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August 21, 2023

Groton Zoning Board of Appeals  
c/o Mr. Takashi Tada  
Town of Groton  
173 Main Street  
Groton, MA 01450

RE: Heritage Landing 40B Comprehensive Permit Application (Submitted May 23, 2023)

Dear Takashi and Members of the Board:

We wish to comment further on some of the questions raised by Board members pertaining to the lack of finality regarding the septic system design, and the source of drinking water, and final review by the Natural Heritage and Endangered Species Program (“NHESP”). If the Board, its staff, or town counsel disagree with our conclusions, we respectfully request having the opportunity to respond to contrary opinions and citations in the law.

As a preliminary matter, conditions of approval which require the issuance of the necessary permits and approvals prior to house construction are customary and anticipated. The applicant fully expects that conditions of approval will be carefully crafted that will require compliance with applicable standards, like as is done in the review and approval of Definitive Subdivision Plans. Whereas the anticipated septic system design will exceed 10,000 gallons per day, and will be within the jurisdiction of MassDEP, and the regulation of the rare and endangered species habitat areas are within the exclusive jurisdiction of NHESP, neither of these issues raise a local concern that the Board must resolve prior to approval of the Comprehensive Permit. Tiffany Hill, Inc., Appellant Norwell Board of Appeals, Appellee, 2007 MA. HAC. 04-15, 13, 2007 WL 2819664.

Moreover, the applicable Regulations do not require the submission of final designs of, or approvals of, septic systems, water systems or endangered species habitat areas. “ In considering an analogous issue involving the subdivision control law, G. L. c. 41, §§ 81K to 81GG, the Supreme Judicial Court found that the ‘law attaches such importance to [local] regulations as to indicate to us that they should be comprehensive, reasonably definite, and carefully drafted, so

that owners may know in advance what is or may be required of them and what standards and procedures will be applied to them. Without such regulations, the purposes of the law may easily be frustrated.’ Castle Estates, Inc. v. Park and Planning Bd. of Medfield, 344 Mass. 329, 334, 182 N.E.2d 540, 544 (1962). This analysis is equally applicable for the comprehensive permit law as it requires the Board's decision to be consistent with local needs, which in turn requires that *regulations* be reasonable in view of the regional need for low and moderate income housing. G.L. c. 40B, § 20, 23.” Weston Development Group and Sanctuary Lane LLP Appellants Hopkinton Board of Appeals, Appellee, 2004 MA. HAC. 00-05, 10–11, 2004 WL 5052502, at \*5

The Board’s Regulations require “A preliminary utilities plan showing the proposed location and types of utilities, sewage, drainage and water facilities, including hydrants.” And the analogues Groton Planning Board Subdivision Regulations require “Data and proposed arrangements for water supply, sewerage and sewage disposal, including all appurtenances, as required by the Board of Health..”, but the regulations do not require that the systems or underlying approvals be in place.

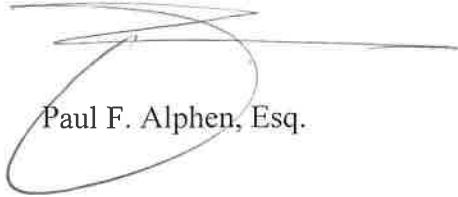
As was determined by the Housing Appeals Committee in Bedford Town, Inc. Bedford Board of Appeals, 1973 MA. HAC. 72-07, 7, 1973 WL 296863, the appropriate way to address concerns regarding the adequacy of the water and septic systems serving a development, is through conditions of approval: “... the same suggestion was made with respect to water supply as to sewer facilities, i.e. that rather than deny the comprehensive permit outright, the permit be granted with conditions that would adequately safeguard health and safety of occupants and town residents. We find that such a disposition would have been more in consonance with legislative intent and consistency with local needs than outright denial.”

Having said that, the applicant fully agrees that the ultimate adequacy of a water supply for domestic use and fire protection, is a legitimate local concern. But, if the municipal water supply is extended to the site (either by a state grant, or at the expense of the applicant, or by a combination of both), or if provisions for well water are incorporated into the project, the issue will be addressed prior to construction of the project. An application, from the Town of Groton, for grant funding to extend the water line was submitted to the State. If the application cannot remain in play, we anticipate that it will be resubmitted for the next round. Some reasonable conditions of approval can be crafted to assure that adequate water will be provided to the project. As the Housing Appeal Committee ruled: “... also implicit within the definition of consistency with local needs is that any condition be reasonable. That is, to be consistent with local needs a condition must not only be ‘reasonable in view of [the balance between the housing need and local concerns],’ but also reasonable in the larger, sense that if it makes the project uneconomic, there must be no alternative condition which would satisfy the local concern and

yet permit the project to go forward.” Cooperative Alliance of Mass., Inc., Appellant Taunton Zoning Board of Appeals, Appellees, 1992 MA. HAC. 90-5, 14–16, 1992 WL 12562132, at \*5

Thank you for your attention to these matters.

Very truly yours,  
Alphen & Santos, P.C.

A handwritten signature in black ink, consisting of a large, stylized loop followed by a horizontal line extending to the right.

Paul F. Alphen, Esq.