

**DESCHENES & FARRELL, P.C.**

Attorneys at Law  
515 Groton Road, Suite 204  
Westford, MA 01886  
Telephone: (978) 496-1177  
Facsimile: (978) 577-6462

*Douglas C. Deschenes*  
*Kathryn Lorah Farrell*  
*Melissa E. Robbins\**

*\*Admitted in MA and NH*

August 14, 2020

Newbury Zoning Board of Appeals  
12 Kent Way  
Byfield, MA 01922

**Re: The Villages at Cricket Lane, 55R Pearson Drive  
Responses to Comments/Questions**

Dear Members of the Board,

Please recall this office represents Cricket Lane Development, LLC, Walter Eriksen, Manager, (hereinafter the Applicant”), regarding the proposed 40B development referenced above (hereinafter the “Project”). Below please find responses to the questions and comments received from various Town Boards, Departments and Commissions. Please accept the following:

**Board of Selectman comments dated April 22, 2020.**

Q: Certain locations in Newbury were identified as amenable to 40B development by the Housing Production Plan put together by the Planning Board. A development at this particular location was not an identified site. The parcel is not an appropriate area for the location of such a dense, sizable development.

**Response:** While the proposed Project location was not identified by the Planning Board as an amenable location for a 40B Development, the site does provide the necessary area, access and utilities to build such a development conforming to applicable health and safety regulations and requirements. As you know, the Massachusetts Housing Finance Agency (“MassHousing”) has provided a Project Eligibility/Site Approval for the Project after consideration of the Town’s comments and concerns. In providing the approval, MassHousing has provided to the Applicant a synopsis of the Town’s and Community’s concerns and has required the Applicant to address specific issues relating to such concerns. (please see the Site Eligibility Approval provided in the

Comprehensive Permit Application submitted by the Applicant). As required, the Applicant has addressed those concerns in its application and fully intends to “explore” and address those concerns during the public hearing process as required by MassHousing.

**Q:** The Town is a victim of the State’s Open Space Residential Development (OSRD), which allows a percentage of houses built to be affordable and is being used as a tool for development. This can result in permitting developers to use land which is inappropriate and marginal for that type of development.

**Response:** The Town of Newbury, like all towns in the Commonwealth, is subject to and is required to adhere to the application of Massachusetts General Laws Chapter 40B (hereinafter the “40B laws”), which is intended to increase the availability of affordable housing in the state. Towns are subject to the 40B laws until such time as 10% of its housing stock meeting the state affordability requirements or until the Town meets certain goals in developing affordable housing and is thereafter granted a “safe harbor” from 40B developments. At the time of the Applicants filing with MassHousing, Newbury had not satisfied its affordable housing requirements and so is subject to such laws. The Applicant is utilizing existing laws intended to increase the stock of affordable housing.

**Q:** Great concern was expressed for the impact of the volume of increased traffic on Pearson Drive, a rural roadway with no sidewalks, located in a small neighborhood.

**Response:** As part of its application, the Applicant has provided a Traffic Assessment (TA) detailing the impacts the Project will have on Pearson Road in terms of pedestrian and vehicular circulation and parking. The report indicates that the Project will not create significantly detrimental impacts relative to pedestrian or vehicular traffic and meets all applicable rules and regulations regarding parking. That report has been reviewed by the Town’s peer review consultant, Gary Hebert of Stantec Consulting Services, for completeness and accuracy. Mr. Hebert has agreed that “No traffic related operational issues were identified in the TA and concurred that the development will not significantly affect normal traffic operations and safety. He also agreed that the proposed parking should be adequate and generally will not overflow onto Cricket Lane. The Applicant intends to resolve any other questions or comments resulting from the peer review during the public hearing process as required by MassHousing.

**Q:** The proposed entrance of the roadway between two homes is obtrusive.

**Response:** The proposed entranceway meets all applicable rules and regulation in terms of public safety. The Applicant is working with the abutting neighbor in terms of the location of the entranceway and its impacts on them, including the use of screening to minimize impacts. The Applicant has agreed to provide the screening and fencing requested by the abutter. Regarding the home on the other side of the entranceway, the Applicant controls that house and is providing screening to minimize impacts for the next owner. Please recall that the next owner

would be purchasing the home knowing the entranceway exists (or will exist) and will therefore weigh that in his/her decision to purchase the home.

Q: The proposed roadway is not sufficiently wide to accommodate fire apparatus or other large emergency response equipment, especially if passing in opposite directions on the roadway.

**Response:** As discussed above, a comprehensive traffic assessment has been completed for the Project and has been reviewed by the Town's peer review consultant. Part of that report addresses access for emergency response vehicles including road width, length and turning radii. It is also understood that the Newbury Fire Department has or will also be reviewing the proposed roadway for conformance to its requirements. Please note the proposed roadway does comply with the National Fire Protection Administration ("NFPA") standards. Again, the Applicant intends to resolve any questions or comments relating to the proposed roadway during the public hearing process as required by MassHousing.

Q: The proposed 40B development is to be compliant and adequately address the Massachusetts Sustainable Development Principles. The application states that the project site is within walking distance of public transportation. Despite the Application's assertions, there is no actual access to public transportation. There is nothing within walking distance of the end of Pearson Drive, nor the furthest back corner. It will be very difficult for anyone living in the proposed development to access necessary services and amenities without a car.

**Response:** As provided in the Site Eligibility letter, the Project is located within two miles of the town hall, library, and village center. As such, it does provide access to public transportation through the Merrimac Ride program and shuttle buses. Evidence of that was provided in the Site Eligibility letter. Such information was reviewed and verified by MassHousing and was found to be following its requirements.

Q: Water testing performed for volume was done at an inappropriate time and does not reflect water usage.

**Response:** The proposed Project has been reviewed by the Byfield Water District. Paul Colby, BWD, has responded that the district is not opposed to the development and feels they have adequate water supply for the proposed homes. The water testing was done prior to review by the BWD.

Q: The parcel abuts the Martins Burns Wildlife Management Area, protected land owned by Massachusetts Division of Fisheries and Wildlife. Martin Burns contains shooting ranges and allows hunting. Therefore, the discharge of firearms frequently occurs. The proposed development will place homes considerably closer to the Martin Burns area and the permitted hunting activities which take place at the area. Significant funds have been put forth by the State

of Massachusetts toward allowing such recreation activities at Martin Burns. The potential development may also infringe on those activities.

**Response:** All potential buyers in the Project will be provided notice of the proximity to and activities allowed within, the Martins Burns Wildlife Management Area, including the hunting and shooting activities. Therefore, prospective owners will be provided the opportunity understand that those activities will be ongoing and to decide if they are comfortable with owning a home in proximity to those activities. Further, it is proposed to provide over 11 acres of undeveloped open space within the Project to provide open space buffers to the homes. Lastly, the Applicant has proposed to donate nearly 5 acres of that open space to the Commonwealth of Massachusetts Division of Fisheries and Wildlife which would provide further buffers to the hunting and shooting activities.

#### **Board of Selectmen Comment 9-23-20**

Q: Concerns are raised relative to cul-de-sac length, dead-end sections, and separation between dwellings.

**Response:** The cul-de-sac length and proposed “dead-end” sections of the roadway meet National Fire Protection Administration requirements for dead end sections. The street overall is in compliance with NFPA the maximum allowance of 100 units on a single entrance dead end.

#### **Fire Department Comments (9/23/19)**

Q: The Fire Department suggested “a minimum of twenty (20) feet of space between buildings due to exposure issues in the event of fire”. The submitted plans do not comply and provide a minimum 15’ between buildings instead.

**Response:** The Applicant is proposing to utilize cement fiberboard siding which under the applicable state building code allows for a 5-foot separation between buildings. Additionally, the Applicant is proposing to provide residential sprinklers (in excess of the State Building Code requirements) to provide an additional measure of protection and safety.

Q: The Fire Department suggested that the dead-end sections be reconfigured or eliminated. It appears that the dead-ends have not been adjusted to comply.

**Response:** The proposed dead ends are in compliance with NFPA standards which require a minimum 16’ wide fire lane. Dead end fire lanes are allowed under the NFPA standards but can be no longer than 300’. The proposed dead ends meet this standard.

### **Planning Board Comments (9/29/19)**

Q: The cul-de-sac length exceeds the maximum allowed without a waiver by 345 feet. This is listed as a waiver.

**Response:** A waiver from the local regulation on maximum cul-de-sac length has been requested as allowed under the 40B regulations. However, the proposed cul-de-sac length does comply with NFPA standards.

Q: A sidewalk is provided on the proposed street, but there are no sidewalks in Pearson Drive. The Board may want the engineer to address whether a sidewalk could be constructed along Pearson Drive.

**Response:** The Applicant, as noted, has proposed to provide sidewalks within the Project in meeting local requirements and in providing for pedestrian safety within the Project. To require the Applicant to provide sidewalks along the entirety of Pearson Drive as mitigation for anticipated increases in pedestrian traffic generated within the Project is excessive and cost prohibitive.

Q: As mentioned previously, each unit has a sliding door on the back of the house, likely leading to a deck and/or patio. These should be depicted on the plans and accounted for in the proposed grading.

**Response:** Decks and stairs have been added to the plans and any necessary modification to grading has been shown on the revised plans submitted.

Q: The project has not addressed what LID alternatives were considered for the site.

**Response:** The stormwater drainage design for the Project is in compliance with applicable conventional State stormwater regulations utilizing standard stormwater system methodology. The proposed design is undergoing review by the Town's peer review consultant for such conformance. The use of specific LID alternatives was not considered as it is not required under applicable State regulations.

### **Board of Health Comment 3-18-20**

Q: I have not had time to review this in detail. However as long as they comply with the BOH State and Local Regulations, I do not see any issues. They will need to submit proposed septic plans for final approval.

**Response:** Consistent with the 40B regulations, all proposed septic systems will conform to applicable State regulations and to the extent economically feasible, all local regulations.

Application to the Board of Health for the proposed septic systems will be made prior to the Zoning Board's hearing on August 20, 2020. At that time, any waivers from the local regulations, if any, will be identified.

### **Byfield Water Department comments 3-5-20**

Q: Byfield Water has reviewed the plans as submitted for this development. The district is not opposed to the development and feel we have adequate water supply for 24 new homes. However, it will be necessary for the developer to meet with us to go over items in the plans that we have questions on. We have not met with anybody on this new development as of yet. There are specifications the district requires pertaining to new water mains, hydrants and service connections that we want to be sure the developer is aware of.

**Response:** The Applicant fully intends to meet with the Water Department upon commencement of the public hearing process and expects to be able to fully comply with the Districts standard requirements in terms of water main installation, service connections and hydrants. It is also expected that the hydrant locations will be reviewed and approved by the Fire Department as well.

### **Principal Assessor Comments 3-2-20**

Q: 1. Market rate # of bedrooms is 60, vs. 19 affordable, which is 24% of the project. The number of affordable units is 25%, but I feel like the bedroom count should also equal 25%

- a. Can they swap an affordable 4 bed for a market 3 bed?
- b. Can they make one more unit affordable? That would bring the % of affordable units to 29% (one additional unit).

**Response:** The 40B regulations do not require that the cumulative number of bedrooms in the affordable units equal 25% of the total bedroom count for the Project. The requirement is that 25% of the housing units be affordable. However, MassHousing does require that at least 10% of the affordable units are suitable for "family" housing. Therefore, the Project is required to provide at least 10% of the affordable units with three or four bedrooms depending on what size units (i.e. bedroom count) is proposed within the entire Project. As currently proposed, the Project meets the requirements for affordable units (25%) and family housing units and so is not amenable to changing the unit or bedroom counts.

Q: 2. For 4 people, moderate income can't exceed \$71,360. What is that number for low income? The affordable units are for low to moderate income, but it seems they are really targeting moderate, as there is no mention of low income that I saw throughout the application.



**Response:** The Project is intended to provide housing to Moderate Income individuals and families. It is not targeted to Low Income individuals or families. The Project meets the State requirements of 25% of the units being provided at prices “affordable” to individuals and families earning no more than 80% of the Area Median Income for Newbury. The HUD income limits published at the time of application indicated the median family income for a 4-person household for Newbury is \$89,200.00.

Q: 3. The application says (page 4) that the homes will be “extremely” energy efficient. If that is the case, are they hoping to achieve any LEED certifications? Is there a specific HERS rating they are hoping to achieve? Will the homes have solar? This is a significant claim they are making with virtually zero explanation. (As an appraiser, I think I am one of 5-6 in the state that is qualified to value high-performance homes the by Appraisal Institute).

**Response:** The Applicant is proposing to develop energy efficient homes. The projected HERS rating for the homes is 45 or less. High efficiency windows, doors, appliances, and mechanical systems (heating, water heating) will be utilized. All the homes will have solar panels.

Q: 4. Of the 24, which ones will be affordable?

**Response:** The determination of exactly which units will be designated as affordable will be done prior to the Final Approval Process with MassHousing. Such determination will be done in conformance with MassHousing regulations and with input from the Town garnered during the public hearing process.

Q: 5. Three of the units are very close to an existing house on Pearson Dr. What, if any sort of buffer will there be? The value of the existing house will definitely be impacted by this project. How will this be addressed? Do those units (#1,2 & 3) need to be built? (21 vs 24).

**Response:** The economic feasibility of the Project is dependent on the 24 units and so the Applicant is not willing to reduce the Project by three units. The three units in question conform to the rear and side yard setbacks (20’) required under the Town’s Zoning Bylaw. Further, existing and proposed fencing, and existing and proposed vegetated areas, are provided to buffer the house on Pearson Dr. In fact, the Applicant has met with the owner of the house in question and has and reached agreement on the buffering to be provided. The use of fencing and vegetation as buffers to existing homes will be discussed during the public hearing process.

Q: 6. Parking (page 7) what if someone has a party? Will emergency vehicles still be able to maneuver if there are cars lining the street? Will on street parking be allowed? There are two garage spaces and two driveway spaces per unit, so if a family has more than two vehicles, they will either constantly be jockeying cars or they will be on the street.

**Response:** The proposed parking provided for the homes exceeds the requirement under the Town’s Zoning Bylaw. Also, there are 6 additional parking spaces provided in two location

along the entrance roadway. On street parking will be allowed only to the extent it is not in violation of any Town ordinances or conditions of the Comprehensive Permit

Q: 7. Throughout the application the town is listed as “Historical” Newbury...just wondering if that is a trigger word for special funding/grants?

**Response:** No, it does not qualify the Project for any special funding or grants that the Applicant is aware of. The use of the term “Historical Newbury” was a grammatical decision of the drafter and was meant to be respectful and complimentary to the historic nature of the Town and Byfield area.

Q: 8. 79 new bedrooms = 100+ new residents = 50ish potential new kids? What impact will this have on local schools?

**Response:** While the Project will undoubtedly results in some number of new school age children living in Newbury, the Applicant does not have any knowledge of the current status of the Town’s school system and so cannot assess the impacts, if any, the Project will have on the school system. Additionally, under the 40B regulations, the Zoning Board is not allowed to deny a Comprehensive Permit because of potential impacts to the town’s school system.

Q: 9. What impact will this have on local police/fire? Is there a ratio of population: officers or population: fire personnel/equipment to consider?

**Response:** While it is understood that additional homes added to a community will add to the fire and police service requirements, the Applicant cannot opine on whether the addition of the proposed 24 units will unreasonably burden the Town’s Police and Fire Departments. However, both the Police and Fire Departments have been solicited for their comments and questions regarding the Project and the impacts it might have on their departments. The Zoning Board will take the departments’ comments into consideration during the public hearing process in considering the Application.

Q: 10. The application says the development is consistent with the character of the town. How?

**Response:** The proposed Project has been designed as a cul-de-sac; single-family development typical of residential subdivisions within the Town. The Project, and the homes themselves, are similar in character to the abutting properties and the general pattern of development proximate to the site and throughout the Town. The two story, wood framed, cottage style homes with attached garages and front porches are typical of New England, including Newbury, developments. Clapboard siding and shingle accents are also a common element found in other homes in the Town. The use of varying color schemes, basic façade designs and alternatives, architectural shingles, double hung windows, front porches and walkways are all intended to



provide a natural and welcoming “village” feel, reminiscent of smaller New England Towns and village districts within them much like Newbury.

### **Conservation Comments 3-11-20**

**Please Note:** The Applicant is preparing to file a Notice of Intent with the Conservation Commission imminently. The filing will occur on or about the time of the ZBA’s public hearing scheduled for 8-20-20. All Conservation questions are expected to be vetted during the NOI hearing process.

Q: 1. The wetland mitigation is in the back yard to the existing single-family home making the new area susceptible to contaminates and encroachment. The wetland loss on the property equals 2394 square feet with a proposal to replace 3300 square feet. Even if the replication is done at a 1.1 to 1 ratio it would equal 3623.4. If the applicant insists on replicating in the lawn portion of the yard, we should expect mowing encroachment and law treatments to negatively impact the replication. The new area is also within a walking easement and even though the easement passes through the existing Bordering Vegetated Wetland, I don’t agree that the project should worsen that condition.

**Response:** The wetland mitigation location has been moved to the opposite side of the wetlands as previously proposed, along the E series wetland flags. This relocation requires a small temporary crossing to facilitate the work, however the area chosen has only a few large trees, some of which will be preserved. This relocated area provides sufficient area to create 5,050 square feet of replication which is a 1.5 : 1 replacement ratio. An additional small area of previously filled wetland area adjacent to wetland flags E15-E-19 will be re-established in that area.

Q: 2. The project as presented impacts the wetland D series in a negative way. At present there is no existing disturbance to the buffer. The MWPA does not provide direct protection to the upland habitat that many wetland dependent species require for completion of their life cycle. Instead, it provides indirect protection over some areas of the buffer that will alter the physical, biological or chemical characteristics of the wetland through impact to habitat features or overland flow into the wetland. This particular buffer is key to the health of the existing Vernal Pool. There are several important functions and contributions provided by this buffer and the potential impacts are likely to be but not limited to:

1. Impervious surfaces within the watershed such as pavement, homes and retaining walls;
2. Location: the distance of the disturbance relative to resource is important;
3. Loss of vegetation;
4. Loss of the capacity to detain, filter, transform and infiltrate runoff, pollutants and nutrients;

5. Generation of pollutants;
6. Changes in shading from trees or the loss of litter, woody debris and organic matter;
7. Creation of hazards or barriers; and
8. Vernal Pool values of breeding, feeding, migration, shelter and overwintering will be severely impacted by changes to topography, soil structure, plant community composition and structure, and hydrologic regime.

If the Boards agree that these functions are likely to be impacted by the proposed project, then additional study and appropriate changes should be required. A wildlife habitat evaluation, Appendix B, is **always** required for projects proposing alteration to Vernal Pools.

**Response:** The purported vernal pool within the A series wetland did not contain enough characteristic to be accepted as a Vernal Pool by DEP. As a result, the area has been identified as an isolated land subject to flooding (“ISLF”). The boundary of the ILSF has been respected and a split rail fence has been proposed to demarcate the area.

Q: Beneficial changes would be flipping the soil absorption system to the reserve area, and moving house #21 along with the retaining walls and the drainage that results from the buildout in this area. As drawn, it appears as though the drainage from this portion of the development will end up in the Vernal Pool.

**Response:** The proposed change would require significant walls along the roadway resulting in significant disturbance. Also, as discussed above, the vernal pool referenced was not certified as such by DEP. Proposed disturbance within buffer zones has been minimized and conforms to the requirements of the Wetlands Protection Act (“WPA”). All required offsets under the WPA have been provided and all drainage from this portion of the Project is controlled and directed away from the resource areas. Because there is no direct alteration of a vernal pool or any area listed in CMR 10.60(1), a habitat evaluation is not required.

Q: There is a statement regarding snow storage within the document. Sheet CS8501, under “POST-DEVELOPMENT PHASE” #5 narrates the snow policy. Sheet CS1001 depicts “SNOW STORAGE AREA (TYP). Together they don’t make sense.

**Response:** The snow storage wording on sheet CS8501 of the plan set has been amended to resolve this conflict.

Q: The proposed walking path is outside the silt fence for a distance adjacent to flags D2, D3, and D4. The present position of the walking path serves to encourage foot traffic to the most sensitive part of the site.

**Response:** The proposed walking trail location has been relocated to address this concern.

## Planning Board Comments 6-17-20

### Q: 1. Public Safety:

- a. The proposed development consists of 24 single-family detached dwellings on an 845' long cul-de-sac off of Pearson Drive with two short dead-end spurs. We note that this cul-de-sac length exceeds the maximum length allowed under our Subdivision Rules and Regulations (500') by 345' and also that dead-ends of any length are not allowed. We note further that this cul-de-sac is proposed to be constructed at the end of an existing subdivision road which is itself a non-through road, with only one connection to another road, Orchard Street. The distance from Orchard Street to the beginning of the loop at the western half of Pearson Drive is approximately 1,500'. Total travel distance from Orchard Street to the beginning of the new cul-de-sac is approximately 3,100' and from Orchard Street to the end of the proposed new cul-de-sac is approximately 3,945', or  $\frac{3}{4}$  of mile. We see construction of this proposed development on a cul-de-sac to be built at the farthest end of this existing non-through road as a major potential safety issue, particularly in case of emergency. A significant amount of consideration went into development of the maximum road length under our Rules and Regulations. Of foremost consideration is the ability and speed with which first responders can reach the residents of a subdivision. The proposed road length absent an alternative means of access poses a serious threat to public safety and significantly lengthens the time for emergency response and poses potential issues for response to traffic incidents. The length of the roadway coupled with the potential for inadequate water pressure at hydrants (see below) poses a significant public safety risk to the residents of the Town. With only one means of access and egress via Pearson Drive, these concerns will be compounded in an emergency situation which necessitates deployment of multiple emergency vehicles to the site.
- b. The Town's Subdivision Rules and Regulations require a minimum roadway width of 22' feet, per request of the Fire Department, to allow two fire trucks or other large emergency vehicles going in opposite directions to pass each other. We note that the cul-de-sac width has been increased to 22' in the current Application from the 20' shown in the Project Eligibility/Site Approval Application and therefore meets the width requirement. However, the two dead-end fire lanes are still only 20' wide, further compounding the access and staging issues that these dead-ends pose for fire apparatus in the event of an emergency.
- c. The length of the cul-de-sac and the width and length of the dead-end fire lanes exacerbate the unsafe condition created by the proposed layout of the houses in the proposed development. We have serious concerns about the fact that the dwelling units are, on average, only 15' apart and the impact that this tight spacing will have on the ability of fire apparatus to go between the buildings to access the rear of the units if needed. Additionally, due to the design of the stormwater management system, many of the dwellings will not be accessible directly from the rear by fire apparatus. These conditions seriously restrict the ability of first responders to properly protect the safety of the residents. Alternative layouts and spacing between dwelling units should be explored to

provide full access to all sides of each dwelling by emergency equipment.

- d. Since no public transportation is available, this new neighborhood will be automobile-dependent and will substantially increase the traffic load on Pearson Drive. There are currently no sidewalks on Pearson Drive — all pedestrians and bicyclists must share the roadway with vehicular traffic. The Application states that parking for 102 cars will be provided on site as part of the development, resulting in an estimated 283 traffic trips per day on weekdays and 269 traffic trips per day on weekends. The Traffic Assessment by TEPP LLC included in the Application states that these numbers of traffic trips will have "no significant overall traffic impact for the area." We respectfully disagree. The addition of 102+ cars traveling the entire length of Pearson Drive to reach the new development, plus any additional visitor vehicles, delivery vehicles, etc., will exacerbate existing safety concerns for pedestrians and bicyclists. This is of particular concern not only for children who currently live on Pearson Drive, but also for children from the new development who will need to walk the length of Pearson Drive to and from the school bus stop on Orchard Street.
- e. The sight lines for cars exiting Pearson Drive on to Orchard Street are very poor, especially to the left (east). The addition of up to 283 traffic trips per day, with the Pearson Drive/Orchard Street intersection as the only point of entry to and exit from the proposed development, will increase the potential for accidents at that intersection. In addition, signage at the island at the entry to Pearson Drive will need to be improved to ensure that the entry and exit lanes are clearly marked. This condition must be addressed in any final design.

**Response:** The Project as proposed does require several waivers from the Town's subdivision rules and regulations. As you may know, this is typical of 40B projects which are intended to increase the availability of affordable housing in the state and so are allowed waivers from local regulations which have on the whole been shown to limit the development of affordable housing. However, it is also true that the Project must be safe and protect public health and safety. As proposed, the Project's roadways meet or exceed all National Fire Protection Administration ("NFPA") standards which establish a nation-wide set of safety standards for roadways and traffic. Additionally, as part of its application, the Applicant has provided a Traffic Assessment (TA) detailing the impacts the Project will have on Pearson Road in terms of pedestrian and vehicular circulation and parking. The report indicates that the Project will not create significant detrimental impacts relative to pedestrian or vehicular traffic and meets all applicable rules and regulations regarding parking. That report has been reviewed by the Town's peer review consultant, Gary Hebert of Stantec Consulting Services, for completeness and accuracy. Mr. Hebert has agreed that "No traffic related operational issues were identified in the TA and concurred that the development will not significantly affect normal traffic operations and safety. He also agreed that the proposed parking should be adequate and generally will not overflow onto Cricket Lane. Mr. Hebert did pose a question regarding the structure of the two proposed "dead ends". The Applicant has and will continue to work with the Fire Department to address this issue as well as the question concerning distances between structures and the question regarding site distances at the Pearson Drive/Orchard Street intersection. The Applicant intends to work through and resolve

any and all questions or comments relating to roadways and traffic during the public hearing process including potential street improvements including necessary signage.

Q: 2. Project Design: While we commend the development team's intention to provide housing that is similar in size and scale to the existing homes on Pearson Drive, we find that the proposed design does not, in fact, accomplish this goal. The project is significantly denser than the Pearson Drive development, which when designed required a 20,000 s.f. minimum lot size and 40' front yard setback. While the number of house design options has been increased from the two shown in the Project Eligibility/ Site Approval Application to three — two for a three-bedroom unit and one for a four-bedroom unit — the limited number of options still results in a uniformity of design which is inconsistent with the surrounding neighborhood. We recommend that additional design options, as well as the possibility of reducing the density of the development, be explored.

**Response:** The Applicant is willing to discuss increasing the available design options to lessen the uniformity of design suggested by the Board. However, with respect to density, the Applicant is not proposing to build in accordance with the Town's density requirements as this would not allow for the development of affordable housing, which is the very intention of the 40B regulations. However, it is important to note that the proposed density (24 homes on 15.08 acres, with 9 buildable acres, for a density of 2.66 units per buildable acre), was found by MassHousing to be acceptable given the proposed housing type and pattern of development within the region.

Q: 3. Project Impact on the Parker River and Water Supply: Newbury, like many of the surrounding communities, has experienced periods of drier than normal weather conditions in recent years and the Byfield Water District has frequently instituted mandatory water restrictions. We note that these restrictions are in place currently. Residents of Pearson Drive have commented on frequent low water pressure, especially at times of heavy use. Both the Parker River Clean Water Association and the PIE-Rivers Partnership have noted that the Parker River is considered one of the most highly stressed rivers in the Commonwealth. The Board is concerned that the water needs of 24 new single-family homes, with a total of 79 bedrooms, will further stress the Parker River and that water pressure will be further compromised, with a negative impact on pressure at the fire hydrants and for the residences. We encourage the Applicant to explore ways to conserve water, such as capturing and recycling rainwater and gray water and installation of low-flow plumbing fixtures. Further, because of public safety concerns, we recommend that multiple additional water pressure tests be conducted at the fire hydrant closest to the project site during periods of peak water demand to ensure that adequate water pressure is provided for fire-fighting; the results of only one test, conducted in 2017, is included in the Application.

**Response:** The Project information has been provided to the Byfield Water District which has opined that they have reviewed the plans as submitted and that the District is not opposed to the development and that it has adequate water supply for 24 new homes. However, it was noted that it will be necessary for the Applicant to meet with District representatives to go over items in the plans that it has questions on as there are specifications the District requires pertaining to new water mains, hydrants and service



connections. The Applicant fully intends to meet with the Water Department upon commencement of the public hearing process and expects to be able to fully comply with the Districts standard requirements in terms of water main installation, service connections and hydrants. It is also expected that the hydrant locations will be reviewed and approved by the Fire Department as well.

Q. 4. Priority Habitat: The Project Site abuts the Martin Burns Wildlife Management Area, which contains Priority Habitat for state-listed rare species, as shown in the 14<sup>th</sup> Edition Natural Heritage Atlas, dated August 1, 2017. As an unimproved parcel, the proposed project site provides an important buffer between this Priority Habitat and the existing residential development on Pearson Drive. Further, one vernal pool, identified during the previous permitting process for this project, was identified on the site and has since been certified. A second potential pool was also identified on the site, but has not been certified. We note also that as a Wildlife Management Area, Martin Burns is used actively for hunting during many months of the year; the proposed project; the proposed layout shows several houses located within 40 feet or less from the Martin Burns property line.

**Response:** All potential buyers in the Project will be provided notice of the proximity to and activities allowed within, the Martins Burns Wildlife Management Area, including the hunting and shooting activities. Therefore, prospective owners will be provided the opportunity to understand that those activities will be ongoing and to decide if they are comfortable with owning a home in proximity to those activities. Further, it is proposed to provide over 11 acres of undeveloped open space within the Project to provide open space buffers to the homes. Lastly, the Applicant has proposed to donate nearly 5 acres of that open space to the Commonwealth of Massachusetts Division of Fisheries and Wildlife which would provide further buffers to the hunting and shooting activities. Proposed disturbance within buffer zones has been minimized and conform to the requirements of the Wetlands Protection Act ("WPA"). All required offsets under the WPA have been provided and all drainage from the Project is controlled and either directed away from the resource areas or purposely directed to the wetland via outflows meeting applicable stormwater and WPA requirements.

Q: 5. Unit and Bedroom Mix: Our understanding is that the affordable units are required to be substantially equivalent to the market rate units. We note, however, that while the market rate units include six 4-bedroom units and twelve 3-bedroom units, only one of the affordable units has four bedrooms. Since 33% of the market rate units are 4-bedroom units, it would seem appropriate that 33% of the affordable units, two total, also be 4-bedroom units.

**Response:** The 40B regulations do not require that the cumulative number of bedrooms in the affordable units equal 25% of the total bedroom count for the Project. The requirement is that 25% of the housing units be affordable. However, MassHousing does require that at least 10% of the affordable units are suitable for "family" housing. Therefore, the Project is required to provide at least 10% of the affordable units with three or four bedrooms depending on what size units (i.e. bedroom count) is proposed within the entire Project. As currently proposed, the Project meets the requirements for affordable units (25%) and family housing units. However, the Applicant will discuss and consider the Board's request during the public



hearing process with the ZBA.

Q: 6. Accessibility: There is no indication in the Application that any of the units will be Handicapped Accessible (ADA/AAB compliant). While accessibility may not be required by law, strong consideration should be given to incorporating Universal Design principles into both the affordable and the market rate units and to making some percentage fully accessible, especially given that Newbury's population is aging, as shown by data gathered for both the HPP and the current Master Plan update.

**Response:** The Applicant will discuss applicable ADA requirements and consideration of incorporating universal design principles within some of the proposed units during the public hearing process with the ZBA.

Q: 7. Site Design:

- a. Stormwater Management: While Newbury's Subdivision Rules and Regulations call for use of low-impact development (LID) techniques for stormwater management, the design drawings show curbing, catch basins, and other hard structures in addition to a detention pond. The stormwater management design should be reviewed to see what additional opportunities there are for LID.

**Response:** The stormwater drainage design for the Project is compliant with applicable conventional state stormwater regulations utilizing standard stormwater system methodology. The proposed design is undergoing review by the Town's peer review consultant for such conformance. The use of specific LID alternatives was not considered as it is not required under applicable State regulations, however, the Applicant is willing to discuss what LID opportunities are available with the Town's peer review consultant as part of the peer review process.

- b. Open Space: While the project Narrative states that 74% of the site is being maintained as open space, we note that 5.31 acres, or 48% of this open space, is wetlands and therefore must remain open. The only open space that is available for active recreation (soccer field and swing set) is on top of and immediately adjacent to the leaching areas for the shared septic system.

**Response:** No response required; the Board's review of the proposed open space is correct.

Q: 8. Compliance with MassHousing Requirements: Page 2 of the Narrative states, under paragraph G, that the "Development will comply with the Commonwealth's Sustainable Development Principles embraced by DHCD." As the Board noted in its September 20, 2019 letter regarding the Project Eligibility/Site Approval Application, there are a number of areas in which the Application does not comply with these Sustainable Development Principles. We repeat those here:

- a. Concentrate Development and Mix Uses: Through its Open Space Residential Development (OSRD) By-Law, the Town encourages cluster development to promote preservation of open space and associated habitat (both upland and

wetland), agricultural land, etc. However, we note that the design of the proposed Byfield Estates uses virtually all the developable upland on the site. The remaining "open space," other than a grassed area over and adjacent to the leaching areas for the shared septic system, is comprised almost entirely of wetlands — open space that must be preserved in any case. Further, we note that while the proposed development may have sidewalks and therefore be considered "pedestrian-friendly," Pearson Drive itself has no sidewalks, nor does Orchard Street, to which Pearson Drive connects, nor do most of the roadways in Newbury.

- b. **Advance Equity and Make Efficient Decisions:** As stated above, we note that the project does not incorporate any Universal Design principles and none of the units is designed to be handicapped accessible. Given the aging population of the town and therefore the age of those who may be interested in these units, we encourage the Applicant to design the units to Universal Design standards and develop some units to meet ADA/AAB requirements. Further, while we agree that the development will provide a few much-needed affordable units, it is unclear to us how a development of the proposed density will "improve the neighborhood," which is well-established and well-maintained.
- c. **Protect Land and Ecosystems:** Again, the Applicant states that clustering the 24 single family homes will allow a "significant portion of the site [to be] left as open space." As noted above, virtually all the upland on the parcel is being developed — the majority of the open space, other than what is over the shared septic system, will consist of wetlands. The project, rather than protecting habitat, will be removing important wildlife habitat which is adjacent to the Martin Burns Wildlife Management Area and area that has been identified by Natural Heritage as Priority Habitat for Endangered and Threatened Species. While the proposed project now identifies 4.82 acres to be deeded to the Massachusetts Division of Fisheries and Wildlife, we note that 3.40 acres of this area is wetlands and therefore unbuildable. The remainder of the site will be densely developed.
- d. **Use Natural Resources Wisely:** It is not clear from the Application documents to what degree "alternative technologies" and "innovative" techniques are being used to conserve natural resources. As previously noted, the project site contains significant wetland resources and is located in a stressed watershed. The proposed stormwater system appears to rely heavily on conventional stormwater management strategies, such as curbing, catch basins, and other hard structures. Further, there is no mention in the Application of potential alternative technologies for wastewater management and water conservation measures, such as recycling of gray water and rain water, use of low flow plumbing fixtures, etc.
- e. **Expand Housing Opportunities:** We note that the project site is not near any employer of any size, other than Triton and the Governor's Academy, or near any regularly scheduled public transit. While the Applicant has stated that the affordable units will be priced to be affordable to households earning 80% of the median income for the area, we note that none will be priced to be affordable to low income households.
- f. **Provide Transportation Choice:** The proposed development is not walkable to any regularly scheduled public transportation. Further, it is not walkable to local amenities, which are, on average, at least 1.5 miles away and accessible only by

rural roads with no sidewalks. Travel to and from the proposed development will require, rather than reduce, dependence on private automobiles, and the development will not increase or promote bicycle and pedestrian access. This will be an automobile-dependent neighborhood.

- g. Increase Job and Business Opportunities: We would like an explanation of how the project "Re-uses or recycles materials from a local or regional industry's waste stream," how it will "support manufacture of resource-efficient materials, such as recycled or low-toxicity materials," and how it will "support businesses that utilize locally produced resources such as locally harvested wood or agricultural products." Adequate explanation has not been provided.
- h. Promote Clean Energy: More explanation is needed on how the project will maximize energy efficiency and renewable energy opportunities. The homes could, for example, be built to meet the Stretch Energy Code, not just Energy Star standards, and/or could incorporate renewable energy systems in addition to the proposed roof-mounted solar panels.
- i. Plan Regionally: We note again that while Newbury's Housing Production Plan 20182022 identifies a serious need in Town for affordable housing, the site of the proposed project is not one that is identified in the HPP as appropriate for a subdivision or residential development of this density.

**Response:** The determination as to whether the Project, as proposed, complies with the applicable Sustainable Development Principles was made by MassHousing in granting the Applicant a Site Eligibility Approval. It is the understanding of the Applicant that the approval was granted with consideration of the Town's concerns as articulated above.

9. Site Control:

- a. The Narrative states that "the developer is the owner and applicant for this Development" and refers to a deed for the property attached to the Application as "Exhibit 0." Exhibit 0, however, does not contain a deed for the property. Rather, it contains two Purchase and Sale Agreements between Byfield Estates, LLC, and Walter K. Eriksen, Jr., one for the home and lot at 55 Pearson Drive and one for the "approximately 16 acres" which comprise the project site and which are identified in the Application as 55R Pearson Drive. It therefore appears that the Applicant is not yet the owner of the property. In addition, we note that both of these Purchase and Sale Agreements stipulate that a "closing must take place no later than 6/1/2020 and, failing that, this Agreement shall become null and void... unless both parties mutually agree to extend said time period further in writing." If it has not already been provided, we recommend that the ZBA request written confirmation that these two Purchase and Sale Agreements are not null and void, but have been extended as required, or that the closings have taken place. Further, as noted in our previous letter regarding the Project Eligibility/Site Approval Application, the Town would like assurances that Mr. Haralambos Katsikis, who signed the Purchase and Sale Agreements on behalf of Byfield Estates, LLC, will not be involved in the proposed project in any way or at any time other than as the Seller of the property, due to his failure to disclose felony

indictments on the previous Byfield Estates Comprehensive Permit Application for this site.

**Response:** The Board is correct that neither Cricket Lane, LLC nor Mr. Eriksen, "owns" the property and so the use of the term owner, was incorrect. However, the Applicant has satisfied the requirement for "site control" via the Purchase and Sales Agreements it has with the owners of the properties, as required under the 40B rules and regulations. Said Purchase and Sales Agreements have in fact been extended and the extended agreements have been provided to the ZBA and Town Counsel as requested. The Applicant herein reiterates its position that Mr. Haralambos Katsikis will not be involved in the proposed Project in anyway or at any time other than as the Seller of the property.

- b. We continue to question the Applicant's assertion that the subject property, identified as "55 Rear Pearson Drive" in the Comprehensive Permit Application, is in fact a separate buildable lot. The Application identifies the area to be developed as a 15.08 acre parcel of land at 55 Rear Pearson Drive. However, referencing an ANR Plan that was endorsed by the Planning Board on December 21, 2005, and recorded at the Southern Essex District Registry of Deeds on February 21, 2006 (Plan Book 396, Plan 5), the "affected" parcel is not a standalone parcel, but was created and merged with 55 Pearson Drive through that ANR Plan. What the Applicant calls 55 Rear Pearson Drive is identified on this Plan as Parcel B, and is described thus: "Parcel B is not a buildable parcel by itself, but is to be combined with Map R-20, Lot 75, to form one continuous parcel containing 16.36 +/- acres." Our Assessors database contains only 55 Pearson Drive, with an area of 16.36 acres. It does not contain any parcel identified as 55 Rear Pearson Drive.

**Response:** As stated above, the Applicant has satisfied the requirements of "site control" for the Project parcel and in fact has Purchase and Sales Agreements for both Pearson Drive and 55 Rear Pearson Drive. Furthermore, there is no requirement that the Project parcel be a "buildable" lot under local regulations.

Thank you for your time and consideration. The Mr. Eriksen and I look forward to meeting with the Board to discuss the Project.

Sincerely,

Deschenes & Farrell, P.C.

Douglas C. Deschenes