

**JOHNSON &
BORENSTEIN, LLC**
ATTORNEYS AT LAW

12 Chestnut Street
Andover, MA 01810-3706
Tel: 978-475-4488
Fax: 978-475-6703
www.jblclaw.com
don@jblclaw.com

12-10-09P01:22 RCVD

2/10/10 (4)
Mark B. Johnson (MA, NH, DC)
Donald F. Borenstein (MA, ME, NH)

Kristine M. Sheehy (MA)
Denise A. Brogna (MA, CA)
Kathryn M. Morin (MA, NH)
Lorri Gill Covitz (MA)
Leslie C. Carey (MA, RI)
Karin M. Theo (MA)

Paralegals

Michele C. Jonikas
Karen L. Bussell

December 8, 2009

Via Certified Mail
RRR #7004 1160 0002 9293 8695

Pauline Knibbe, Chair
Acton Board of Selectmen
Town of Acton
472 Main Street
Acton, MA 01720

Re: Applicant: Highgrove Estates, LLC
Location: 330 (approx.) West Acton Road
(opposite Canterbury Road), Stow, MA; and
18 Woodchester Rd.; 16 & 18 Windemere Rd., Acton, MA
Comprehensive Permit, G.L. c. 40B, ss. 20 - 23
Notice of Submission of
Site Eligibility Application pursuant to 760 CMR 56.04(2)

Dear Chairperson Knibbe:

Notice is hereby given pursuant to the above-referenced regulation that Highgrove Estates, LLC has requested the issuance of a Project Eligibility and Site Approval letter on this date from the Massachusetts Housing Financing Agency. The Applicant seeks a project eligibility determination under the Federal Home Loan Bank of Boston's New England Fund Loan Program, as well as, MassHousing's own loan programs.

The Applicant has proposed the development of 64 residential homes on a site totaling 42.1 +/- acres, located in both Stow (56 units, 37 acres) and Acton (8 units, 5.1 acres). A copy of the Applicant's Housing Starts application package, as filed with MassHousing, is enclosed herewith and contains detailed information

Pauline Knibbe, Chair
Acton Board of Selectmen
December 8, 2009
Page 2

concerning the Applicant's proposal. I trust this notice satisfies the Applicant's obligations under the cited Regulation.

Very truly yours,

JOHNSON & BORENSTEIN, LLC


Donald F. Borenstein

DFB/mbf

Enclosure

Cc: Highgrove Estates, LLC
MassHousing



FILE COPY

**Town of Acton
472 Main Street
Acton, Massachusetts 01720**

Telephone (978) 264-9612
Fax (978) 264-9630

**Steven L. Ledoux
Town Manager**

January 14, 2010

Mr. Donald Borenstein
Johnson & Borenstein
12 Chestnut Street
Andover, MA 01810

RE: Highgrove Estates LLC 40B
By e-mail to don@jblclaw.com

Dear Mr. Borenstein;

The Acton Board of Selectmen is in receipt of your letter of December 8, 2009 with regard to the subject noted above.

To that end, the Board of Selectmen will be discussing your proposal for a 40B located in Acton, at 18 Woodchester Road, 16 & 18 Windemere Road and 330 West Acton Road in Stow, Massachusetts. The Acton Board of Selectmen requests a presentation from the proponent on the portion proposed to be located in Acton, on February 8, at 7:40 p.m. in the Faulkner Hearing Room in the Acton Town Hall.

Please note that the Acton Board of Selectmen must submit their comments prior to February 11, 2010.

In order that our appropriate departments can prepare comments for that meeting we need to have additional notebooks on the proposed project. We would ask that you submit 3 more complete notebooks for our staff and committee review purposes.

In addition, any materials you will be distributing at that meeting, we ask that you forward by e-mail to my office no later than the Thursday prior to your February 8th meeting. I can be e-mailed at cjoyce@acton-ma.gov if you have any additional questions please feel free to contact me.

Very truly yours,

Christine Joyce
Town Manager's Office

Cc: Roland Bartl, ACHC, Board of Selectmen, Board of Appeals



01-13-10P12:52 RCVD

Massachusetts Housing Finance Agency
One Beacon Street, Boston, MA 02108

TEL: 617.854.1000 | FAX: 617.854.1091
VP: 866.758.1435 | www.masshousing.com

January 11, 2010

Pauline Knibbe, Chair
Board of Selectmen
Town of Acton
472 Main Street
Acton, MA 01720

RE: Highgrove Estates
PE# 503
Site Approval Application Notification

Dear Chairperson Knibbe:

The Massachusetts Housing Finance Agency (MassHousing) is currently reviewing an application for Site Approval submitted by Christine Sweeney. The proposed Highgrove Estates development will consist of 64 newly constructed housing units located on a 42 acre parcel of land located on West Acton Road in Stow and 18 Woodchester Road in Acton.

The site approval process is offered to project sponsors who intend to apply for a comprehensive permit under Chapter 40B. MassHousing's review involves an evaluation of the site, the design concept, the financial feasibility of the proposal, and the appropriateness of the proposal in relation to local housing needs and strategies. As part of our review, we are soliciting comments from the local community and we would appreciate your input. You also may wish to include in your response, issues or concerns raised by other town boards, officials or other interested parties. Pursuant to the new Massachusetts General Laws Chapter 40B regulations (760 CMR 56.00) your comments may include information regarding municipal actions previously taken to meet affordable housing needs such as inclusionary zoning, multifamily districts adopted under G.L. c.40A and overlay districts adopted under G.L. c.40R. Your comments will be considered as part of our review.

We have been informed by the applicant that the Town has received a copy of the Highgrove Estates application and site plans. Please inform us of any issues that have been raised or are anticipated in the Town's review of this application. We request that you submit your comments to this office within 30 days so we may process this application in a timely manner.

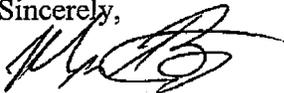
During the course of its review, MassHousing will conduct a site visit, which Local Boards, as defined in 760 CMR 56.02, may attend. The site visit for Highgrove estates has been tentatively scheduled for January 26, 2010. Please notify Michael Busby, MassHousing 40B Project Coordinator, at (617) 854-1219 promptly if any representatives of your office or of other Local Boards plan to attend the scheduled site visit.

Please note that if and when an application is submitted for a comprehensive permit, assistance is available to Acton's Zoning Board of Appeals (ZBA) to review the permit application. The Massachusetts Housing Partnership's (MHP) *Ch. 40B Technical Assistance Program* administers grants to municipalities for up to \$10,000 to engage qualified third-party consultants to work with Acton's ZBA in reviewing the Chapter 40B proposal. For more information about MHP's technical assistance grant visit MHP's web site, www.mhp.net/40B or e-mail MHP at communityinfo@mhp.net. Also available at MHP's web site are the "Local 40B Review and Decision Guidelines" that were released in November 2005 to provide guidance to local officials as they review comprehensive permit applications. The Chapter 40B regulations and accompanying guidelines issued by DHCD, however, take legal precedence over the MHP guidelines.

If you have any questions, please do not hesitate to telephone me at (617) 854-1219 or Greg Watson, Comprehensive Permit Manager, at (617) 854-1880.

Thank you for your assistance.

Sincerely,



Michael Busby
40B Project Coordinator

Christine Joyce

From: Nancy Tavernier [ntavern@comcast.net]
Sent: Friday, January 15, 2010 10:51 AM
To: Christine Joyce
Subject: Fwd: Highgrove Estates comments to Roland, BOS.doc



Highgrove Estates
comments to ...

FYI

>Date: Fri, 15 Jan 2010 10:45:43 -0500
>To: rbartl@acton-ma.gov, Paulina Knibbe <p.knibbe@comcast.net>
>From: Nancy Tavernier <ntavern@comcast.net>
>Subject: Highgrove Estates comments to Roland, BOS.doc
>Cc: sledoux@acton-ma.gov, achc@acton-ma.gov
>
>Attached please find comments from the ACHC in regard to the
>Stow/Acton development, Highgrove Estates. I would advise having
>draft comments ready for Selectmen approval on Feb. 8 so they can be
>received at MassHousing by the 30 day deadline.

Acton Community Housing Corporation

Nancy Tavernier, Chairman

TOWN OF ACTON

Acton Town Hall

472 Main Street

Acton, Massachusetts, 01720

Telephone (978) 263-9611

achc@acton-ma.gov

TO: Roland Bartl
FROM: Nancy Tavernier, Chair ACHC
SUBJECT: ACHC comments on MassHousing notification of 40B application for Highgrove Estates, 330 West Acton Rd, in Stow; 16, 18 Windemere Drive, and 18, 20-23 Woodchester Drive in Acton
DATE: January 15, 2010
Cc: Steve Ledoux, Paulina Knibbe

ACHC has made a cursory review of the application and plans for the proposed 40B development called Highgrove Estates located primarily in Stow. The Board of Selectmen was notified by the proponent's attorney of its intent to file the application with MassHousing on December 8, 2009. The filing has been made and as required by law MassHousing notified the Town on January 11, 2010 about the application and the commencement of a 30 day comment period. We strongly urge the Selectmen to submit comments to MassHousing and we offer the following points to be considered as part of the Town's position.

The proposed development is for 64 units contained in 25 duplex and triplex buildings, all townhouses with two bedrooms, attached garages, and approximately 2400-3000 s.f. of living space. Twenty five percent of the units will be affordable, two units in Acton. The location of the project is on the Acton-Stow line with 56 units (22 buildings) in the Town of Stow and 8 units (3 buildings) in the Town of Acton. There are two triplexes and one duplex in Acton located on Windemere Drive which connects to Woodchester Drive. The main road in the project is proposed to be a public way in Stow and Acton as it begins on West Acton Rd. and goes north to hook up to Woodchester Drive at the intersection of Highland Rd., both public ways. The Acton units can only be accessed from Windemere Drive so they are not part of the overall traffic flow from the rest of the development. Traffic from the 56 Stow units can travel either to West Acton Rd. in Stow or Woodchester Drive and other roads in the Forest Glen/Squirrel Hill neighborhoods in Acton depending on which direction the drivers are going.

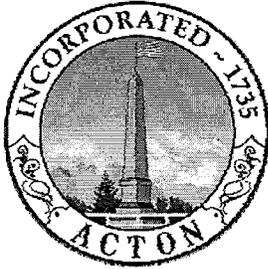
This is a list of concerns or issues for you to consider as part of your comments:

- The market sales prices in Stow are listed at \$378,000 but in Acton at \$495,000. We feel that is not only an unrealistic price for a two bedroom townhouse but the differential

between the two towns seems excessive. The main advantage to the Acton address is the public water supply and the schools, we assume.

- The affordable unit selling price is \$163,000 which is a good price for an affordable unit.
- We are concerned that the 2BR townhouse design may be a non-starter in the market as other developments are having difficulty selling two bedroom units, a mixture of unit sizes would be more desirable.
- We know there will be concerns about the potential for up to half of the traffic going north on the new road which would take it through the existing neighborhoods. West Acton Rd. is a feeder road and traffic should be funneled onto it as much as possible.
- We strongly urge the Town of Acton to coordinate comments and the review process with the Town of Stow. We suggest contact also be made with former Acton town employee Donna Jacobs who is on the Stow Housing Trust and is likely knowledgeable about this proposal.
- We note that unless Acton water is extended to the Stow side of the project, there will be separate condo association on the Stow side for each building due to the necessity of a private well. That will not be the case in Acton, all three buildings will be a separate condo association and we support that structure.
- We are not certain about wetlands issues on the Acton parcel, they need to be reviewed by Tom Tidman.
- We would encourage the development of walking trails that would link up to conservation land on Flagg Hill.
- We would not want to see both affordable units be the interior units in the two triplexes, at least one should be an outside unit.
- The location of this development is inconsistent with the Town's Comprehensive Permit Policy document.

Lastly, we are concerned that there has been no notification of the abutters and would urge the Selectmen to contact the neighborhood association in that area to alert them to the presentation on February 8 and to give them a chance to view the plans in Town Hall prior to that meeting.



Planning Department

TOWN OF ACTON
472 Main Street
Acton, Massachusetts 01720
Telephone (978) 264-9636
Fax (978) 264-9630
planning@acton-ma.gov

MEMORANDUM

To: Steve Ledoux, Town Manager **Date:** January 28, 2010
From: Roland Bartl, AICP, Planning Director *R. B.*
Subject: **High Grove Estates – 40B, Stow & Acton
MassHousing Project Eligibility/Site Approval Application Notice**

Financing: MassHousing & New England Fund
Comments due to MassHousing: **February 11, 2010**
MassHousing site visit: February 2, 2010, 10:00AM
Location: Stow: off West Acton Road at Acton town line
Acton: 16 & 18 Windemere Drive &
18 Woodchester Drive
Acton Town Atlas map/parcels: G-1/251, 280, 295
Zoning – Acton: Residence 2 (R-2)
Proposed number of units: 64; 8 in Acton
Proposed number of affordable units: 16; 2 in Acton
Housing types: Duplexes and triplexes
Proponent: Highgrove Estates, LLC; Christine Sweeney
Contact: Donald F. Borenstein, Esq.
Johnson & Borenstein, LLC
12 Chestnut St, Andover, MA 01810
978-475-4488
Engineer: Stamski and McNary, Inc.

MassHousing is reviewing this project in accordance with State regulations on 40B's. The developer must have MassHousing site approval before submitting a 40B project application to the local Zoning Board of Appeals.

I have reviewed the ACHC comments, dated January 15, and do not intend to repeat them here except to note that the project location is inconsistent with Acton's 40B Policy.

The site in Stow is challenging with steep slopes, high groundwater, and significant uncontrolled drainage that affects some abutters. The developer had previously sought preliminary approval for a

19-unit cluster subdivision plan in Stow, which had no access or only emergency access to Woodchester Drive in Acton. The Stow Planning Board¹ rejected the plan. This is unfortunate in that its denial has undoubtedly caused the developer to pursue the 40B route, which now involves Acton. I have not read the Stow Planning Board's decision on the preliminary cluster plan and thus do not know the specific reasons for their denial.

However, the Stow Planning Board has shared with me their preliminary comment letter on the 40B project proposal. It opens with the statement that "the site of the proposed project is not appropriate for residential development", yet the 37 acres site (Stow acreage only) is zoned for residential use. It continues with expressing grave concerns regarding the site hydrology noting that existing runoff causes flooding at West Acton Road and assuming that development of the site will inevitably increase the runoff. In my experience, new development can as much help with mitigating bad existing drainage problems as it can cause to make things worse. It mostly depends on the design engineer, who builds the development infrastructure, and who supervises the work. The design engineer in this case usually does pretty good work. Further, the Stow Planning Board's draft letter states that "while the road design (for the development to West Acton Road) is within the criteria for horizontal and vertical alignment, the combination of the two creates an unsafe condition." I find these statements troubling and not well suited to confront and address the issues that both Towns are now facing with 64-unit 40B project application now before MassHousing, and presumably soon before the Acton and Stow Boards of Appeals.

The Stow Planning Board's position regarding this land seems rather entrenched; it reports that it had denied three previous development proposals, one having had only 7 lots. It is hard to tell whether the developer would be willing to pursue any further/definitive approvals from the Stow Planning Board, or whether the Stow Planning Board is at all willing to reconsider its positions in light of the looming 40B project. Given the impacts that the 40B project has on the Forest Glen/Squirrel Hill neighborhood – at least half the traffic running through residential neighborhood streets – it may be worth for Acton to try to effectuate a change of mind in Stow about the much smaller original cluster subdivision.

cc: Planning Board (Acton)
ACHC

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¹ Stow has an elected Planning Board.

**TOWN OF ACTON
INTERDEPARTMENTAL COMMUNICATION**

Date: February 4, 2010

To: Steven L. Ledoux, Town Manager

From: Engineering Department
Bruce M. Stamski, P.E., Town Engineer/Director of Public Works

Re: Highgrove Estates 40B project in Stow and Acton

The Engineering Department met with Detective Cowan and briefly reviewed the above mentioned plan with respect to traffic impacts on Acton roads.

The 8 units in Acton on Windemere Drive are a stand alone development with respect to traffic. These 8 units will produce approximately 80 vehicle trips per day which will not overwhelm the local streets with respect to volume. When more detailed plans are submitted we will have recommendations for off site mitigation due to the steep slopes of the surrounding roadway network.

The 56 units in Stow will produce approximately 560 vehicle trips per day. It was our opinion that almost all of these trips will enter and leave via the West Acton Road entrance in Stow. We will want certain features built into the design to assure this. The Acton local streets in this area have grades up to 13% and are unsuitable for a large increase in traffic. We request that a T turnaround be constructed at the Town Line and that the 200 foot connection to Woodchester Drive have signage for emergency use only. We would not recommend gates to formally block off the connection but have other traffic calming devices to discourage everyday use.

We would also request that the Town of Stow plow the 200 foot connection in that it serves their new residents.



Town of Stow

380 Great Road
Stow, Massachusetts 01775
(978) 897-5098
FAX (978) 897-2321

February 4, 2010

Michael Busby
40B Project Coordinator
MassHousing
One Beacon Street, 29th Floor
Boston, MA 02108-3110

Re: Application for Project Eligibility and Site Approval
Highgrove Estates, LLC

Dear Mr. Busby,

Pursuant to 760 CMR 56.04(3), the Stow Board of Selectmen, Planning Board, Board of Health, Conservation Commission and Municipal Housing Trust offer the following comments on the Application for Project Eligibility, filed by Highgrove Estates LLC comments as noted below. For the reasons set forth below, the Town asks MassHousing to deny the application for project eligibility using its broad discretionary authority to do so. In addition to the specific comments identifying the flaws and failures of the proposal, MassHousing is asked to acknowledge the significant steps taken by the Town of Stow to increase its affordable housing stock and, accordingly, support the Town by not issuing project eligibility to a project so directly contrary to the Town's long-term planning and land use goals. MassHousing should use its role of "gatekeeper" wisely and deny the requested approval for the reasons set forth below in addition to the simple fact that the Town rejects this application as being completely inconsistent with the Town's plans, programs and land use policy.

1. The application violates the requirements of 760 CMR 56.04(4)(e) where the claimed acquisition value of \$1,500, 000 is unsupported.

The materials submitted to the Town on behalf of the applicant contain, at Tab 6, an "Opinion of Value" prepared by Barrett & Company Real Estate, Concord, Massachusetts. Putting aside the question of the qualifications of who prepared this "Opinion of Value" (it is unsigned and undated), the "Opinion of Value" contains no valuation of the real property, no methodology for how a valuation would be reached or any "opinion of value." The "Opinion of Value" as contained in the materials submitted to the Town, and presumably MassHousing, should be disregarded as completely unreliable.

In addition to failure of the applicant to support their claim of the acquisition price, certified to under the "pains and penalties of perjury", the applicant has failed to explain (for good reason as no explanation could be made) how the Purchase and Sales Agreement's

contingency clause found in paragraphs 6 and 7 could possibly conform to MassHousing's "Acquisition Value" policy. Accordingly, the application for project eligibility must be denied.

2. Claimed proof of site control, the Purchase and Sales Agreement, states by its own terms, that 64 dwelling units are required for performance.

By its own terms, the entire project must be rejected by the buyer (who are related parties to the seller) if the buyer does not obtain "64 for sale units." The purchase and sales agreement does not contain any provision allowing the buyer to accept fewer than "64 for sale units." Accordingly, MassHousing is being asked to approve a project eligibility application that it knows includes no—zero—flexibility in terms of density. Therefore, should the Stow Board of Health, the Department of Environmental Protection or any other agency not within the jurisdiction of the Board of Appeals or Housing Appeals Committee pursuant to G.L. c.40B, s.20-23 disapprove one or more units within the project, the specific and unequivocal terms of the purchase and sales agreement are negated, site control is lost and the project is in violation of G.L. c.40B, s.20-23 and 760 CMR 56.00 et seq.

As the applicant has clearly conceded jurisdiction of the Stow Board of Health over the proposed project (see sheet 3 of 4 of "Site Plan" accompanying its application), MassHousing could fairly presume that, due to the soils, wetlands and topography on and off the locus, in addition to the Planning Board's lengthy discussion regarding the December 2008 preliminary plan denial, that the Stow Board of Health will be duly concerned with plans to dispose of wastewater generated by 64 dwelling units and act accordingly.

These facts put MassHousing in a difficult position. If despite the Town's credible request to deny project eligibility MassHousing grants project eligibility approval anyway, MassHousing is now aware that it must issue a project eligibility letter allowing for no fewer than 64 dwelling units. Approval of any fewer number of units will render the purchase and sales agreement and thus site control, a nullity. Given the repeated failures of permitting on the locus and a brief review of the plans as submitted to MassHousing, it is inconceivable that 64 dwelling units will be—or can be—approved on this locus. MassHousing should not issue project eligibility for a development that, by its own contractual terms, will lose site control through one of several permitting scenarios unreviewable by the Board of Appeals or Housing Appeals Committee.

3. The Town of Stow is "consistent with local needs" as the term is used in 760 CMR 56.03(7).

On or about December 18, 2008, or *within twelve months* of the applicant filing this application with MassHousing and the Town of Stow (dated December 8, 2009 and received by the Town of Stow on December 10, 2009), the Stow Planning Board denied a preliminary subdivision plan pursuant to G.L. c.41, s.81-L, et seq. and the Stow Subdivision Rules and Regulations. The Board's decision is attached to this letter. Accordingly, the present application for project eligibility is a "related application" pursuant to 760 CMR 56.03(7). While the plan would have included a percentage of the proposed dwelling units as "affordable" pursuant to the Town of Stow's inclusionary zoning bylaw, these units would not have been "at least 10% SHI Eligible Housing units" per 760 CMR 56.03(7) and, therefore, the protections afforded the Town by 760 CMR 56.03(7) apply in full.

It is anticipated that MassHousing or the applicant may claim that the "related application" provisions of 760 CMR 56.03(7) do not apply where the "application" for project eligibility, as opposed to application for a comprehensive permit, is made within twelve months of a prior

application. Respectfully, such a claim would be incorrect. As an application for a comprehensive permit cannot be made without project eligibility approval from MassHousing, it would be folly to suggest that the phrase "application" as found with 760 CMR 56.03(7) did not include any application related to the procurement of the comprehensive permit as required by 760 CMR 56.00, et seq. Accordingly, it is the Town's position that the present application to MassHousing and, if MassHousing should grant a project eligibility letter, the comprehensive permit application to the Board of Appeals, constitutes a "related application" under the regulations and that, accordingly, the Town of Stow is "consistent with local needs" as it relates to this project. As the Town has expressed its strong disapproval of this project, MassHousing should simply reject the application now, avoiding further unnecessary expenditures of time and resources of the parties.

4. The application fails to comply with 760 CMR 56.04(i).

Although clearly required pursuant to 760 CMR 56.04(i), the application and accompanying plans fail to identify the portions of the Town of Stow Zoning Bylaw, Subdivision Regulations and other rules and regulations for which waivers are sought. MassHousing is barred from issuing a project eligibility letter for this project without submission of such information and accordingly, the application package submitted to MassHousing and the project eligibility letter must be denied. (See, 760 CMR 56.04, "The Applicant shall submit an application... which *shall include*:...)(Emphasis supplied).

5. The application requires approval of the Planning Board pursuant to G.L. c.41, s.81-U and 81-X.

The project for which project eligibility is sought is nothing more than a re-submission of a subdivision plan of land, having previously been denied the same pursuant to the Subdivision Control Law. (The name of the proposed project, "Highgrove Estates" is the same name proposed by the landowner in its failed attempt to obtain preliminary subdivision approval in 2008.) Now, seeking to circumvent the purpose of the Subdivision Control Law, the applicant has filed an almost identical proposal pursuant to G.L. c.40B, s.20-23. Putting aside the obvious intention of the applicant, it is the position of the Town of Stow that G.L. c.40B, s.20-23 may not be used to by-pass the clear and unequivocal language found in G.L. c.41, s. 81-X regarding the recording of a plan illustrating a subdivision of land. Simply put, a board of appeals is without authority to endorse a subdivision plan and the Registrar of Deeds without authority to accept a board of appeals' endorsement on a subdivision plan. MassHousing's approval of project eligibility of this project will set in motion a process whereby even if the Board of Appeals approves the project, the Board of Appeals is without authority to create the twenty lots sought by the applicant. Moreover, if the Housing Appeals Committee, on the mistaken belief that the Town is not consistent with local needs with regard to this project, orders the Board of Appeals to endorse the plan, such endorsement and possible recording at the Registry of Deeds would place title to the lots in question, given the clear conflict with the express provisions of G.L c.41, s.81-X. MassHousing can avoid this certain dispute by denying the project eligibility letter.

6. The proposed project will stress the requirements of Title 5, 310 CMR 15.000 Section 15:216 "Aggregate Determination of Flows and Nitrogen Loading."

Approval of a 40B project should not occur knowing that the threats to environmental health issues cannot be met. The proposed development of 56 units in the Town of Stow will stress the requirements for a nitrogen loading aggregate plan required by Title 5, 310 CMR 15.000 Section 15:216 "Aggregate Determination of Flows and Nitrogen Loading."

The Nitrogen Loading Facility Aggregate Plan requires that the applicant incur certain obligations regarding number of bedrooms and or wastewater discharge as defined in 310 CMR 15.002. The Restrictions and Easements are to insure the protection of nitrogen loading limitations of 440 gpd/acre discharge standard pursuant to 310 CMR 15.214 in nitrogen sensitive areas or in areas serving new construction where the use of residential wells and on site disposal systems are proposed in the project.

The Stow Board of Health is very concerned with the number of bedrooms and the allowable facility land and credit land with this submission as defined by Title 5, 310 CMR 15.000 Section 15:216.

7. The proposed project generates flows in excess of 10,000 gpd, requiring the need for a wastewater treatment plant.

The Board of Health has grave concerns about wastewater treatment on this site. The plans indicate a total of 112 bedrooms, in the Town of Stow resulting in flows greater than 10,000 gpd, which would trigger the need for a wastewater treatment plant. The applicant proposes a segmentation plan (individual septic systems for each 2-3 unit building), which could be viewed by DEP and MEPA as a way to specifically avoid the requirement for a wastewater treatment plant and possibly the requirement for MEPA review. Although more costly for the developer, a wastewater treatment plant is better for the environment and would also be best in terms of having sufficient funds in place for professional maintenance.

8. The site of the proposed project is subject to the new U. S. Army Corps of Engineers Programmatic General Permit (Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899).

The new U. S. Army Corps of Engineers Programmatic General Permit could make development of the site quite difficult.

The new Army Corps Programmatic General Permit (PGP), issued on January 21, 2010 establishes a three-tiered review process, similar to the previous PGP. For example, it requires that a project that may alter less than 5,000 square feet may be subject to Category 1 review, however, the new PGP requires that an applicant submit a Category 1 Form to the Army Corps. If a project alters between 5,000 square feet and 1 acre of federal wetlands, a Category 2 application must be submitted.

If less than 5,000 square feet are to be altered, the proposed activities must meet the terms and conditions of the General Permit. The new PGP specifies that a project "shall have no more than minimal direct, secondary and cumulative adverse environmental impacts" and applicants are to provide information on secondary and cumulative impacts as specified in Appendix D of the PGP.

Appendix A of the PGP specifies the new Federal review of activities in and around vernal pools: Projects that are less than 5,000 square feet may not be eligible for Category 1 permit review for any work within a vernal pool depression, for any work, including roads and driveways in the VP envelope (100 feet from the depression's edge), or any work that individually or cumulatively impacts >25% of the VP critical terrestrial habitat (areas within 100 - 750 feet of the depression edge).

There are also review requirements for crossing of rivers, streams, and wetlands.

The new PGP also defines Secondary Effects differently than the old PGP. Secondary Effects are effects on an aquatic ecosystem associated with a discharge of dredged or fill material, but not the result of the actual placement of the fill. Secondary effects include such items as the following: septic tank leaching and surface runoff, habitat fragmentation, interruption of travel corridors for wildlife (e.g. amphibians that migrate to and from seasonal or vernal pools), noise/lighting, and road kill of wetland dependent wildlife. The Corps will review each project to evaluate the scope, extent, severity, and permanence of direct, secondary, and cumulative adverse effects.

The proposed project will likely be reviewed by the Corps as a result of the number of crossings and secondary/cumulative effects.

9. The site of the proposed project is not appropriate for residential development.

Although the site is located in the Residential District, this site is not appropriate for development. The Town of Stow denied proposals for residential development on this site in 1972, 1973, 1998 and 2008 because the plans did not adequately address drainage, access and public safety.

The proposed site plan is strikingly similar to a preliminary plan denied by the Stow Planning Board in December 2008. In its decision, the Planning Board found that this site is not appropriate for an 18-unit Subdivision, as shown on the Preliminary Plan. The Applicant chose not to follow up with a Definitive Subdivision Plan addressing the deficiencies noted in the Preliminary Plan Decision. The proposed plan for 56-units on the same site with basically the same layout creates additional impervious surfaces, causing additional runoff and impact to abutting properties. In addition, the proposed road will cause safety issues in inclement weather related to emergency response time and access to school buses and the Council on Aging van.

As indicated in the December 2008 Decision (attached), the Planning Board has grave concerns that development of this site will cause harm to abutting properties and roadways and does not provide safe access for the proposed 56 units. The following list outlines major concerns noted in the decision:

- The hydrological features of the area of the parcel proposed for development present major obstacles for development. The land is presently forested with a significant amount of wetlands. The depth to groundwater is very shallow, identified by the applicant during the 2008 application as being only two feet below ground surface in some areas. Clearing the present vegetation for roads and lot development will increase the quantity of water, which must be handled by the existing natural groundwater system. The wetlands that presently drain to Acton will present an increased flow placing an added burden on Acton's drainage systems.
- The Superintendent of Streets stated that the existing runoff from a spring on the hill causes flooding across and around West Acton Road. Additional water would exacerbate the problem. The existing drop inlet in Acton gets overwhelmed and cannot handle additional water.
- The Superintendent of Streets stated that the proposed road for the 2008 plan was located to the east side of the hill and would be very shady, making it susceptible to freezing. This proposal shows a similar plan for access from West Acton Road. The road in the 2008 plan had a 10% grade with multiple wetland crossings. It would also require extensive cutting and filling (up to 24 feet) to bring it to 10% grade.

- The topography shown on the Plan indicates steep (20%±) slopes from West Acton Road to a less steep plateau at the top of the hill. Access from West Acton Road will require a road with a 5% grade at the intersection to 10% grade on the 200' radius turn. While this design is within the criteria for horizontal and vertical alignment, the combination of the two creates an unsafe condition, as it would create a difficult roadway to maneuver in the winter, as expressed by the Stow Highway and Public Safety Officials.
- During a Public Meeting held by the Planning Board in 2008 on the 18-lot Preliminary Planned Conservation Development/Subdivision Plan, the Application stated that the site contains 30.31 acres of forested land. After development of the proposed Plan, the forested land would have been reduced to 14.91 acres. The current plan would reduce it further. The Board is concerned about the stability of the site and the road both during and after construction, as most of the trees on the first half of the hill will be removed and up to 20 feet of fill will be added.
- Most of the development is in the Water Resource Protection District. Although the Stow Zoning Bylaw limits development to no more than 10% impervious surface in order to protect our water resources, the total impervious surface, including roadways, sidewalks and houses, was above that limit, estimated to be just under 11%. The current plan appears to far exceed that, and we are concerned about the impact on the quality of neighboring wells.
- The Conservation Commission noted concern about the proposed access road and steep slopes, and wetland crossings that will be required to access the property from West Acton Road. The Commission has not yet made a determination with regard to whether the access road from West Acton Road would be considered a "Limited project" under the Wetlands Protection Act regulations, given that an alternative means of access to the upland portion of the property is available, which would not require wetland crossings. The Conservation Commission recommended that the Applicant explore the feasibility of locating the primary access in Acton and working with Stow and Acton on a mutual aid agreement for emergency response.

10. Development Plans were also denied for this site in 1972, 1973 and 1998 due to drainage and public safety issues.

- In 1972, the Applicant filed an Application for Approval for a Preliminary Subdivision Plan, prepared by Colburn Engineering, for this Site with the Towns of Stow and Acton. The Town of Stow and the Town of Acton disapproved the Application, as the Plan did not adequately address drainage, access, wetlands and street standards.
- In 1973, the Applicant filed an Application for Approval for a Definitive Subdivision Plan, prepared by Colburn Engineering, for this Site with the Towns of Stow and Acton. This plan showed 23 lots located in the Town of Stow with sole access from the Town of Acton. The Town of Stow and the Town of Acton disapproved the Application, as the Plan did not adequately address drainage, access, wetlands and street standards.
- In 1998, the Applicant filed conceptual subdivision plans, prepared by Howe Surveying Associates, Inc.:
 1. A seven (7) lot conventional subdivision – four (4) hammerhead lots with frontage on West Acton Road, Stow and three (3) conventional lots with access from Woodchester Drive, Acton.

2. An eleven (11) lot conventional subdivision - four (4) ANR lots with frontage on West Acton Road, Stow and 7 conventional lots fronting on a subdivision roadway off of Woodchester Drive, Acton.
3. A seventeen (17) lot conventional subdivision with frontage on a subdivision roadway off of Woodchester Drive, Acton.

The Planning Board met with the Applicant on November 24, 1998. The Planning Board voiced concern about sole access from the Town of Acton, excessive grades in the Town of Stow, drainage and wetlands. The Applicant's Engineer stated that there is a 100' elevation change until you meet the plateau and that they provided access off of Woodchester Drive in Acton due to the topography along West Acton Road, where slopes are in excess of 20%. He further stated that it would be nearly impossible to build a road to town standards off of West Acton Road. The Applicant's Attorney stated that he feels it would be environmentally destructive to build a road in Stow, given the topography.

11. The Town of Stow continues to provide for affordable housing needs, such as inclusionary zoning, and Chapter 40B developments under construction and under consideration.

The Town of Stow acknowledges there is a need for low and moderate income housing in the Town of Stow pursuant to the provisions of Chapter 40B of the General Laws, the Town's long range planning efforts and applicable Rules and Regulations of the Department of Housing and Community Development (DHCD). However, we also note that not all sites are appropriate for residential development.

In addition to reasons stated above, we urge you to deny the application for project eligibility for this project, using your broad discretionary powers, as the Town of Stow continues to provide for affordable housing needs consistent with the Town's rational and long term planning objectives, as evidenced by the following actions in the past decade:

- May 2001 – Town Meeting approved the adoption of the Community Preservation Act in support of historical preservation, open space protection and low and moderate income housing, participating at the maximum 3% property tax surcharge. Since adoption, Stow Town Meeting has approved the allocation of \$2,352,000 in CPA funds for affordable housing projects as detailed below.
- June 2002 – Town Meeting approved an Active Adult Neighborhood Bylaw, which requires at least 10% of the units be priced for QUALIFIED AFFORDABLE HOUSING PURCHASERS. In addition, at least 5% of the DWELLING UNITS shall be built to sell at a price affordable to middle income households, as defined by Executive Order 418 for the Town of Stow.
- May 2003 – Town Meeting approved the sum of \$150,000 from the Community Preservation Fund for the purpose of purchasing perpetual deed restrictions on existing homes per the Stow Community Preservation Plan.
- May 2003 – Town Meeting approved the sum of \$100,000 from the Community Preservation Fund for the purpose of purchasing affordable restrictions on two properties. This project was part of a larger mixed-user project and has been in litigation.
- May 2003 – Town Meeting approved an Inclusion of Affordable Housing Bylaw (also known as Inclusionary Zoning), which requires any development or division of land, which could result in the creation of six (6) or more DWELLING UNITS, shall require a

Special Permit from the Planning Board, and shall include as a condition of said permit that:

- At least 10% of the units be priced for QUALIFIED AFFORDABLE HOUSING PURCHASERS;
 - The mix of AFFORDABLE DWELLING UNITS and market rate housing built in any one year be equivalent to the overall mix for the entire development;
 - Deed restrictions, acceptable to the Town, and established in accordance with the standards of DHCD or successor or additional programs adopted by the Commonwealth or its agencies, shall be placed on the appropriate property to ensure that AFFORDABLE DWELLING UNITS created under this section shall remain AFFORDABLE DWELLING UNITS in perpetuity or for as long a period as is allowed by law.
- October 16, 2003 – The Zoning Board of Appeals approved a ninety-six (96) unit Comprehensive Permit, sixty (60) of which are to be separate single-family dwellings and thirty-six (36) of which are to be in attached triplex multifamily structures. Twenty-five (25%) percent (24 units), of the units are designated for sale to buyers with income at or below 80% of the median income published for the Boston Primary Metropolitan Statistical Area (PMSA), and an additional six (6) units shall be sold to buyers with income at or below 120% of the median income published for the Boston PMSA. This development is currently under construction.
 - May 2004 – Town Meeting approved the sum of \$100,000 from the Community Preservation Fund for the purpose of purchasing perpetual deed restrictions on existing homes per the Stow Community Preservation Plan.
 - May 2004 – Town Meeting approved the sum of \$350,000 from the Community Preservation Fund for the purpose of acquiring permanent “affordability” restrictions for 37 dwelling units in the Pilot Grove Apartments, such restrictions to remain in perpetuity.
 - December 2004 – At a Joint Boards Planning Summit, the Town of Stow government identified Affordable Housing as one of four town-wide priorities. The Board of Selectmen assumed ownership for this priority.
 - March 2005 – Based on funds already appropriated at the May 2003 and the May 2004 Town Meetings, the Community Preservation Committee submitted to DHCD a proposed first-of-a-kind affordability program in which CPA funds would purchase affordability restrictions on existing homes to go into effect when existing home ownership changes hands. After several years of discussion and changes to the program to meet DHCD concerns, the program was deemed not eligible for the SHI.
 - May 2005 – Town Meeting approved the establishment of a municipal affordable housing trust fund.
 - October 2005 – Town Meeting approved the appropriation of \$252,500 from the Community Preservation Fund for two affordable units as part of a larger, “mixed use” project. This project involved Chapter 61 land, and a lawsuit resulted in the Town not being able to commence with the project.
 - May 2006 – Town Meeting adopted Section 18 to be added to Town Affairs of the General Bylaws – a Municipal Affordable Housing Trust, providing for a Board of Trustees consisting of seven trustees to be appointed by the Board of Selectmen, one of whom is to be a member of the Board of Selectmen. The Stow Municipal Affordable

Housing Trust complemented the policy work of the Stow Housing Partnership and eventually took over full responsibility.

- May 2006 – The Planning Board approved the Arbor Glen Active Adult Neighborhood, currently under construction. The Permit requires the developer to:
 - Build 4 units of housing for Annual Incomes of \$66,080.00 or less (80% of Median Income).
 - Build 3 units of housing for Annual Incomes of \$123,900.00 or less (150% of Median Income).
 - Make cash payment for 4 units.
- July 2007 – The Planning Board approved the Ridgewood Estates Active Adult Neighborhood. The Permit requires the developer to:
 - Build 4 units of housing for Annual Incomes of \$66,080.00 or less (80% of Median Income).
 - Build 3 units of housing for Annual Incomes of \$123,900.00 or less (150% of Median Income).
 - Make cash payment for 4 units.
- November 2008 – The Community Preservation Committee approved the sum of \$9000 in administration funds for the Municipal Affordable Housing Trust to create a new Housing Production Plan that is in compliance with the latest DHCD rules changes for Chapter 40B.
- October 2009 - Town Meeting approved the sum of \$1,400,000 from Community Preservation Unrestricted Fund Reserves, and \$350,000 from Community Preservation Affordable Housing Reserves, for the purpose of purchasing land and developing a total of 67 affordable housing units as follows:
 - 37 affordable supportive housing units next to Plantation apartments, an existing 50-unit affordable elderly rental apartment complex and
 - 30 affordable family rental units, adjacent to Pilot Grove apartments, an existing 60-unit affordable family rental development.

12. Smart Growth Criteria Score Card

The proposed project meets few criteria for the Smart Growth Criteria Score Card:

- The project does not meet the criteria for "Redevelop First."
- The project only appears to meet two criteria for "Concentrate Development." The plan certainly provides much higher density than the surrounding area and multi-family housing. However, the plan does not introduce mixed use or add new uses: The development is all residential. Additionally, the development is not compact or clustered to preserve undeveloped land. The only undeveloped areas are multiple Flood Plain Districts and vernal pools.
- The project does not appear to meet the criteria for "Restore and Enhance Environment." Although there is conservation land nearby, no open space or passive recreation facilities are identified on this site, and the plan does not show any connectivity to the off-site trails.

- The project does appear to meet the criteria identified by the applicant for "Be Fair." This is a 40B project, and it does provide affordable housing in the middle to upper income area. No other criteria apply.
- The project may meet the criterion identified by the applicant for "Conserve Resources:" Energy Star or equivalent. The plan did not provide any supporting evidence. No other criteria apply. Note that the Town of Stow adopted the most current version of the Massachusetts Stormwater Management Handbook for all development in the Town. It is disappointing that the applicant does not plan to use low impact development or other innovative techniques, which the Planning Board has been emphasizing with all applicants.
- The project does meet the criterion identified by the applicant for "Expand Housing Opportunities:" Homeownership units, including for low/mod households. No other criteria apply. Note that due to the lack of rental units, this project would not apply to many persons eligible for affordable housing programs.
- The project does not appear to meet the criteria for "Provide Transportation Choice." According to the proposal, the nearest public transportation is the Acton Train Station, 2.5 miles away. However, later in the document, the box is checked for a transportation corridor within approximately one mile. Additionally, there are no sidewalks should a resident want to walk 2.5 miles to the train station.

Furthermore, the project is not located near a town center, schools or Town services. All transportation is dependent upon cars, and all children would need to be bused to school. Furthermore, it is doubtful that school buses would be able to traverse the road in adverse winter weather as evidenced at other locations in Town with similar grades.

In addition, the Town does not see this project as "relatively consistent with existing neighborhood density" as the application claims. As shown on the plans, only three small, one-story homes are downhill from the proposed development. A project of 56 new homes above three existing homes is not "relatively consistent with existing neighborhood density." Furthermore, the footprint of each home appears to be of similar size as one of the units in the multi-unit buildings, and the multi-unit buildings are proposed to be 2 ½ stories; that is, two to three times longer than and 2 ½ times the height of the existing homes.

13. Stow Housing Production Plan

The goal of the Municipal Housing Trust is to support the creation of new affordable housing in the Town of Stow. The currently drafted Stow Housing Production Plan does not identify this site as a priority site for affordable housing. The Municipal Housing Trust would require additional information to understand how this proposal would support the priority goals and strategies identified in our Housing Production Plan.

14. Recommendation

The Town of Stow is supportive of affordable housing and has made a concerted effort to provide housing for affordable low- and moderate-income purchasers. That being said, we also take seriously our responsibility of protecting the health, safety and welfare of Stow's residents. The reality is that not all sites are appropriate for development. As indicated, several development proposals for this site with significantly less density have been

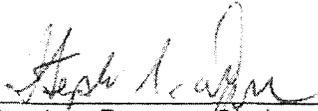
presented to the Town of Stow over the past 27 years, and all have been rejected because the applicant was unable to adequately address drainage, access, wetlands, street standards and public safety concerns.

15. Conclusion

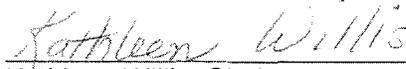
For all the reasons noted above and applying the discretionary powers granted to MassHousing, we urge you to deny the present application for project eligibility. Development on this locus has been rejected in the past, not because the Town is opposed to development in general or affordable housing in particular, and not because of neighborhood opposition. Rather, past attempts to develop this land—by the very same individuals proposing to develop it currently—were rejected due to legitimate, enumerated and rational engineering and public safety issues, issues that do not go away simply by labeling the project as a “comprehensive permit”. Quite the contrary. The present application only exacerbates the previous problems identified on this locus. We note that MassHousing has rejected project eligibility applications in several past instances where the grounds for doing so were far less obvious than here. We suggest that MassHousing has no grounds for approving the present application and respectfully await your decision to deny the same.

If you have any questions, please do not hesitate to contact Stow Planning Coordinator, Karen Kelleher, at 978-897-5098 or planning@stow-ma.gov.

Sincerely,



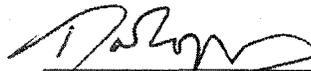
Stephen Dungan, Chairman
Board of Selectmen



Kathleen Willis, Chairman
Planning Board



Marcia Rising, Chairman
Board of Health



David Coppes, Chairman
Conservation Commission

Cc: Undersecretary Tina Brooks, DHCD
Inspector General Gregory Sullivan
Senator Eldridge
Representative Hogan
Acton Board of Selectmen
Acton Planning Board
Acton Zoning Board of Appeals
Stow Zoning Board of Appeals
Stow Municipal Affordable Housing Trust



Acton, MA

February 3, 2010

Mr. Roland Bartl, AICP
Director, Planning Dept.
472 Main Street
Acton, Massachusetts 01720

Dear Roland:

This letter is sent on behalf of the more than 270 families who are represented by the Forest Glen Association in West Acton in regard to the proposed 40B condominium development of 64 units to be built in Stow (56 units) and Acton (8 units) called Highgrove Estates.

Yesterday, you and I --- along with some interested Acton and Stow citizens and several officials from town boards in Stow--- did a "site walk" with representatives from the Highgrove Estates project and Michael Busby, 40B Project Coordinator for MassHousing, to obtain a first-hand look at the property and the plans.

Through our conversations and subsequent exchange of E-Mails, we have been able to gain a more comprehensive understanding of the scope and scale of this development, and its potential impact on Acton (and Stow).

The primary concerns about this 40B development being expressed by Stow town officials and residents in Stow and Acton are safety, traffic, and impact to the environment, including water runoff issues for nearby residents.

As you saw from the plans and the walk, there is a proposed steep and winding road design entering from West Acton Road in Stow and a second road exiting in Acton at the junction of Woodchester Drive and Highland Road onto residential roads not designed to handle a high volume of traffic. These are concerns during any season, but of deep concern during the winter months when roads are snow-covered, wet and icy.

Stow Police and Fire officials have already gone on record stating that the access road from Stow to Highgrove Estates --- because of its steep grade --- may be difficult (sometimes impossible) to navigate in winter and their emergency vehicles would have to travel through Acton to enter the development, thus delaying their response. This would also impact school buses and the Stow Council on Aging van.

There are vernal pools and wetlands on the Highgrove Estates site, and there are concerns about impact to the environment and also water runoff --- especially to the homes along the lower end of Duggan Road in Acton and across West Acton Road to Stow homes on Canterbury Hill Drive. These homeowners have already documented and dealt with water runoff and flooding problems which may be further exacerbated by this development. There are reports of clogged drains and the potential for water crossing Willow Street because the flow may be too much for the current piping system to handle.

The Town of Stow has denied proposals for residential development on this site in 1972, 1973, 1998, and 2008 because the plans did not adequately address drainage, access and public safety.

We have been told that the Town of Stow will be sending a letter this week to Massachusetts 40B officials in Boston detailing their concerns. This letter will be signed by the Stow Board of Selectmen, the Stow Planning Board, the Stow Board of Health, the Stow Conservation Commission, and the Stow Town Counsel.

I urge you to talk further with your counterparts in Stow, review their letter to MassHousing and the many detailed points it will contain, make that letter available to the Acton Board of Selectmen prior to the February 8th hearing, and share your own professional opinion with Stow and Acton officials as well.

Not every piece of residential zoned land is "suitable" for residential development --- even 40B development. And whatever benefit more housing may have for a town will not benefit Acton since the vast majority of these homes will be built in Stow, but will often end up using our Acton neighborhood for access.

Please call me if you wish to discuss this in greater detail.

Sincerely,

Allen Nitschelm
President – Forest Glen Association
9 Marian Road
Acton, MA 01720
Telephone --- 978-266-2456
E-Mail ----- allen@thehomesteader.com

cc by email: Acton Board of Selectmen
Acton Zoning Board of Appeals
Forest Glen Association Board of Governors
Stow Planning Board

To: Acton Board of Selectmen
Cc: Roland Bartl, Acton Planning Board

Subject: Comments regarding Highgrove Estates L.C.C 40B Site Proposal
on Windemere Drive

Date: February 4, 2010

Dear Acton Board of Selectmen:

We support affordable housing in our town and in our neighborhood. But as residents of Windemere Drive, we wish to bring to your attention our concerns and questions regarding the proposed site plan presented by Highgrove Estates, L.C.C. for 16 & 18 Windemere Drive.

We urge you to prepare comments to the Mass Housing Authority that address serious concerns caused by the density of the proposed project: structures, driveways, vehicles, project roadway, storm water catch basin, wetland buffer zone, and mounded leaching fields, *all on one half of, if not less than one half of, Lot A.* (the other half of Lot A is a narrow strip of unusable land that extends the full length of the Acton/Stow line within the combined site proposal). The portion of Lot A being developed is equivalent in size to two typical single-family lots along Windemere Drive.

The proposed density of half of Lot A is the underlying and driving factor for the safety, liability, health, and environmental issues described below.

I. Density Concerns

The 40B project coordinator from Mass Housing stated during the site walk that 40B developments should blend in with neighborhood, and their density should fall in line with its surrounding neighborhood density. Clearly, this is not the case here.

1. The cumulative footprint size of the eight units is roughly equal to 12 times the footprint size of an abutting home, minus the garage. This is in contrast to the entire stretch of Windemere Dr. between upper and lower Woodchester Dr., which has exactly 12 houses, and represents approximately a 400% increase in density compared to the rest of the neighborhood.
2. The proposed density of this one half lot in the Acton portion of the Site Proposal is significantly higher than that of any part of the proposed development on the Stow side. So not only does the proposed Acton development not conform to the density of its Windemere Dr. neighborhood, it doesn't even conform to the density of the rest of the lots in this proposal. Why would the Town of Acton want to accept this, when even Mass Housing sees it as inconsistent with its own parameters?

II. Proposed Density Impacts Safety

1. There are currently 12 single-family units on Windemere Drive between upper and lower Woodchester Dr. Adding eight new units will almost double the density and vehicle traffic on Windemere Drive.
2. The road is narrow, and barely passable for two directions of traffic in winter. And Windemere Drive is always one of the last streets to be plowed.
3. The site plan identifies additional visitor parking on the development roadway. However, when considering the amount of space owners will need to back out of their driveways onto the development roadway, it becomes evident that visitor parking would be very limited. *During Tuesday's site walk, the engineer admitted that visitor parking will spill over onto Windemere Drive.* Driver visibility around the curves is already very limited, and navigating around parked cars is already difficult. It is not possible to park cars on both sides of the street. **The layout of Windemere does not support such a high density of parked cars, especially on the curve.**
4. The storm water catch basin is on the edge of the curviest part of Windemere Drive. There is the real danger of vehicles swinging too wide around the curve or skidding on ice and landing in the basin.
5. The density of structures, vehicles, project roadway, etc. greatly reduces, if not *eliminates truly safe open space for outside play for the children who live in the condos:*
 - a. Front circle will have a storm-water catch basin
 - b. Rear yards will either be on the mounded leaching field adjacent to a steep drop-off, or will be marshy due to being in the buffer zone of the wetlands.
 - c. **Does the town of Acton want the liability** and/or will buyers pay \$495,000 plus \$320/month condo fee for their children to have no place to play but in the street, in the middle of the curve, between visitors' parked cars, and amid higher traffic flow?
6. Safety of pedestrians and cyclists are a concern since there are no sidewalks. Children walk in the street to get to and from school buses. This is also a popular area for children to bike.

III. Proposed Density Raises Health Concerns

1. The last percolation tests were performed in 1997. Are these tests meaningful for a shared septic system in an eight-dwelling condo unit? With the water table being only two feet below the surface, what are the implications for the septic system and the leaching field? Will the system require pressure dosing, significant grading (at most 25% ?), and mounding with retaining walls? How will that increase the amount of land needed for the landscaping of the leaching

field in an already dense site plan? Will that encroach into the buffer zone of the wetlands?

2. *The residents in these condo units will have a much higher risk of exposure to mosquito-borne diseases* due to their extreme close proximity to the shaded wetlands in their backyards, and the large storm water catch basin in their front yards.

IV. Proposed Density Impacts Environment

1. Storm water runoff, and melting snow and ice, already have been a documented problem for the houses on the downhill side of this property, that the town has attempted to mitigate with the installation of a curb along the curve. The loss of tree cover, and the downhill grade from this property, will further exacerbate this problem.
2. The basements of all the units will be below the water table, and most will be within the buffer zone of wetlands or vernal pools. Where will the discharge from the sump pumps be directed?
3. With the absence of open space, and the positioning of the driveways and roadway, where will snow removal contractors pile snow? How will this affect drainage during the spring?
4. The driveways for Units A7 and A8, as drawn on the plan, are much shorter than the driveways of the other units. We are concerned that Units A7 and A8 will need to be moved farther back from the road, and even farther into the buffer zone of the wetlands.
5. Will DEQE have input *prior* to the state's decision on site eligibility?

V. Proposed Density Will Call for Variances

Overall, this project is going to require several critical variances, some of which may include:

1. Override single-family zoning
2. One unit is being built within the buffer zone of a vernal pool (Unit A4).
3. Five units are being built within the buffer zone of wetlands (Units A4, A5, A6, A7, A8).
4. Two units are not adequately set back from Windemere Drive (Units A7 and A8).
5. Where is the usable open space on the Acton lot, as required by the Town of Acton?
6. Will the storm basin require a variance?
7. Will a variance be required to locate a 40B development on a town line?

VI. Other Practical Concerns

The affordable condo selling price (\$163,000 plus \$175 monthly condo association fee) is not really aimed at “lower income” families: during the site walk, the developer’s representative stated that these units would be for moderate income families such as “teachers, firefighters, and police officers.”

In other parts of Acton, condos are currently available on the market priced at or near the proposed selling price of these 40B units. We question if this development on Windemere Drive truly supports the spirit of the Chapter 40B regulations. If not, then it should not be granted the privileges and special considerations of a 40B development.

Given all these concerns, and all the variances that would be required for this project to come to fruition, what are the overriding benefits of adding merely two 40B units, that justify its costs and risks?

Respectfully,

Carol and Don Brady
15 Windemere Drive
Acton