

Town and County of Nantucket Board of Selectmen • County Commissioners

Dawn E. Hill Holdgate, Chairman
Jason Bridges
Matt Fee
Rita Higgins
James R. Kelly



16 Broad Street
Nantucket, Massachusetts 02554

Telephone (508) 228-7255
Facsimile (508) 228-7272
www.nantucket-ma.gov

C. Elizabeth Gibson
Town & County Manager

February 14, 2018

Mr. Michael Busby
40B Specialist
MassHousing
One Beacon Street
Boston, MA 02108

Re: Surfside Crossing 40B – Project Eligibility Letter Application

Applicant: Surfside Crossing LLC
Project: Surfside Crossing in Nantucket /156 ownership units on 12.87 acres
Property: 3, 5, 7 & 9 South Shore Road, Nantucket, MA/LUG-2 Zoning District

Dear Mr. Busby:

The Board of Selectmen (“Board”) received your December 15, 2017 correspondence regarding the December 12, 2017 application (“Application”) by Surfside Crossing LLC (“Applicant”) to MassHousing for a Project Eligibility Letter (“PEL”) to allow submission of a comprehensive permit application to construct 156 ownership units, with 60 single-family detached dwellings and 96 condominiums in 6 buildings, with a total of 389 bedrooms (“Project”), on 12.87 acres at 3, 5, 7 and 9 South Shore Road (“Property”). We thank you very much for the opportunity to provide our comments.

The Board of Selectmen voted 5-0 to strongly urge MassHousing to deny the PEL because (1) the design presents significant fire safety issues; (2) the Property is too culturally important¹; (3) the Property is located in an extremely environmentally sensitive² area; (4) the Parcel is too small to support the proposed 12 unit per acre density, which would overwhelm the Property and the neighborhood and where there is a special concern over traffic generation; (5) the Project would generate 43,000 gallons of sewer flow per day that would require a new one-mile long sewer main to the wastewater treatment facility as existing sewer mains cannot handle additional flow; and (6) the Town has insufficient water capacity to serve the Project.

As a threshold matter, the Board notes that Nantucket unquestionably has a critical need to design, permit and build affordable housing. The Board of Selectmen developed and adopted an updated Housing Production Plan in 2016 which was approved by the Department of Housing and Economic Development (“DHCD”)³. We presently have 121 Subsidized Housing Inventory (“SHI”) Units, short of our

¹ The Property is located in the vicinity of several documented archeological sites and will need intensive surveying.

² The Property consists entirely of endangered species habitat and is located in the Miacomet Pond Watershed.

³ Please see attached Exhibit 1 – Nantucket’s 2016 Housing Production Plan.

workforce / affordable housing needs and our minimum goalpost of 490 SHI Units (10% of our year-round housing stock). However, the Board has made affordable housing creation an urgent priority and worked very successfully in recent years with the development community and Town Meeting to craft and adopt zoning tools to allow affordable housing development that is economic to build.⁴ As a direct result, since March 9, 2017, special permit relief has issued for four separate projects that will provide Nantucket with 306 additional SHI Units.⁵

On December 21, 2017, special permit relief issued for Town-owned land, to allow creation of 64 income restricted workforce housing units, all of them SHI eligible. On March 9, 2017, three workforce housing special permits issued, with one project having 225 rental units and the other two providing multiple affordable housing ownership opportunities. *We want MassHousing to know that we take the critical need for affordable housing very seriously and we are making significant progress and will continue to work to make even more progress.*

That said, the Surfside Crossing Project is entirely inappropriate for the reasons detailed below.

1. Project Design Defects/Fire Safety Issues

The Project proposes only one means of egress for the 96-unit condominium complex and this is dangerously deficient. The rear parking areas are not designed to provide fire ladder truck access and this is also very dangerous.⁶

If the only entrance to the condominium buildings were blocked, the entire condominium complex would be blocked, making fighting a fire very difficult and causing critical delays in efforts to control a fire, allowing it to spread. Nantucket is an island away off-shore in the Atlantic and we often experience high winds, especially during the winter season. Reaching any fire, particularly when it is windy, as quickly as possible, is a matter of the greatest public safety urgency. The single means of egress for 96 units should not be allowed as the need to protect public safety (both that of the occupants of the Project and other area residents) and to protect property are of paramount importance. The Fire Chief has noted that parking areas must be properly designed to allow access for a ladder truck, to allow rescue and fire operations.

The fire spread concern is increased by the 12-unit/acre density of the Project and the dense development of the adjacent 40B development (4.38 units per acre). Access for emergency operations to such densely developed areas is absolutely critical and must be provided.

2. Infrastructure Issues

A. Sewer Issues

i. Town's Sewer Easement

The Town has a sewer force main easement that crosses the entire Property. The Project proposes to place buildings very close to the easement, including one or more buildings on

⁴ A list of the Income-Restricted Housing on Nantucket and a copy of the zoning relief adopted are attached as Exhibits 2-A and 2-B.

⁵ Copies of the four Special Permits are attached as Exhibits 3-A, 3-B, 3-C and 3-D.

⁶ Letter from the Nantucket Fire Chief is attached as Exhibit 4.

the actual edge of the easement or even slightly within the easement area; and the Project proposes the planting of trees above the sewer force main easement.

No structure may touch or intrude into the Town's force main easement and no trees or other landscaping may be placed above the easement, except for grass. In the event of the need to maintain, repair or replace the sewer force main or portions of it, the Town needs and has a right to have unfettered access to the easement area. In addition, the Town needs to have access through the Project to reach the easement area. In the event of an emergency relating to a sewer force main, the Town needs immediate and unobstructed access.

In the event that the Project were to proceed, the Applicant must be required to survey the easement before construction begins, to provide an accurate current as-built location of the infrastructure in the easement area, and then provide a survey of all staked foundations before they are poured.

ii. Sewer Capacity Issues

The Project would generate 43,000 gallons of sewer flow per day and there are two separate capacity issues that will have to be evaluated in relation to such a large flow. The Town is in the process of conducting a Capacity Management Operation and Maintenance survey ("CMOM").

While current sewer capacity at the Surfside Wastewater Treatment Facility is adequate to serve existing needs, existing sewer infrastructure is inadequate to serve a project of this magnitude.

Current sewer mains and sewer pumping stations are adequate to serve existing needs, but the existing mains and pump stations cannot take materially additional flow outside build-out of existing plans at this time. There are two sewer force mains that cross the Property, but it is not feasible to connect to these active mains nor is it feasible to connect to the nearby Surfside Pump Station, as the mains and the pump station are already at full capacity or will be when already allocated flow is added to this infrastructure for projects that already have permits.

While there may be sewer capacity available at the Surfside Wastewater Treatment Facility when the Project is ready to connect; at a minimum, the Project would need to construct a new, separate sewer main that would flow directly to the Facility, which is approximately one mile from the Property. The sewer main would either need to be supported by a new sewer pump station at the Property or be designed and constructed to allow for gravity flow. The estimated expense is \$750,000 for a pump station and \$1.4 million for the sewer main.

B. Water Capacity Issues

The Town is nearing the expiration of its 20-year Water Withdrawal Permit and is working on the application to DEP to renew the permit. Currently, there are six new approved developments, with 459 housing units, that are planned to be built in the next five years that intend to apply to

connect to the Wannacomet Water distribution system; and, of course, there is the issue of the high water demand during the summer season which must be taken into account.

The Project would conservatively require 11 to 12 million gallons of water per year. Once the new water withdrawal permit is issued, there will be a set amount of water that will be allowed to be pumped. Simply put, the *water infrastructure capacity* may not be available to serve the Project⁷.

C. Traffic, Parking, and Public Transportation

i. Traffic

The increased traffic to and from the Property, during the summer season and the school year alike, must be appropriately evaluated from a vehicular as well as pedestrian / biking perspective. If a PEL is issued and a comprehensive permit application is received, the developer must provide a comprehensive traffic study, with a scope that includes the Property and critical intersections within approximately 1-mile of the site (see eight intersections noted on attached map⁸) and takes in to account both seasonal and off-seasonal (school year) peaks. *We cannot overstate the importance of understanding and taking in to account the impact that a development which would add 156 units and 389 bedrooms to a single access road neighborhood would have.*

ii. Parking

The proposed parking would technically satisfy local requirements, however, multiple spaces will need to be surrendered or removed to meet the access requirements of the Fire Department. None of the planned parking over the Town's Sewer Main Easement may occur. Furthermore, parking on the 40B site next door (Sachem's Path), where density is lower (4.38 units per acre versus 12 units per acres), has been routinely cited by residents as inadequate in practice now that the project is complete and occupied.

iii. Public Transportation

We do not currently have year-round public transportation available for this area 'though the Board notes expanded bus service to year round in this area is scheduled. Details are currently being worked out. This service is new and it is uncertain at this time as to level of usage so there is no guarantee of ongoing service.

3. Cultural and Environmental Sensitivity

A. Archeological/Cultural Importance

Prior investigation in the immediate vicinity noted significant Wampanoag activity, including a burial ground and artifacts. To that end, the Executive Director of the Massachusetts Historical Commission ("MHC"), by letter dated February 2, 2018, noted that: "Undisturbed portion of the project impact area are archaeologically sensitive by virtue of environmental characteristics,

⁷ The Nantucket Wellhead Protection District Map is attached as Exhibit 5.

⁸ See attached Exhibit 6 – Intersection Study Map.

with level, sandy soils in proximity to recorded archaeological sites and the wetlands and water resources of Miacomet Pond, favorable for ancient and historic period Native American Habitation and land use.”⁹

The MHC Letter requests that development of the Project “be preceded by an intensive (locational) archaeological survey ... under a State Archaeologists Permit ... by a professional consulting firm retain by the project proponent ... to determine if the project will affect any significant historic or archaeological resources ... and to avoid, minimize, or mitigate adverse effects to identified significant archaeological resources.”

In the event that any state permit is required, then compliance will be required under G.L. c.9, §§26-27C. We request that the PEL not issue before the archeological study is conducted, or in the case MassHousing decides to issue the Project a PEL that it require that the survey be conducted.

B. Environmental Sensitivity

The Application notes that the entire Property contains Priority Habitats of Rare Species. We have attached Natural Heritage & Endangered Species Program mapping of the area and the MESA permit for the 40B project next door that speak to the sensitivity of this area.¹⁰ We understand that the Project will disturb the entire acreage, per the representations in the PEL application. Virtually the only open space to be provided would be atop the drainage infrastructure and above the Town’s sewer force main easement. The Project is located within mapped protected species habitat; in our view, the Applicant should be required to obtain a determination from Mass Natural Heritage regarding any habitat management areas/requirements for the Property before any PEL letter is issued. In the case of the 40B next door, on approximately 9 acres, over 12 acres of off-site mitigation lands were obtained in that the case, as a Town-supported project, that project by the Nantucket Housing Authority was able to provide relief with off-site land. The Application does not speak to the developer’s ability to do so here.

The Property is located entirely within the Miacomet Pond Watershed and a portion of #3 South Shore Road is within the area of direct runoff to Miacomet Pond.

Any development of the Property must take proper steps to prevent any direct runoff and to properly treat any surface waters before leaving the Property or being infiltrated to groundwater. This must include roof runoff. A development of this density, given its location could have a negative impact to Miacomet Pond.

C. Overcrowding of the Property and the Neighborhood

The proposed 12-units/acre for the Project would overwhelm and overcrowd the Property and the neighborhood. The size of the single-family lots ranges from 3,700 s.f. to 13,000 s.f. and at least 34 of the single-family parcels would have less than 5,000 s.f. The Town supported a 40B development with 40 single-family homes on small parcels right next door to the Property, but that development has a density of 4.38 units per acre, with more than two acres subject to a

⁹ Massachusetts Historical Commission letter dated February 2, 2018, attached as Exhibit 7.

¹⁰ The NHESP Priority Habitat Maps and MESA permit for Sachems Path are attached as Exhibits 8 & 9, respectively.

conservation restriction and with 12.75 acres of off-site open space mitigation land. Adding a second, even denser development right next door is not appropriate for this neighborhood.

At a minimum, the size of the smallest single-family lot should be increased to at least 5,000 s.f. (and the number of lots correspondingly decreased). We note that market rate single-family dwellings in a comparable 40B development in the vicinity have been selling for **\$1.8 million or greater**, so an increase in lot size (and a decrease in the number of dwellings) should be economically feasible for the Applicant and the market rate pricing should be noted in the Applicant's pro forma.

The Application recites that 30% open space will be provided within the Project; however, the proposed open space consists of: (1) thin strips of ineffective buffer around the perimeter of the Property, which are not usable for any open space purpose; (2) small parcels that consist of land above the underground drainage infrastructure; and (3) the land that runs the 20-foot width of the Town's easement for the sewer force main. As to the latter two areas, trees and landscaping must be prohibited. The overcrowding and lack of open space is wholly inappropriate.

4. Project Ownership/Management Issues

The Application proposes ownership and management of the single-family development and the condominium development by one entity. We understand that, ultimately, there would need to be two separate legal entities. If a PEL is issued, we request that it require two individual Comprehensive Permit applications and that there be two separate legal entities for the two parts of the development.

Any sharing of infrastructure, and the obligation to pay for maintenance, repairs and replacement, must be carefully worked out and documented.

We note that an underground drainage system is proposed for the Project. While that type of system can be appropriate for a commercial enterprise that is run by a professional management company, responsibility of that type of system by a home owner's association and a condominium association is much more difficult as such associations may not be professionally managed and may not understand that curtailing annual maintenance costs may have severely adverse and expensive impacts.

In particular, we urge that the issue of underground drainage and its maintenance requirements be carefully peer reviewed; and we urge that MassHousing make sure that the cost of that maintenance and the cost of repairs and replacement are included in the pro forma for the Project. We request that there be a requirement for the creation of a drainage escrow account, one that must be created and maintained by each of the two legal entities, to provide for the long-term funding of the maintenance, repair and replacement of the drainage system.

We are all aware, if an underground system is not properly maintained, it will clog and fail and the expense to repair and replace the system (and deal with flooding damage) can be prohibitive. We urge that any PEL require the provision of separate escrow accounts and that there be peer review of the amount that must be placed in the accounts by the developer at the outset and that must be funded by the individual owners over time.

5. Questionable Practices by 40B Developer

The Board recently became aware of issues with an existing 40B project that must be addressed in this and all affordable housing projects going forward. The ZBA received complaints that, on multiple occasions, affordable home buyers were presented by the 40B developer with deeds, at the 11th hour during the closing process, that included reciprocal easements that allowed the developer to place a garage or a common driveway on the affordable parcel to support an adjacent market rate lot, with the affordable home buyers feeling pressured to agree, for fear they would lose their place in the lottery, even though the garage or access way was not shown on the approved plans or within the comprehensive permit. This resulted in an inappropriate burdening of affordable parcels by reducing the useable area of the already small parcels.

This practice resulted in litigation and created expense for the Town and created expense and extreme anxiety for affordable unit owners and is still not fully resolved. The Town requests that MassHousing direct, in any PEL that is issued, for this and every project, that the Project shall be developed with the following constraints:

- a. No construction of accessory structure or driveway or access way shall occur unless shown on the approved plans and authorized under the comprehensive permit.
- b. No accessory structure (garage, shed, pool, etc.) may be erected on an affordable parcel for the purpose of serving an adjacent market rate parcel.
- c. No access way shall be installed on an affordable parcel to serve a market rate parcel unless the comprehensive permit and plan expressly and clearly approve a common driveway use.

6. Energy Issues

There is an important need to manage Nantucket's surging peak electric load. According to Nantucket's electric utility company, National Grid, the demand for electricity on the island is growing at more than five times the Massachusetts state average. If demand continues to increase at this rate, a third delivery cable will be necessary, at an estimated cost of \$150-175 million dollars to local ratepayers. We request that any PEL require that the Applicant carefully consider the Town's Housing Production Plan, in which key energy saving recommendations, goals and strategies are detailed. Additionally, according to National Grid, an engineering report would need to be commissioned in order to design and accommodate the Project's electric load. Significant electric service upgrade costs may be incurred by the developer to the extent allowed by the Department of Public Utilities.

7. School Impact

In order for the Town to plan appropriately, a school impact study must be provided by the Applicant for the Project.

8. Affordability Options

The Town has many projects underway or permitted in the 80% AMI category. We request that the

Applicant consult the Town's approved Housing Production Plan and with the Town's local housing agencies and consider income restrictions at other affordability levels for which the Town has a demonstrated need, including at moderate workforce levels like 120% AMI. We would like to see this kind of creative and year-round community-minded thinking brought to bear on this Project.

CONCLUSION

The Town is very aware that 40B's typically exceed local zoning standards; however, the Project design and configuration are entirely inappropriate; and, conflict and overburden the Property and the surrounding neighborhood for the reasons discussed above. Much more work by the Applicant would be needed to develop an appropriate plan addressing all of the concerns set forth in this letter for the Property before the Board could consider a letter of non-opposition. We urge that the PEL be denied or that it be issued for a revised project that fully addresses the concerns noted above.

We thank you and MassHousing for consideration of the Board's comments and concerns regarding the Project.

Very truly yours,



Dawn Hill Holdgate, Chair



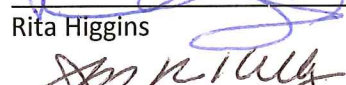
Matt Fee, Vice Chair



Jason Bridges



Rita Higgins



James R. Kelly

Enc. Exhibits

cc: Zoning Board of Appeals
Director of Planning and Land Use Services
Town Counsel
Surfside Crossing, LLC

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