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W. Jay Lee
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VIA EMAIL AND FEDEX

September 1, 2022

Ms. Caroline "Chris" Kluchman
Deputy Director - Division of Community Service
Department of Housing & Community Development 100
Cambridge Street, Suite 300
Boston, MA 02114

RE: Town of Walpole - Housing Production Plan
Certification Approval dated September 10, 2021

Dear Ms. Kluchman:

Neponset Village, LLC ("Neponset") is in receipt of a letter from the Town of Walpole Zoning Board of Appeals (the "Board") dated August 18, 2022 (copy attached) which represents notice to Neponset that the Board

voted to invoke and declare that denial of the Neponset 40B application is consistent with local needs as defined in 760 CMR 56.03(1)(b) and 56.03(4) due to receipt of a Certification of Approval, dated September 10, 2021, issued by the Massachusetts Department of Housing and Community Development, certifying the Town of Walpole's compliance with its Housing Production Plan, approved for a two-year period running from April 27, 2021 to April 26, 2023.

The letter further states that

The basis for the Board's determination is the Town of Walpole ("Town") has achieved one of the statutory minima standards set forth under G.L. c. 40B, sec. 20-23 and 760 CMR 56.03(1)(b) and (4) because the Department of Housing and Community Development ("DHCD") has certified compliance with the Town's Housing Production Plan.

In accordance with the provisions of 760 CMR 56.03(8) please accept this letter as a formal appeal of the Board's decision and the DHCD's Certification of Approval dated September 10, 2021. The basis for Neponset's appeal with associated documentation are attached hereto.

Thank you for your consideration.

Sincerely,



W. Jay Lee, Esquire
Senior Counsel

cc: Town of Walpole - Zoning Board of Appeals
Mr. Jim Johnson - Walpole Town Administrator
Mr. Patrick Deschenes - Walpole Dir. of Economic Development
Mr. Philip DiMartino - DHCD
Ms. Catherine Racer - DHCD
Ms. Alana Murphy - DHCD

**DEPARTMENT OF HOUSING AND COMMUNITY
DEVELOPMENT**

**APPEAL OF THE WALPOLE ZONING BOARD OF
APPEALS NOTICE OF SAFE HARBOR
PURSUANT TO THE REGULATIONS AT 760 CMR 56.03(8)**

**APPELLANT – NEPONSET VILLAGE, LLC
PROJECT- NEPONSET VILLAGE, 5 PLEASANT STREET
September 1, 2022**

By:

Macchi & Macchi, LLC
The Forum Building
1256 Washington Street
Norwood, MA 02062
Tel. 781-762-1700
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DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

APPEAL OF THE WALPOLE ZONING BOARD OF APPEALS
NOTICE OF SAFE HARBOR
PURSUANT TO THE REGULATIONS AT 760 CMR 56.03(8)

APPELLANT- NEPONSET VILLAGE, LLC
PROJECT- NEPONSET VILLAGE, 5 PLEASANT STREET

SECTION I
INTRODUCTION

This is an appeal, pursuant to the Regulations promulgated under M.G.L. c. 40B, sec. 20-23 by the Department of Housing and Community Development at 760 CMR 56.00, specifically 760 CMR 56.03(8) (the "Regulations"), from a decision of the Walpole Zoning Board of Appeals (the "Board") in a letter dated August 18, 2022 which purports to represent written notice to Neponset Village, LLC ("Neponset") as Notice of Safe Harbor pursuant to 760 CMR 56.03 (1)(b) and (8) (the "Safe Harbor Letter"). A copy of the Safe Harbor Letter is attached as **Exhibit I**.

This is an appeal pursuant to the Regulations at 760 CMR 56.03(8) regarding the following issues:

- a) Whether DHCD's Certification Approval issued on September 10, 2021 (the "DHCD Certification") has lapsed due to the lack of building permits being issued by the Town within one year from the approval of the comprehensive permit upon which the DHCD Certification was based (a copy of the DHCD Certification is attached as **Exhibit II**); and
- b) Whether the Walpole Zoning Board of Appeals incorrectly invoked safe harbor with respect to Neponset's project entitled "Neponset Village" ("Neponset").

SECTION II
SUMMARY OF RELEVANT PROCEDURAL HISTORY ON CEDAR
CROSSING/CEDAR EDGE AND DARWIN COMMONS PROJECTS

1. Unrelated to the Neponset's project, on or about January 6, 2020, an application was filed with the Board by 55 SS LLC (the "Applicant") seeking a comprehensive permit (the 40B Application") to allow "construction of 240 rental units and 60 ownership units as more particularly described in the attached application. The Project was entitled the "Cedar Crossing/Cedar Edge Project." (See **Exhibit III**).

2. The Board opened one public hearing for the Cedar Crossing/Cedar Edge Project and issued a decision dated April 27, 2021 which stated, in Paragraph one, the following:

"An application for a Comprehensive Permit was submitted by 55 SS, LLC ("Applicant") to the Walpole Zoning Board of Appeals ("Board") on January 15, 2020. As originally proposed by the Applicant, the project consisted of the construction of two-hundred and forty (240) rental apartments and sixty (60) single-family home ownership units (the "Project") totaling 300 units on property located at 51, 53 and 55 Summer Street, Walpole, Massachusetts (the "Property"). The rental portion of the Project, labeled "Cedar Crossing", consisted of four (4) four-story buildings (each containing forty-eight (48) units with parking under) and forty-eight (48) rental townhomes. The rental apartments would consist of one-hundred and twelve (112) one-bedroom units and eighty (80) two-bedroom units, and the rental townhomes will consist of twenty-four (24) two-bedroom units and twenty-four (24) three-bedroom units. The single-family home ownership portion of the Project, labeled "Cedar Edge", consists of three- bedroom single-family homes.

Attached as **Exhibit IV** is a copy of Paragraph one of the April 27, 2021 decision.

3. On or about August 26, 2021, the Town of Walpole (the "Town") made a request in writing to DHCD for "certification of compliance of the Town's Housing Production Plan based on the Board's decision for the 55 Summer Street, 268-unit mixed-income rental and homeownership housing development known as Cedar Crossing and Cedar Edge." The Town further states "226 units from this development will count for our SHI according to 760 CMR 56.03(2)." Attached as **Exhibit V** is a copy of the Town's letter requesting certification.

4. The Town's representation that "226 units from this development will count for our SHI according to 760 CMR 56.03(2)" is presumed to represent the compliance with Section 11.A.2.b.(1) of the DHCD Guidelines that states, in part, the following:

b. Rental & Assisted Living Facility

(1) General - In a rental or ALF development, if at least 25% of units are to be occupied by Income Eligible Households earning 80% or less than the area median income, or alternatively, if at least 20% of units are to be occupied by households earning 50% or less of area median income, and meet all criteria outlined in Section 1, then all of the units in the rental development shall be eligible for inclusion on the SHI. [emphasis added] In determining the number of units required to satisfy either percentage threshold, fractional numbers shall be rounded up to the nearest whole number (e.g.: in a 51unit development, one would restrict 13 units in order to meet the 25% standard).

If fewer than the aforementioned percentages of units in the development are so restricted, then only the units that meet the requirements of Section II.A.I shall be included.

Attached as **Exhibit VI** is a copy of the Section 11.A.2.b.(1) of the DHCD Guidelines.

5. In a letter dated September 10, 2021, DHCD issued a "Certification

Approval” based on the Town's representation that the Town was in compliance with its Housing Production Plan ("HPP"). (See DHCD's Certification attached as **Exhibit II**). As noted, the DHCD's Certification outlined the following findings:

Finding No. 1: Walpole has a valid HPP. The effective date of the HPP is April 23, 2019 the date DHCD received a complete plan submission. The HPP has a five- year term and will expire on April 22, 2024;

Finding No. 2: The project for which certification was requested is known as Cedar Crossing/Cedar Edge (SHI ID# 10582) which consists of 226 SHI units.

Finding No. 3: DHCD finds that the units are eligible for SHI inclusion and have been added to the SHI. The number of SHI units (226) is enough for a two-year certification period (90).

Finding No. 4: The certification period will run from April 27, 2021 to April 26, 2023.

6. Notwithstanding the DHCD's findings, the DHCD's Certification included the following conditional provision which stated the following:

"Please note that all units must retain eligibility for the SHI for the entire certification period. If units are no longer eligible for inclusion on the SHI, they will be removed and will no longer be eligible for certification. This action may affect the term of your certification."

7. It is vital to note that eligibility for certification and inclusion on a Town's SHI follows strict time standards. Notably, the Regulations at 760 CMR 56.03(2)(c) provide the following:

"If more than one-year elapses between the date of issuance of the Comprehensive Permit..., as that date is defined in 760 CMR 56.03(2)(b) 1., and issuance of the building permit, the units will become ineligible for the SHI until the date that the building permit is issued..."

8. On or about July 19, 2022, Neponset filed an application for

Comprehensive Permit for the Neponset Village Project. The Board opened the public hearing for the Neponset Village Project on August 17, 2022, at which time the Board voted to deny the Neponset Villages Project. The Board found that "denial of the Neponset Village 40B application is consistent with local needs..." as noted in the Safe Harbor Letter (See **Exhibit I**).

9. As of the date of the Safe Harbor Letter issued by the Board in connection with Neponset's application for Comprehensive Permit for the Neponset Village Project, over one year has elapsed from the date of the issuance of the Comprehensive Permit for the Cedar Crossing/Cedar Edge Project (SHI ID# 10582) for which the DHCD Certification was based.

10. Unrelated to Neponset Project, in an email from Wall Street to the Walpole Building Commissioner (the "Commissioner") dated May 30, 2022, Wall Street inquired of the status of the 40B project entitled "Cedar Crossing/Cedar Edge". Wall Street made the following request:

Just wanted to touch base to get an up-date on the 40B Project entitled 'Cedar Crossing/Cedar Edge' located at 55 Summer Street. In particular, it would be appreciated if you would advise if 1.) any documents have been submitted to your office in compliance with the comprehensive permit; 2.) whether any applications for building permits had been submitted; and 3.) whether any building permits have been issued for the project. (See **Exhibit VII**.)

11. In an email reply from the Commissioner to Wall Street dated June 2, 2022, the Commissioner stated the following:

To answer your request on 55 Summer St., cedar crossing (1) no documents have been submitted with a comprehensive permit (2) no applications for building permits have been submitted (3) no permits have been issued.

(See **Exhibit VIII.**)

12. With the Commissioner's confirmation that "no permits have been issued" for the Cedar Crossing/Cedar Edge Project and more than one-year having elapsed from the date of issuance of the Comprehensive Permit for the Cedar Crossing/Cedar Edge Project without a building permit being issued, the units upon which the DHCD Certification was previously based are no longer eligible for inclusion on the Town's SHI. Thus, by operation of the applicable Regulations and the very terms of the DHCD's Certification to the Town, the units in the Cedar Crossing/Cedar Edge Project must be removed from the Town's SHI; and the DHCD Certification must be deemed to have lapsed.

13. Therefore, the Safe Harbor letter dated June 2, 2022, issued by the Board regarding Wall Street's application for a Comprehensive Permit for the Darwin Commons Project cannot be used as a basis for asserting a Safe Harbor unless and until such units are reinstated to the Town's SM.

14. On or about July 19, 2022, Wall Street Development Corp. ("Wall Street") filed an application for a Comprehensive Permit for its Darwin Commons project. On August 17, 2022, the Board voted to invoke its Safe Harbor based upon the above-described DHCD Certification. Wall Street filed an appeal with DHCD. DHCD eventually granted Wall

Street's appeal finding that the Board "has not met its burden of proving satisfaction of the grounds for asserting the certified Housing Production Plan safe harbor as defined under 760 CMR 56.03(1)(b) and 56.03(4)." (See **Exhibit IX.**)

REQUESTS FOR DHCD RELIEF

WHEREFORE, Neponset respectfully requests that DHCD find the following:

1. The DHCD Certification issued on September 10, 2021 regarding the units in the project Cedar Crossing/Cedar Edge and for which the DHCD Certification was granted to the Town has lapsed on April 26, 2022 because such units are no longer eligible to be included in the Town's SHI;
2. The Town's Notice of Safe Harbor, dated August 18, 2022 was incorrect in that the Safe Harbor referenced therein had lapsed on April 26, 2022; and
3. The Board must accept the Neponset's application for the Neponset Village Project and process the application in accordance with the Regulations and M.G.L. c. 40B.

Respectfully submitted,

APPELLANT, NEPONSET VILLAGE, LLC



By its Attorneys,
W. Jay Lee, Esquire
Senior Counsel
Macchi & Macchi, LLC
Tel. 781-762-1700
Email: WJLee@Macchi-law.com
Tel. 781-762-1700

EXHIBIT I



Town of Walpole
Commonwealth of Massachusetts
Zoning Board of Appeals

Zoning Board of Appeals
John Lee, Chair
Drew Delaney, Vice Chair
Bob Fitzgerald, Clerk
Jane Coffey, Member
David Anderson, Member
Judith Conroy, Assoc. Member
Timothy Hoegler, Assoc. Member

August 18, 2022

Neponset Village, LLC
Coneco Building Company
Attn: Robert Lincoln, General Manager (By Certified & Regular Mail)
4 First Street
Bridgewater, MA 02324

Re: Written Notice of Safe Harbor Pursuant to 760 CMR 56.03(1)(b) and (8)
Neponset Village, 5 Pleasant Street, Walpole MA
(June 3, 2022 - MassHousing Project Eligibility Determination)

Dear Mr. Lincoln,

Please be advised that this correspondence shall serve as written notice to you, Robert Lincoln (the "Applicant") from the Walpole Zoning Board of Appeals (the "Board"), that, on August 17, 2022, the Board opened the public hearing regarding your application for a comprehensive permit for the project known as Neponset Village, 5 Pleasant Street Walpole, Massachusetts (the "Application"), and the Board voted 4 to 0 to invoke and declare that denial of the Neponset Village 40B application is consistent with local needs as defined in 760 CMR 56.03(1)(b) and 56.03(4) due to receipt of a Certification of Approval, dated September 10, 2021, issued by the Massachusetts Department of Housing and Community Development, certifying the Town of Walpole's compliance with its Housing Production Plan, approved for a two-year period running from April 27, 2021 to April 26, 2023.

The basis for the Board's determination is that the Town of Walpole ("Town") has achieved one of the statutory minima standards set forth under G.L. c.40B, §§20-23 and 760 CMR 56.03(1)(b) and (4) because the Department of Housing and Community Development ("DHCD") has certified compliance with the Town's Housing Production Plan. A copy of DHCD's certification of compliance with an approved HPP for Walpole is enclosed herewith.

This written notice was forwarded to both the Applicant and to DHCD on August 18, 2022, within 15 days of the August 17, 2022 opening of the public hearing on the Application.

Regards,

John Lee, Chair
Walpole Zoning Board of Appeals



Commonwealth of Massachusetts
**DEPARTMENT OF HOUSING &
COMMUNITY DEVELOPMENT**

Charles D. Baker, Governor ♦ Karyn Polito, Lieutenant Governor ♦ Jennifer D. Maddox, Undersecretary

September 10, 2021

Mark Gallivan, Chair
Walpole Select Board
Walpole Town Hall
135 School Street
Walpole, MA 02081

RE: Housing Production Plan - Certification Approval

Dear Mr. Gallivan:

The Department of Housing and Community Development (DHCD) has reviewed the Town of Walpole's August 26, 2021 request for certification of compliance with its Housing Production Plan (HPP). In order for a municipality to be certified the following needs to occur:

- Housing units affordable to low and moderate income households and eligible for inclusion on the Subsidized Housing Inventory (SHI) have been produced during one calendar year, the same year for which certification is requested during the initial year of SHI eligibility.
- Units must total at least 0.5% (45) units for Walpole of year-round housing units for one-year of certification. A total of 1% of year-round housing units (90) units for Walpole are needed for a two-year certification.
- The units were produced and are eligible in accordance with the approved HPP and DHCD's c. 40B Guidelines.¹

DHCD makes the following findings:

1. Walpole has a valid HPP. The effective date for the HPP is April 23, 2019 the date that DHCD received a complete plan submission. The HPP has a five-year term and will expire on April 22, 2024.
2. The project for which certification was requested for is known as Cedar Crossing/ Cedar Edge (SHI ID# 10582) which consists of 226 SHI units.
3. DHCD finds that the units are eligible for SHI inclusion and have been added to the SHI. The number of SHI units (226) is enough for a two-year certification period (90).
4. The certification period will run from April 27, 2021 to April 26, 2023.

Please note that all units must retain eligibility for the SHI for the entire certification period. If units are no longer eligible for inclusion on the SHI, they will be removed and will no longer be eligible for certification. This action may affect the term of your certification. I have included an updated list of SHI eligible units. The Town of Walpole's SHI currently stands at 9.74%. I applaud your efforts to plan for the housing needs of Walpole.

¹ <https://www.mass.gov/files/documents/2017/10/10/guidecomprehensivepermit.pdf>.

EXHIBIT II



Commonwealth of Massachusetts
DEPARTMENT OF HOUSING &
COMMUNITY DEVELOPMENT

Charles D. Baker, Governor ♦ Karyn Polito, Lieutenant Governor ♦ Jennifer D. Maddox, Undersecretary

September 10, 2021

Mark Gallivan, Chair
Walpole Select Board
Walpole Town Hall
135 School Street
Walpole, MA 02081

RE: Housing Production Plan - Certification Approval

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- Units must total at least 0.5% (45) units for Walpole of year-round housing units for one-year of certification. A total of 1% of year-round housing units (90) units for Walpole are needed for a two-year certification,
- The units were produced and are eligible in accordance with the approved HPP and DHCD's c. 40B Guidelines.¹

DHCD makes the following findings:

1. Walpole has a valid HPP. The effective date for the HPP is April 23, 2019 the date that DHCD received a complete plan submission. The HPP has a five-year term and will expire on April 22, 2024.
2. The project for which certification was requested for is known as Cedar Crossing/ Cedar Edge (SHI ID# 10582) which consists of 226 SHI units.
3. DHCD finds that the units are eligible for SHI inclusion and have been added to the SHI. The number of SHI units (226) is enough for a two-year certification period (90).
4. The certification period will run from April 27, 2021 to April 26, 2023.

Please note that all units must retain eligibility for the SHI for the entire certification period. If units are no longer eligible for inclusion on the SHI, they will be removed and will no longer be eligible for certification. This action may affect the term of your certification. I have included an updated list of SHI eligible units. The Town of Walpole's SHI currently stands at 9.74%. I applaud your efforts to plan for the housing needs of Walpole.

¹ <https://www.mass.gov/files/documents/2017/10/10/guidecomprehensivepermit.pdf>.

Please contact Phillip DeMartino, Technical Assistance Coordinator, at (617) 573-1357 or Phillip.DeMartino@mass.gov if you need assistance as you implement your HPP.

Sincerely,



Caroline "Chris" Kluchman
Deputy Director, Division of Community Services

cc Senator Paul R. Feeney
Representative Edward R. Philips
Patrick Deschenes, Director, Community & Economic Development, Walpole
James Johnson, Town Administrator, Walpole

EXHIBIT III



Fee _____

TOWN OF WALPOLE - ZONING BOARD OF APPEALS

APPLICATION FOR HEARING

FOR COMPREHENSIVE PERMIT APPLICATIONS SEE ZBA RULES AND REGULATIONS FOR COMPREHENSIVE PERMITS

Name of Applicant: 55 SS LLC Date: 1/6/2020

Address: 6 Lyberty Way Suite 203 Westford, MA 01886 Tel. No. 978.369.4884

Location of property involved: 51-53-55 Summer Street

Previous B/A Decision - Case # _____ Date: _____

Assessors Lot No. 52-60, 52-59 and portion of 52-78 Zoning District: LM

This application - (fill out the appropriate request(s) below):

1. Request a **SPECIAL PERMIT** under Section _____ of the Zoning By-Laws
allow _____
to _____

2. Request a **VARIANCE** from Section _____ of the Zoning By-Laws to
allow _____

3. Is an **APPEAL** from action taken by Building Inspector or other administrative official
_____ with respect to _____
(Name of official) (Describe)

4. Request for a **COMPREHENSIVE PERMIT** pursuant to Massachusetts General Laws, Chapter 40B, Section 20 through 23, as amended, to allow:

Construction of 240 rental units and 60 ownership units as more particularly described in the attached application.

5. Request for a **DETERMINATION:** N/A

In the event of a lengthy application, please attach additional sheets to this application.

Signature of Zoning Enforcement Officer

Check if Project
May Require Historical Commission Review

D S Hale, MANAGER 55 55 LLC + 55 BH LLC
Signature of Owner of Property

D S Hale, MANAGER 55 55 LLC + 55 BH LLC
Signature of Applicant

6 Liberty Way Suite 203 Westford MA 01886
Address of Owner

Same Entity
Relationship to property involved

**PLEASE NOTE:
THE APPLICANT IS ADVISED THAT WHILE THE BOARD STAFF MAY ASSIST ON PROCEDURAL MATTERS, NO LEGAL OR OTHER ADVICE SHALL BE GIVEN. IT IS THE RESPONSIBILITY OF THE APPLICANT TO DETERMINE THE CHAPTER AND SECTION NECESSARY FOR THE APPLICATION TO BE ACCURATE. OTHERWISE, THE APPLICANT MUST LOOK TO THEIR OWN ATTORNEYS OR OTHER ADVISORS IN THIS REGARD.**

**Cedar Crossing and Cedar Edge Walpole 40B
Rental/Ownership
Project Narrative**

The Cedar Crossing and Cedar Edge Walpole 40B will consist of one project containing a 240 rental units sub-project called Cedar Crossing and a 60-unit ownership sub-project called Cedar Edge Condominiums. Both sub-projects will be funded by the New England Fund and both the ownership and rental portions of the complex will have 25% of the units restricted to occupants earning no more than 80% of the median income. The combined project will address a variety of demographic needs from young families to millennials and empty nesters and will be configured as follows:

Rental:

- 24 three-bedroom units
- 106 two-bedroom units
- 110 one-bedroom units

Ownership:

- 32 three-bedroom units
- 28 two-bedroom units

The rental portion of the project will consist of four, five story 60-unit buildings which will each have elevators and parking under. Five percent (5%) of the units in the rental portion will be handicap accessible and the remainder of the units will be handicapped adaptable. The number of hearing-impaired units will meet state guidelines.

The ownership units, which will be in a condominium association, will be made up of 16 buildings holding 3-4 townhomes.

In addition, the rental portion of the project will contain a club house/management office which will serve the rental project and offer meeting space, business office, pool, playground and other amenities.

Locus:

The site consists of Assessor's Map/Parcel 52-59 & 52-60 and can be seen on the attached Plan of Land dated August 30, 2019. The property consists of approximately 34 acres located on Summer Street in Walpole.

Existing Site Conditions:

Site Location and Environs: The lots are bound by five single and two-family homes along Summer Street to the south. To the East from Summer Street by the CSX/MBTA rail line for approximately 1150 feet and then by vacant forested land owned by Baker Hughes. On the east side of the railroad tracks there is a solar farm on the Baker Hughes Land. To the North the property is bound by a the 361-acre conservation land (Cedar Swap/Cedar Hill) owned by Walpole and to west the property is bound by one large single-family home lot that is mostly forested and also abuts the cedar swamp.

EXHIBIT IV



RECEIVED

21 APR 27 AM 9:48

Town of Walpole

Commonwealth of Massachusetts Zoning Board of Appeals

John Lee, Chairman
Susanne Murphy, Vice Chair
Robert Fitzgerald, Clerk
Mary Jane Coffey, Member
Drew Delaney, Member

DECISION ON CHAPTER 40B COMPREHENSIVE PERMIT APPLICATION

G.L. c. 40B, §§20-23

APPLICANT
55 SS LLC

LOCATION OF PROPERTY INVOLVED
51-53-55 Summer Street
Walpole Assessors Map: 52; Lots 59, 60 and a portion of 78

I. PROCEDURAL HISTORY

1. An application for a Comprehensive Permit was submitted by 55 SS, LLC ("Applicant") to the Walpole Zoning Board of Appeals ("Board") on January 15, 2020. As originally proposed by the Applicant, the project consisted of the construction of two-hundred and forty (240) rental apartments and sixty (60) single-family home ownership units (the "Project") totaling 300 units on property located at 51, 53 and 55 Summer Street, Walpole, Massachusetts (the "Property"). The rental portion of the Project, labeled "Cedar Crossing", consisted of four (4) four-story buildings (each containing forty-eight (48) units with parking under) and forty-eight (48) rental townhomes. The rental apartments would consist of one-hundred and twelve (112) one-bedroom units and eighty (80) two-bedroom units, and the rental townhomes will consist of twenty-four (24) two-bedroom units and twenty-four (24) three-bedroom units. The single-family home ownership portion of the Project, labeled "Cedar Edge", consists of three-bedroom single-family homes. .
2. During the hearing process, the Applicant revised the Project. A plan dated January 27, 2021 depicts Lot 1 (Cedar Crossing) having the apartments in two (2), six-story buildings with parking under: Building 1 containing one hundred eight (108) units; and Building 2 containing eighty-four (84) units. There are additionally fifty-two (52) rental townhouses in eleven (11) buildings. Lot 2 (Cedar Edge) contained of sixteen (16) townhouse units within eight (8) duplex

EXHIBIT V



TOWN OF WALPOLE
COMMONWEALTH OF MASSACHUSETTS

*Walpole Town Hall
135 School Street
Walpole, MA 02081
Phone (508) 660-7300
Fax (508) 660-7303*

Jennifer Maddox, Undersecretary
MA Department of Housing and Community Development
100 Cambridge Street, Suite 300
Boston, MA 02114
Attn: Phil DeMartino 40B

Dear Undersecretary Maddox,

The Town of Walpole is please to request certification of compliance of the Town's Housing Production Plan based on the ZBA decision for the 55 Summer Street, 268-unit mixed-income rental and homeownership housing development known as Cedar Crossing and Cedar Edge. The Housing Production Plan is ready for certification of more than 1% of our year-round housing stock (90 units needed, while 226 units from this development will count for our SHI according to 760 CMR 56.03(2)).

Necessary documentation in the form of a ZBA decision and "New SHI Unit" forms have already been sent to DHCD for approval and are also attached.

We await your determination and look forward to working with DHCD throughout the process.

Sincerely,

Mark Gallivan, Chair
Select Board

SUBSIDIZED HOUSING INVENTORY: Requesting New Units Form

Name of Development Cedar Crossing
 Address 51, 53 and 55 Summer Street, Walpole, MA 02081
 Total Acreage 54.73

Subsidizing Agency – List All (i.e., MassHousing, DHCD)
MassHousing

Subsidy Program – List All (i.e., Housing Starts, NEF, LIP, HOME)
NEF

	Rental	Ownership
Total Units in Development	212	
Total Affordable Units	53	
Restricted at 80% of AMI	53	
Restricted at 50% of AMI		
Restricted at 30% of AMI		

Date of Building Permit(s) N/A
 (Provide a listing of issued building permit numbers and corresponding unit numbers and addresses. Please note that foundation permits are not to be included as building permits)

Date of Occupancy Permit(s) N/A (Provide a listing of issued occupancy permit numbers and corresponding unit numbers and addresses)

For Comprehensive Permit Projects, Zoning Approvals under M.G.L. c.40A, and Completed Plan Reviews under M.G.L. c.40R (provide copy of applicable permit, approval, or plan review):

- Date comprehensive permit application was filed with the ZBA: 1/15/2020
- Date comprehensive permit, zoning approval under M.G.L. c.40A, or completed plan review under M.G.L. c.40R was filed with the town clerk: 4/27/2021
- Was an appeal filed? YES or NO
 Was an appeal filed by the Zoning Board of Appeals? YES or NO
- Date the last appeal was fully resolved: 8/20/2021
 (Provide documentation)

Documentation* evidencing the following must be submitted with this form:

1. The zoning or permitting mechanism under which the housing development is authorized
2. The units are subsidized by an eligible state or federal program
3. The units are subject to a long term use restriction limiting occupancy to income eligible households for a specified period of time (at least thirty years or longer for newly created affordable units, and at least fifteen years for rehabilitated units)
4. The units are subject to an Affirmative Fair Housing Marketing Plan

SUBSIDIZED HOUSING INVENTORY: Requesting New Units Form

5. The last appeal has been fully resolved (where applicable)

Submit form and documentation to: **DHCD Office of the General Counsel
Attn: Subsidized Housing Inventory
100 Cambridge Street, Suite 300
Boston, MA 02114**

Submitted by: Name & Title: Patrick Deschenes, Director of Community & Economic Development
Mailing Address: 135 School Street, Walpole, MA 02082
Phone and email: (508) 660-7352, pdeschenes@walpole-ma.gov

*Please review Section II of the DHCD Comprehensive Permit Guidelines, "Measuring Progress Towards Local Goals," available at: <https://www.mass.gov/service-details/comprehensive-permit-information> for more information about the required criteria for inclusion on the Subsidized Housing Inventory.

SUBSIDIZED HOUSING INVENTORY: Requesting New Units Form

Name of Development Cedar Edge
 Address 51, 53 and 55 Summer Street, Walpole, MA 02081
 Total Acreage 54.73

Subsidizing Agency – List All (i.e., MassHousing, DHCD)
MassHousing

Subsidy Program – List All (i.e., Housing Starts, NEF, LIP, HOME)
NEF

	Rental	Ownership
Total Units in Development		56
Total Affordable Units		14
Restricted at 80% of AMI		14
Restricted at 50% of AMI		
Restricted at 30% of AMI		

Date of Building Permit(s) N/A
 (Provide a listing of issued building permit numbers and corresponding unit numbers and addresses. Please note that foundation permits are not to be included as building permits)

Date of Occupancy Permit(s) N/A (Provide a listing of issued occupancy permit numbers and corresponding unit numbers and addresses)

For Comprehensive Permit Projects, Zoning Approvals under M.G.L. c.40A, and Completed Plan Reviews under M.G.L. c.40R (provide copy of applicable permit, approval, or plan review): <ul style="list-style-type: none"> • Date comprehensive permit application was filed with the ZBA: <u>1/15/2020</u> • Date comprehensive permit, zoning approval under M.G.L. c.40A, or completed plan review under M.G.L. c.40R was filed with the town clerk: <u>4/27/2021</u> • Was an appeal filed? YES or NO Was an appeal filed by the Zoning Board of Appeals? YES or NO • Date the last appeal was fully resolved: <u>8/20/2021</u> (Provide documentation)
--

Documentation* evidencing the following must be submitted with this form:

1. The zoning or permitting mechanism under which the housing development is authorized
2. The units are subsidized by an eligible state or federal program
3. The units are subject to a long term use restriction limiting occupancy to income eligible households for a specified period of time (at least thirty years or longer for newly created affordable units, and at least fifteen years for rehabilitated units)
4. The units are subject to an Affirmative Fair Housing Marketing Plan

SUBSIDIZED HOUSING INVENTORY: Requesting New Units Form

5. The last appeal has been fully resolved (where applicable)

Submit form and documentation to: **DHCD Office of the General Counsel
Attn: Subsidized Housing Inventory
100 Cambridge Street, Suite 300
Boston, MA 02114**

Submitted by: Name & Title: Patrick Deschenes, Director of Community & Economic Development
Mailing Address: 135 School Street, Walpole, MA 02082
Phone and email: (508) 660-7352, pdeschenes@walpole-ma.gov

*Please review Section II of the DHCD Comprehensive Permit Guidelines, "Measuring Progress Towards Local Goals," available at: <https://www.mass.gov/service-details/comprehensive-permit-information> for more information about the required criteria for inclusion on the Subsidized Housing Inventory.

EXHIBIT VI

GUIDELINES

Updated December 2014

G.L. C.40B COMPREHENSIVE PERMIT PROJECTS

SUBSIDIZED HOUSING INVENTORY

Regulatory Authority: see 760 CMR 56.00



II. MEASURING PROGRESS TOWARDS LOCAL GOALS

A. Subsidized Housing Inventory

1. Project Eligibility Criteria

A Project or other unit(s) of Low or Moderate Income Housing shall be eligible to be included on the SHI consistent with the provisions of 760 CMR 56.03(2) and with the following requirements.

a. Eligible Subsidy Programs

The housing programs listed in Appendix II.1 are considered eligible subsidy low or moderate-income housing programs for purposes of G.L. c.40B, §§ 20-30, 760 CMR 56.00.¹ Such programs are eligible if they are administered through a Subsidizing Agency; in the case of federal or local programs not administered through a Subsidizing Agency, projects must generally receive a Project Eligibility Letter through DHCD's Local Initiative Program ("LIP") or receive LIP Local Action Unit ("LAU") approval.²

Subsidizing Agencies periodically modify existing programs and create new low- or moderate-income housing programs. Please contact DHCD at 617-573-1533 if you are aware of changes that should be reflected on this list.

b. Affordability – Household Income

In order for a household to be eligible to rent or purchase a restricted unit the household's income shall not exceed 80% of the AMI. A Subsidizing Agency may establish lower thresholds for its programs.

c. Affordability - Household Assets

The Subsidizing Agency may establish, for its housing programs, asset limitations for eligible households. In the absence of such provisions, eligible households shall be subject to the following asset limitations:

- (1) For age-restricted homeownership Projects, household assets shall not exceed \$275,000 in value, including equity in a dwelling (to be sold). (Note: For New England Fund, Housing Starts, and the Local Initiative Program, this asset limit applies for projects which applied for a determination of project eligibility on or after February 22, 2008. For such projects which applied for a determination of project eligibility prior to that date, then-existing program asset limits apply.)
- (2) For non-age restricted homeownership units, household assets shall not exceed \$75,000 in value.
- (3) For rental units, the greater of the following will be added to income: the income derived from the assets or an imputation of value calculated in a manner consistent with HUD requirements in place at the time of marketing.

¹ This listing does not provide a conclusive indication as to whether any housing development or housing unit is within the statutory definition of low- or moderate-income housing, though this listing is used by DHCD in making such determinations. Such determinations are subject to review by the Housing Appeals Committee in the context of formal appeals concerning particular housing proposals.

² Exceptions apply for locally administered CDBG and HOME rehabilitated housing units.

- (4) If a potential purchaser divests him/herself of an asset for less than full and fair cash value of the asset within two years prior to application, the full and fair cash value of the asset shall be included for purposes of calculating eligibility.

For a detailed description of assets and the treatment of such in determining eligibility, please refer to HUD's "Occupancy Requirements of Subsidized Multifamily Housing Programs"; Handbook 4350.3, Chapter 5, and Appendix II.2, "Additional Guidance on Income". In the event of any conflict between the Handbook and the explicit requirements of these Guidelines or of a Subsidizing Agency (e.g. rules regarding owning a residence at the time of application), the requirements of the Subsidizing Agency and these Guidelines, in that order, shall take precedence over the Handbook.

(May 2013 Update: Language on assets in connection with rental units; reference to HUD Handbook for description of assets.)

d. Housing Cost

Generally, the housing program, through its statutory basis, regulations, or guidelines establishes the maximum monthly housing cost. In the absence of such a provision, the following provisions shall apply:

- (1) Rental -- monthly housing costs (inclusive of utilities) shall not exceed 30% of monthly income for a household earning 80% of area median income, adjusted for household size. If there is no city trash collection, a trash removal allowance shall be included. If the utilities are separately metered, they may be paid by the tenant and the maximum allowable rent will be reduced to reflect the tenants' payment of utilities, based on the area's utility allowance. Developers should secure the amount of the current Section 8 utility allowance for the specific unit size and type from the local/regional housing authority.
- (2) Assisted Living Facility -- ALFs shall be treated as rental housing.
- (3) Homeownership
 - (a) Down payment must be at least 3% of the purchase price, at least half of which must come from the buyer's funds unless the Eligible Subsidy Program permits a smaller down payment.
 - (b) Mortgage loan must be a 30-year fully amortizing mortgage for not more than 97% of the purchase price with a fixed interest rate that is not more than 2 percentage points above the current MassHousing interest rate (www.masshousing.com).
 - (c) Monthly housing costs (inclusive of principal, interest, property taxes, hazard insurance, private mortgage insurance and condominium or homeowner association fees) shall not exceed 38% of monthly income for a household earning 80% of area median income, adjusted for household size.
- (4) Continuing Care Retirement Communities -- CCRs shall be treated as homeownership units.
 - (a) Entry Fee -- Any requisite entrance fee policy must be reasonable, taking into account that many otherwise eligible households may not have owned a home previously, and therefore the value of their Household Assets may be limited. A policy that sets a minimum entry fee for such households at a figure that is equivalent to 10% down payment on a homeownership unit for which a household at 80% of area median income, adjusted for household size, would be eligible, shall be deemed to be reasonable.

Note: Resident selection for the Affordable Units must comply with the requirements of a lottery or other fair and equitable procedure approved by the Subsidizing Agency (see Section III, Affirmative Fair Housing Marketing Plan), and without regard to the amount of their assets.

(b) Monthly fees – generally may not exceed 35% of household income plus an allowance for meals, if provided.

(c) Health care reserve fund – to the extent required, such fund must be reasonable and must be held for the benefit of the household for the exclusive purpose of paying for acute and skilled nursing care. The health care reserve fund shall be funded prior to determining whether a household has sufficient resources for the entrance deposit and shall be excluded from calculation of assets for the purposes of determining asset eligibility.

(May 2013 change: insertion of paragraph on Assisted Living.)

e. Use Restriction

All Use Restrictions must meet the following minimum standards:

- (1) Runs with the land and recorded at the appropriate registry of deeds or filed with the appropriate land court registry district for a term that shall be not less than 15 years for rehabilitated housing units and not less than 30 years for newly created units.³
- (2) Identifies the Subsidizing Agency and monitoring agent, if applicable.
- (3) Effectively restricts occupancy of Low and Moderate Income Housing to Income Eligible Households. A Use Restriction may require that an Income Eligible Household must have a lower percentage of area median income than 80%.
- (4) Requires that tenants of rental units and owners of homeownership units shall occupy the units as their domiciles and principal residences.
- (5) Provides for effective administration, monitoring, and enforcement of such restriction.
- (6) Contains terms and conditions for the resale of a homeownership unit, including definition of the maximum permissible resale price, and for the subsequent rental of a rental unit, including definition of the maximum permissible rent.
- (7) Subjects the units to an Affirmative Fair Housing Marketing and Resident Selection Plan for approval by the Subsidizing Agency and consistent with the guidelines in the following Section III, as may be amended from time to time, for the term of the restriction.

f. Affirmative Fair Housing Marketing and Resident Selection Plan

- (1) For Projects that received a determination of Project Eligibility on or after March 1, 2014, the Project is in compliance with the Bedroom Mix Policy as set forth in the "Interagency Agreement Regarding Housing Opportunities for Families with Children"; see, <http://www.mass.gov/hed/docs/dhcd/hd/fair/familyhousinginteragencyagreement.pdf>.

³ Newly created units includes units that were converted from a prior use (e.g., commercial or public use) into housing units

- (2) The affordable housing units shall be subject to an Affirmative Fair Marketing and Resident Selection Plan that, at a minimum, meets the requirements set out in the following Section III, Affirmative Fair Housing Marketing Plan.

(May 2013 Update: insertion of requirement of AFHMP requirement; no change in policy.)

2. Unit Eligibility Criteria

a. General

Regardless of the zoning or permitting mechanism utilized, all affordable housing units that meet the criteria outlined in Section II.A.1 shall be eligible for inclusion on the SHI at the earliest of the following:

- (1) For units that require a Comprehensive Permit under M.G.L. c.40B, §§ 20 through 23, or a zoning approval under c.40A or completion of plan review under M.G.L. c.40R, the date when
 - (a) the permit or approval is filed with the municipal clerk, notwithstanding any appeal by a party other than the Board, but subject to the time limit for counting such units set forth at 760 CMR 56.03(2)(c), or
 - (b) on the date when the last appeal by the Board is fully resolved.
- (2) When the building permit for the unit is issued.
- (3) When the occupancy permit for the unit is issued.
- (4) When the unit is occupied by an Income Eligible Household and all the conditions of 760 CMR 56.03(2)(b) have been met (if no Comprehensive Permit, zoning approval, building permit, or occupancy permit is required.)

b. Rental & Assisted Living Facility

- (1) General - In a rental or ALF development, if at least 25% of units are to be occupied by Income Eligible Households earning 80% or less than the area median income, or alternatively, if at least 20% of units are to be occupied by households earning 50% or less of area median income, and meet all criteria outlined in Section 1, then all of the units in the rental development shall be eligible for inclusion on the SHI. In determining the number of units required to satisfy either percentage threshold, fractional numbers shall be rounded up to the nearest whole number (e.g.: in a 51 unit development, one would restrict 13 units in order to meet the 25% standard).

If fewer than the aforementioned percentages of units in the development are so restricted, then only the units that meet the requirements of Section II.A.1 shall be included.

- (2) Accessory Apartments - shall be eligible for inclusion in the SHI provided they meet the requirements of Section VI, Local Initiative Program.
- (3) Tenants Who Become Over-Income: If, after initial occupancy, the income of a tenant of an affordable unit increases and exceeds the maximum allowable income at the time of annual income determination, such a Update in income shall not affect the treatment of the Project or the unit with respect to the SHI provided that the Owner is in compliance with the related

EXHIBIT VII



Gmail

Lou Petrozzi
<lou@wallstreetdevelopment.com>

Cedar Crossing/Cedar Edge Comprehensive Permit - 55 Summer Street

1 message

Lou Petrozzi

Mon, May 30, 2022 at 8:12

<lou@wallstreetdevelopment.com>

PM

To: James Crowley <jcrowley@walpole-ma.gov>

Hi Jim:

Hope you are having a nice weekend - beautiful weather!!

Just wanted to touch base to get an up-date on the 40B Project entitled "Cedar Crossing/Cedar Edge" located at 55 Summer Street. In particular, it would be appreciated if you would advise if 1.) any documents have been submitted to your office in compliance with the comprehensive permit; 2.) whether any applications for building permits had been submitted; and 3.) whether any building permits have been issued for the project.

Thank you in advance for this information.

Lou P.

--

Lou Petrozzi, President
Wall Street Development Corp.
2 Warthin Circle

Norwood, MA 02062

O. 617-922-8700

www.wallstreetdevelopment.com

EXHIBIT VIII



Gmail

Lou Petrozzi
<lou@wallstreetdevelopment.com>

cedar crossing

James Crowley <jcrowley@walpole-
ma.gov>

Thu, Jun 2, 2022 at 9:42
AM

To: "lou@wallstreetdevelopment.com"
<lou@wallstreetdevelopment.com>

Cc: Jim Johnson <jjohnson@walpole-ma.gov>, Patrick Deschenes
<pdeschenes@walpole-ma.gov>

Hi Lou,

To answer your request on 55 Summer St , cedar crossing (1) no documents have been submitted with a comprehensive permit (2) no application for a building permits have been submitted (3) no permits have been issued .

Respectfully

Jim Crowley

Building Commissioner



135 School st

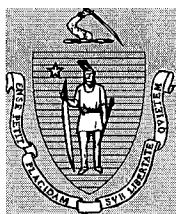
Town of Walpole

508-660-6347

jcrowley@walpole-ma.gov

When writing or responding, please remember that the Secretary of State's Office has determined that email is a public record.

EXHIBIT IX



Commonwealth of Massachusetts
**DEPARTMENT OF HOUSING &
COMMUNITY DEVELOPMENT**

Charles D. Baker, Governor ♦ Karyn E. Polito, Lt. Governor ♦ Jennifer D. Maddox, Undersecretary

July 7, 2022

Mr. John Lee, Chair
Walpole Zoning Board of Appeals
Town of Walpole / Walpole Town Hall
135 School Street
Walpole, MA 02081

Re: Walpole Safe Harbor Decision, Residences at Darwin Commons, Darwin Lane, Walpole MA

Dear Mr. Lee:

The Department of Housing and Community Development (DHCD) is in receipt of a June 13, 2022 letter from Louis Petrozzi, President of Wall Street Development Corporation, (Applicant), which has proposed a Chapter 40B project known as Residences at Darwin Commons, Darwin Lane, Walpole, MA. The Applicant challenges the June 2, 2022 letter by the Walpole Zoning Board of Appeals (Board), which notified the Applicant that the Board considers the denial of the Applicant's application for a Comprehensive Permit to be consistent with local needs.

The Board claims that the denial is consistent with local needs based on the following assertion: certified Housing Production Plan (HPP) as defined under 760 CMR 56.03(1)(b) and 56.03(4).

Procedural Background: 760 CMR 56.03(8)

Pursuant to 760 CMR 56.03(8), if a Board considers that, in connection with an Application, a denial of the permit or the imposition of conditions or requirements would be consistent with local needs on the grounds that the *Statutory Minima* defined at 760 CMR 56.03(3)(b) or (c) have been satisfied or that one or more of the grounds set forth in 760 CMR 56.03(1) have been met, it must do so according to the following procedures. Within 15 days of the opening of the local hearing for the Comprehensive Permit, the Board shall provide written notice to the Applicant, with a copy to the Department, that it considers that a denial of the permit or the imposition of conditions or requirements would be consistent with local needs, the grounds that it believes have been met, and the factual basis for that position, including any necessary supportive documentation. If the Applicant wishes to challenge the Board's assertion, it must do so by providing written notice to the Department, with a copy to the Board, within 15 days of its receipt of the Board's notice, including any documentation to support its position. The Department shall thereupon review the materials provided by both parties and issue a decision within 30 days of its receipt of all materials.

The Board shall have the burden of proving satisfaction of the grounds for asserting that a denial or approval with conditions would be consistent with local needs, provided, however, that any failure of the Department to issue a timely decision shall be deemed a determination in favor of the municipality. This procedure shall toll the requirement to terminate the hearing within 180 days.

Regulatory background: Certified Housing Production Plan as Defined under 760 CMR 56.03(1)(b), 56.03(4)(c) and(f), and 56.03(2)(b) and (c):

760 CMR 56.03(1): *A decision by a Board to deny a Comprehensive Permit... shall be upheld if one or more of the following grounds has been met as of the date of the Project's application... (b) the Department has certified the municipality's compliance with the goals of its approved Housing Production Plan, in accordance with 760 CMR 56.03(4).*

760 CMR 56.03(4)(c): *Affordable Housing Goals. The HPP shall address the matters set out in the Department's guidelines, including: 1. a mix of types of housing, consistent with local and regional needs and feasible within the housing market in which they will be situated, including rental, homeownership, and other occupancy arrangements, if any, for families, individuals, persons with special needs, and the elderly; 2. a numerical goal for annual housing production, pursuant to which there is an increase in the municipality's number of SHI Eligible Housing units by at least 0.50% of its total units (as determined in accordance with 760 CMR 56.03(3)(a)) during every calendar year included in the HPP, until the overall percentage exceeds the Statutory Minimum set forth in 760 CMR 56.03(3)(a).*

760 CMR 56.03(4)(f): *Certification of Municipal Compliance. A municipality may request that the Department certify its compliance with an approved HPP if it has increased its number of SHI Eligible Housing units in an amount equal to or greater than its 0.5% production goal for that calendar year. SHI Eligible Housing units shall be counted for the purpose of certification in accordance with the provisions for counting units under the SHI set forth in 760 CMR 56.03(2). Requests for certification may be submitted at any time, and the Department shall determine whether a municipality is in compliance within 30 days of receipt of the municipality's request. If the Department determines the municipality is in compliance with its HPP, the certification shall be deemed effective on the date upon which the municipality achieved its numerical target for the calendar year in question, in accordance with the rules for counting units on the SHI set forth in 760 CMR 56.03(2). A certification shall be in effect for a period of one year from its effective date. If the Department finds that the municipality has increased its number of SHI Eligible Housing units in a calendar year by at least 1.0% of its total housing units, the certification shall be in effect for two years from its effective date. (See 760 CMR 56.03(2) citations below.)*

DHCD's HPP and DHCD's G.L. c. 40B Guidelines (the "guidelines") also state as follows:

Term of Certification. *So long as the units produced are SHI Eligible Housing units (see 760 CMR 56.03), a certification shall be in effect for a period of one year from its effective date if the community has increased its SHI Eligible Housing units 0.5% of the total year round housing units or two years from its effective date if it has increased its number of SHI Eligible Housing units 1.0% of total year round housing units. If the units by which the municipality achieved its certification become ineligible for the SHI, then the certification shall lapse as of the date that the units became ineligible for the SHI. If such units become eligible for the SHI during the remaining term of the certification period, then the certification shall be re-instated for such remaining term.¹*

760 CMR 56.03(2)(b): *Units shall be eligible to be counted on the SHI at the earliest of the following:*

- 1. For units that require a Comprehensive Permit under M.G.L. c. 40B, § 20 through 23, or a zoning approval under M.G.L. c. 40A or completion of plan review under M.G.L. c. 40R, the date when:
 - a. the permit or approval is filed with the municipal clerk, notwithstanding any appeal by a party other than the Board, but subject to the time limit for counting such units set forth at 760 CMR 56.03(2)(c); or*
 - b. on the date when the last appeal by the Board is fully resolved;**
- 2. When the building permit for the unit is issued;*
- 3. When the occupancy permit for the unit is issued; or*
- 4. when the unit is occupied by an Income Eligible Household and all the conditions of 760 CMR 56.03(2)(b) have been met (if no Comprehensive Permit, zoning approval, building permit, or occupancy permit is required.)*

¹ Section II.B.9 of the guidelines, available at <https://www.mass.gov/files/documents/2017/10/10/guidecomprehensivepermit.pdf>, also contained within stand-alone HPP guidelines, available at <https://www.mass.gov/doc/housing-production-plan-guidelines/download>.

760 CMR 56.03(2)(c): *Time Lapses. If more than one year elapses between the date of issuance of the Comprehensive Permit or zoning approval under M.G.L. c. 40A or completion of plan review under M.G.L. c. 40R, as that date is defined in 760 CMR 56.03(2)(b)1., and issuance of the building permit, the units will become ineligible for the SHI until the date that the building permit is issued. If more than 18 months elapse between issuance of the building permits and issuance of the certificate of occupancy, the units will become ineligible for the SHI until the date that the certificate of occupancy is issued...*

Notice Requirements under 760 CMR 56.03(8)

DHCD finds that the Board submitted notice to the Applicant within 15 days of opening the local hearing (May 25, 2022) through its June 2, 2022 letter. DHCD notes copies were sent to DHCD via certified mail and electronic mail. DHCD finds that the Applicant challenged the Board's assertion within the proper timeframe, 15 days from receipt of the Town's notification, through its June 13, 2022 letter. DHCD notes that copies of the Applicant's letter were sent to DHCD via certified mail and electronic mail. DHCD notes that although the State of Emergency has ended, DHCD continues to request electronic submission of documents.

The Board's Submission

The Board's submission consisted of a June 2, 2022 safe harbor assertion notification letter based on Walpole's September 10, 2021 HPP Certification and an attachment. The attachment was the September 10, 2021 DHCD HPP Certification Approval letter. In the September 10, 2021 DHCD letter, the following findings were made:

1. *Walpole has a valid HPP. The effective date for the HPP is April 23, 2019 the date that DHCD received a complete plan submission. The HPP has a five-year term and will expire on April 22, 2024.*
2. *The project for which certification was requested for is known as Cedar Crossing/ Cedar Edge (SHI ID# 10582) which consists of 226 SHI units.*
3. *DHCD finds that the units are eligible for SHI inclusion and have been added to the SHI. The number of SHI units (226) is enough for a two-year certification period (90).*
4. *The certification period will run from April 27, 2021 to April 26, 2023.*

DHCD's September 10, 2021 HPP Certification Approval letter also states:

"Please note that all units must retain eligibility for the SHI for the entire certification period. If units are no longer eligible for inclusion on the SHI, they will be removed and will no longer be eligible for certification. This action may affect the term of your certification."

The Applicant's Submission

The Applicant's submission consisted of a June 13, 2022 formal appeal letter that also includes the procedural history of Darwin Commons, various exhibits including but not limited to the September 10, 2021 DHCD HPP Certification Approval letter, the Town's HPP certification request with accompanying documentation that the Town submitted for inclusion of the Cedar Crossing/Cedar Edge units on the SHI, excerpts from the DHCD guidelines, and a copy of a June 2, 2022 email from Walpole's Building Commissioner confirming that building permits had not been issued for Cedar Crossing/Cedar Edge.

The Applicant's main argument against the validity of the Board's safe harbor assertion is that, as of the date of the Applicant's Comprehensive Permit application for Darwin Commons April 28, 2022, building permits for the Cedar Crossing/Cedar Edge development had not been issued within the required time frame under the terms of the HPP Certification, 760 CMR 56.03(2)(b.1)&(c), and the guidelines.

If you have further questions, please contact Phillip DeMartino, Technical Assistance Program Coordinator, at (617) 573-1357 or Phillip.DeMartino@mass.gov.

Sincerely,

A handwritten signature in cursive script, appearing to read "Caroline 'Chris' Kluchman".

Caroline "Chris" Kluchman
Deputy Director, Division of Community Services

Cc: James Johnson, Town Administer, Walpole
George Pucci, Esq., Town Counsel, Walpole
Patrick Deschenes, Director of Economic Development, Walpole
Louise Petrozzi, President, Wall Street Development Corporation
Jay Talerman, Esq., Meade, Talerman & Costa
Dean Harrison, 40B Consultant