

# ALPHEN & SANTOS, P.C.

ATTORNEYS AND COUNSELORS AT LAW  
200 LITTLETON ROAD, WESTFORD, MASSACHUSETTS 01886  
(978) 692-3107 FAX (978) 692-5454  
[www.alphensantos.com](http://www.alphensantos.com)

Paul F. Alphen, Esquire  
Maria L. Santos, Esquire

August 8, 2023

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

RE: Heritage Landing 40B

Dear Members of the Board:

Please accept the below additional responses to questions asked of the applicant at the July 26<sup>th</sup> hearing.

At the time of the meeting, we believed that a grant award for the extension of the municipal water main would be a necessary prerequisite for the construction of the project. That has since changed, as our client is exploring alternatives for the provision of potable water to the project. We do not have details to share at this time, but we wanted to let the Board know that there are alternatives in the works.

Speaking of the provisions for drinking water, the Board voted to ask Town Counsel if our client's application is premature because our client does not have a firm source of potable water, and because we do not have a final decision from MA NHESP, and because without a nitrogen loading restriction in place on additional land not all of the 40 Units can have three (3) bedrooms. We are of the opinion that the application is not premature for a few reasons:

A. The Board's Rules and Regulations for Comprehensive Permits do not require that the applicant submit final designs and/or engineering for the provision of water and/or septic, nor do they require prior approval from MA NHESP;

B. The Rules and Regulations require the submittal of "A preliminary utilities plan showing the proposed location and types of utilities, sewage, drainage and water facilities, including hydrants. Drainage plans shall be accompanied with preliminary drainage calculations and shall describe how the project conforms to best management practices and the DEP's Stormwater Management guidelines". Such information has been provided, and in the event that the Board or its consultants conclude that the information that was submitted is incomplete, please advise us and we will respond appropriately.

C. Similarly, the materials submitted comply with 760 CMR 56.05 (2) regarding the contents of the necessary "preliminary site development plans."

D. The Board may deny the project if it is not consistent with local needs, or it may approve the project with conditions and the conditions can include applicable requirements regarding water and septic. The regulations of the MA NHESP stand on their own, and no land owner may proceed with development in violation of the applicable regulations.

E. By way of analogy, even in a subdivision, it is not a requirement that subsurface disposal system permits be issued for each of the lots prior to the approval of the subdivision. The Planning Board's Rules and Regulations anticipate that subdivisions will be approved with a condition that "No building or structure shall be built or placed on any lot without a permit from the Board of Health." (See Section 381-8. D. (1) (b).

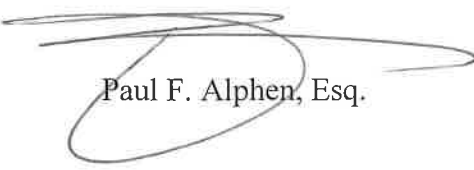
Should Town Counsel have a different opinion, we would appreciate the opportunity to engage in the necessary discussions so that we may try to reach some consensus.

And, we had offered to submit the soil test results previously performed at the property. The testing was witnessed by B. Braley of the Groton Board of Health, and the results are attached to the email which accompanies this letter. As provided by the applicable DEP Regulations:

"(1) The standard percolation test is intended to give an approximate measure of the soil's percolating capacity. Unsaturated hydraulic conductivities vary dramatically from the saturated hydraulic conductivity with changes in soil characteristics and moisture content. Percolation testing may be conducted at any time of the year and the data obtained in accordance with the procedures specified by 310 CMR 15.000 **may be deemed valid for an indefinite period** provided the soils within the site evaluated remain undisturbed and unaltered. All percolation testing shall be performed in the presence of the Approving Authority." (emphasis added) 310 Mass. Code Regs. 15.104 (emphasis added)

Thank you for your attention to these matters.

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



Paul F. Alphen, Esq.