occupancy permits for the Project.