

Regnante Sterio LLP

Theodore C. Regnante
James F. Sterio
David J. Gallagher*
Michael P. Murphy*
Robert P. Yeaton
Seth H. Hochbaum
Paul G. Crochiere

Attorneys at Law
Edgewater Office Park
401 Edgewater Place, Suite 630
Wakefield, Massachusetts 01880-6210
Telephone (781) 246-2525
Telecopier (781) 246-0202
Website: www.regnante.com

Laura McKelligott Kahl
Angie Guarracino
Jesse D. Schomer
Neil Cohen

File No. 46389

*Also admitted in NH

January 31, 2019

VIA FEDERAL EXPRESS & E-MAIL

Gregory P. Watson, AICP
Manager of Comprehensive Permit Programs
Massachusetts Housing Finance Agency
1 Beacon Street
Boston, MA 02108

Re: Project Eligibility Letter (PEL) Application: Elm Street Apartments
Property: 20 Elm Street, North Reading, MA
Applicant: NY Ventures LLC

Dear Mr. Watson:

This office is counsel to NY Ventures LLC, the applicant in connection with the above-noted PEL application. It has come to our attention that Michael P. Gilleberto, Town Administrator of the Town of North Reading, has recently filed with your office a letter dated January 15, 2019, objecting to this application.¹ We now write in response to the Town's letter to clear up any misapprehensions that the Town's letter might create.

I. Municipal Actions to Meet Affordable Housing Needs in North Reading

The first points noted in the Town's letter (pp. 1-2) pertain to the eligibility criterion set forth in 760 CMR 56.04(4)(b) – namely, “municipal actions previously taken to meet affordable housing needs”. In particular, the Town notes (a) its recent completion of a Housing Production Plan (HPP) in 2018, (b) its participation in the Metro North Regional Housing Services office, (c) its previous experience with 40B and 40R projects, and (d) its enactment of an affordable housing overlay zoning district and a multifamily housing overlay district. Citing these efforts, the Town argues that “previous municipal action is of a character and scale to create significant opportunities as-of-right to meet the municipality's need for affordable housing.”

¹ Our understanding is that the Town's comment letter was the subject of a public hearing by the North Reading Select Board on January 14, 2019. Neither the applicant nor its representatives were advised of that public hearing, nor given an opportunity to appear at it to answer questions and/or respond to concerns, nor were we notified that the Town's letter to MassHousing had issued. It is also our understanding that – despite already filing a very comprehensive and thorough comment letter – the Town has requested a further extension of time to file comments, and that your office has granted that extension through February 1, 2019. We note that this is the second extension to the public comment period that the Town has requested. We hereby respectfully submit that the time for public comment has been more than adequate, and we request that no further extensions be granted.

While these efforts are no doubt laudable, to date, they have not translated into significant production of affordable housing in North Reading. Our comments on this issue follow.

A. Affordable Housing Creation in North Reading

North Reading's HPP was very recently approved by DHCD in August of 2018. As it is less than six months old, it is perhaps unsurprising that no SHI-eligible affordable housing units have been created since its approval. Due to this lack of creation of affordable units, North Reading is not in compliance with the housing-creation goals of its HPP, nor is it eligible for "safe harbor" under Chapter 40B regulations.

Based on DHCD data, as of August of 2018, North Reading had 540 SHI-eligible units out of a total of 5,597 total year-round housing units (9.65%), leaving the Town 20 units short of the 10% threshold mandated by Chapter 40B. Of those 540 SHI-eligible units, over 75% (406 units) are contained in a single 40R development – the Edgewood Apartments development (also known as the Residences at Martin Brook) at 100 Lowell Road. It is further notable that, of the other 134 SHI-eligible units in North Reading, 99 units (74%) are restricted to persons with disabilities/special needs or are age-restricted (or both), leaving only 35 SHI-eligible units (of which only 4 are rentals) outside of the Edgewood complex that are unrestricted. This leaves scant unrestricted affordable housing options for young adults, families, and workforce housing – some of the very demographics that Chapter 40B is designed to assist.

Moreover, as noted in the Town's HPP, the Edgewood Apartments development was permitted, built, and occupied more than a decade ago. For the subsequent 10+ years since the Edgewood complex was built, the Town's SHI reflects only one new affordable unit: a single ownership unit at Bradford Pond Estates. This shows a clear lack of urgency on the part of the Town in regards to the ongoing creation of affordable housing to meet the rising need for it.

With respect to other recent developments, the Town did recently approve under Chapter 40R a 450-unit Pulte Homes development known as Martins Landing, which is adjacent to the Edgewood Apartments. However, all 450 of these units will be market-rate, age-restricted units, which will only further reduce the Town's affordability percentage when the Town's number of total year-round units are recalculated following the release of the 2020 Census results.

B. Overlay Zoning Districts Created by the Town

With respect to the affordable housing and multifamily overlay zoning districts created by the Town, these districts consist of properties that are owned by the Town. Notably, since the 20 Elm Street property is not located in either district, the relevance of the existence of these districts is questionable, since the property cannot be developed under that zoning.

The affordable housing overlay district was established in 2008 and, as noted in the Town's letter, consists entirely of Town-owned properties. The Town's letter notes that this land "may yield 20 units" (i.e., the absolute bare minimum required to reach 10% affordable) and "could" be

used to create even more affordable housing.² Yet, in the 10+ years since the affordable housing overlay district was established, not a single SHI-eligible unit has actually been created in it.

The multifamily housing overlay district was established in 2017 and consists of 5 specific lots containing just under 100 acres of property on Lowell Road. Of that land area, roughly 49% consists of the Edgewood Apartments property. Another 35% of it consists of the (market rate, age-restricted) Martins Landing property, and about 14% consists of parks/conservation land. In fact, only about 2.5% of it (2.49 acres) is actually available for new affordable housing development.³ Therefore, while this district may have been established in an effort to create affordable housing, approximately 97.5% of it is not actually available for new affordable housing development.⁴

In sum, while the Town has no doubt taken steps that, if implemented, could promote the creation of affordable housing, these efforts have not had the effect of actually creating any meaningful amount of unrestricted affordable housing in over ten years.

II. Conceptual Design and Site Appropriateness

The next points made by the Town in its letter (pp. 2-4) pertain to the eligibility criterion set forth in 760 CMR 56.04(4)(c) – namely, whether “the conceptual project design is generally appropriate for the site on which it is located”. The criticism offered by the Town in regard to this criterion fall into the categories of (a) environmental concerns, (b) neighborhood integration and massing, and (c) project density.

A. Environmental Concerns

The first point raised by the Town in its letter are environmental concerns. Specifically, the Town cites the “close proximity to the Ipswich River”, potential effects on local wells, the fact that the project includes a proposed wastewater treatment facility that is subject to MassDEP’s Ground Water Discharge Permit Program (310 CMR 5.00), the Town’s allegedly limited “ability to meet summer water demands”,⁵ and the Town’s claim that soil testing is needed to determine “whether the soils are suitable for the construction of large buildings”.

² This district consists of 23 specific lots, all owned by the Town, located in various places around North Reading. These properties were effectively “spot zoned” to avoid dimensional zoning requirements of the underlying residential zoning districts. The applicant has reviewed the list of properties located in the affordable housing overlay district, and it appears that every lot in this district suffers from one defect or another that would make permitting of development difficult, such as wetlands, lack of physical access, zoning nonconformities, etc.

³ Since this parcel (102 Lowell Road) is located directly adjacent to the Edgewood Apartments site, if it were used for affordable housing, it would only exacerbate the existing ghettoization of the affordable housing units in North Reading by further concentrating the lion’s share of affordable housing opportunities in a single location.

⁴ Indeed, since almost half of this district represents the decade-old Edgewood Apartments, the Town, by citing it again here, is effectively attempting to double-count its largest affordable housing development.

⁵ The state of the Town’s public water infrastructure would constitute a “pre-existing condition affecting the municipality generally” under 760 CMR 56.05(8)(d)(1), and is thus not relevant to this application.

As outlined in the January 10, 2019 letter of Chris Sparages, P.E., project engineer, even though this project has been filed under Chapter 40B, it remains subject to any/all applicable state and federal regulations – including all environmental protections. In apparent acknowledgement of this fact, despite raising the above-noted specific concerns, the Town also notes as follows in its letter:

If the appropriate environmental authorities determine this site is appropriate with regard to wastewater disposal and stormwater management, and such development does not negatively impact the Ipswich River, the Town would agree that the site is “generally appropriate for residential development.” [emphasis added]

This effectively amounts to an acknowledgement that the above-noted environmental, wetlands, ground water protection, waste water treatment/management, stormwater management, and soil suitability concerns will be addressed in the context of the permitting processes under the various state and federal regulatory schemes governing each of these issues.⁶ As such, the applicant respectfully submits that such concerns are moot in the context of this permitting process.

B. Neighborhood Integration and Massing

The Town next notes in its letter that “[t]he project concept presents massing not in keeping with the surrounding neighborhood.”⁷ Citing DHCD’s *Handbook: Approach to Chapter 40B Design Reviews*, the Town claims that “townhouses are more appropriate than large apartment buildings when new housing is located alongside existing single-family homes.”

This argument is a broad oversimplification of DHCD guidance, since it focuses only on typology of housing, and overlooks the many other factors that are considered in determining the appropriateness of the proposed conceptual design in the context of the site, such as architectural style and features, mass-reducing design elements, use of topography, landscaping/buffering, etc. Indeed, while townhouse-style development is one way noted by the *Handbook* for a 40B development to be integrated into an existing single-family neighborhood, it also provides that “other building styles may provide similar densities” as larger-scale multifamily buildings. In other words, multifamily buildings are appropriate in single-family neighborhoods where the building style integrates into the architectural styles of the surrounding neighborhood and/or reduce the bulk of buildings.

⁶ Despite this acknowledgement, the Town, elsewhere in its letter, requests that MassHousing solicit comments from the Towns of Lynnfield and Middleton and the City of Peabody based on the fact that “all of these municipalities draw water from the Ipswich River.” As an initial matter, Chapter 40B regulations do not allow, in the context of the assessment of a 40B project, the consideration of the “local concerns” of different municipalities from the one where the proposed development will be located. Even if the regulations did allow this, the state and federal environmental protection regulations to which this project is subject will provide the same protections to these communities as they will to North Reading.

⁷ More specifically, the Town cites as a concern the “very close proximity of Buildings 1 and 2 to the abutting residences on Lynn Street.” Notably, this issue has already been resolved in the updated site plan filed by the applicant, which moves the buildings and parking areas away from the properties located on Lynn Street.

With specific respect to this project, the buildings have been designed with architectural elements and details that help to reduce their apparent size and massing. First, much of the project's parking is located under the buildings, which hides many of the cars from view, thus eliminating the need for expansive parking areas surrounding the buildings. Next, the exterior facades design presents the appearance of layering by using different materials to create a base, a middle, and a top to each of the buildings, which helps to reduce the appearance of height. The units all also contain balconies, which serve to further break up the appearance of bulk/massing (particularly on the longer building faces) and add visual interest to the facades. Additionally, the building roofs are designed to be sloped in deference to the adjacent homes in the area. Critically, the materials on the building facades have been selected based on their congruity with the building materials of homes nearby, in an attempt to promote a continuity of architectural style and design.

While the buildings have been designed to complement the nearby residential homes in the vicinity of the project site, it should be noted that the most prominent and visible structure from the proposed development will be the large restaurant and function hall at the Teresa's Prime restaurant site. The presence of this facility by itself refutes the notion that the neighborhood in which the project site is located is a uniformly single-family residential neighborhood.

With respect to the site itself, the building locations have been selected to provide privacy between buildings, positioning away from abutters, and to reduce the appearance of the buildings from Elm Street. The buildings were designed to maximize the number of units with views of the Ipswich River and surrounding areas. New landscaping and existing foliage will be used to buffer the project site from abutters, and the interior of the site itself will also be tastefully landscaped to complement the transition from single-family residential to multifamily residential.

Finally, it should be noted that after this application was filed, the applicant has revised the proposal in response to concerns raised by neighbors and Town officials. As the applicant's project 40B consultant, Lynne Sweet, advised MassHousing on January 16, 2019, the applicant has proposed to move Buildings 1 and 2 away from the property line, thus increasing the setback to the closest abutters from 50 feet to 75 feet – three times what is required under local zoning. This represents a 50% increase in the setback to abutters. Doing so not only provides greater distance to abutters, but also allows a number of existing trees to be saved, thus leaving more of a natural vegetated buffer between the proposed buildings and the existing neighbors.

C. Project Density

The Town next argues that "the developer [should] reduce the overall density of the project to better conform to the surrounding neighborhood and reduce demands on emergency services."

Notably, in regard to density, the DHCD Handbook specifically provides that "the site and building design, not the numerical density, determines if a development is 'generally appropriate for

the site.”⁸ The site and building design elements that make the project appropriate for the site are discussed above.

However, while the “numerical density” is not determinative of site appropriateness, since the Town raised this issue, it should be noted that the project actually is less dense – measured both in units/acre and units/buildable-acre – than the two largest multifamily properties in North Reading (Edgewood Apartments and Pulte Homes at Martins Landing), as well as the project’s closest competition in the directly-adjacent town of Lynnfield (Market Street Apartments and Lynnfield Commons).

The comparative densities of these other developments are shown on the following chart:

Development	Total Acres	Units	Units Per Acre	Non-buildable Acreage*	Buildable Acreage	Units Per Buildable Acre
Edgewood Apts.	47.78	406	8.50	22.2	25.58	15.87
Martins Landing	34.20	450	13.16	7.1	27.10	16.61
Market Street	12.00	180	15.00	4.2	7.80	23.08
<i>Average:</i>			11.02			17.13
Elm Street Apts.	19.00	200	10.53	6.2	12.8	15.63

*Non-buildable land area represents DEP wetlands and FEMA special flood hazard areas

This chart shows that the overall density of this project (10.53 units per acre) is less than the weighted average of the other nearby multifamily developments (11.02), and far less than the overall density of the Pulte Homes at Martins Landing project (13.16 units per acre), which the Town of North Reading approved for construction. More strikingly, based on units per buildable acre, the proposed project is significantly less dense (15.63 units per buildable acre) than all of the other nearby multifamily developments, which have a weighted average density of 17.13 units per buildable acre.

In sum, while numerical density is poor indicator of site appropriateness, the proposed project’s density is actually less than the most directly comparable multifamily developments in the area – including two that were approved by the Town of North Reading.

⁸ This concept – that the raw number of units does not by itself undermine a 40B project’s appropriateness – has been routinely upheld by the Housing Appeals Committee, most recently in the case of *HD/MW Randolph Avenue, LLC v. Milton Board of Appeals*, 13 MHACR 31 (2018), where the HAC reversed a condition reducing the number of dwelling units from 90 to 35 on the basis that, among other things, “[g]eneral or vague arguments alone regarding density and intensity are insufficient to warrant a reduction in a project size.” Notably, the project density upheld in *HD/MW Randolph Avenue* was slightly higher by overall site area (11.5 units per acre) than this project (10.5 units per acre).

III. Town Feedback

The Town's letter next proceeds to enumerate a series of comments pertaining to the details of the project (pp. 4-7). Many of these comments contain requirements that various Town departments would propose to be imposed upon the project as part of its design and construction, and requests for review that will be part of the 40B permitting process before the North Reading Zoning Board of Appeals. These comments, and the applicant's responses, are as follows.

- **Town's Comment:** The project site is not among the locations identified in the Town's HPP as appropriate for development of affordable housing.
 - ***Applicant's Response:*** The fact that the project site was not identified by the Town in its HPP as a potential location for affordable housing development is neither significant nor relevant. Based upon the Town's letter and its HPP, it is clear that Town primarily considered in this analysis the Town-owned properties in its affordable housing and multifamily housing overlay districts, which, as discussed above, present very limited opportunities for future affordable housing development. The other properties identified by the Town appear to have limited (if not nonexistent) developability.⁹ By contrast, the project site is immediately developable and, if permitted, will by itself more than accomplish the Town's HPP production target of 152 units in 5 years.
- **Town's Comment:** The project site is not near amenities and services.
 - ***Applicant's Response:*** The project site is no nearer or farther from amenities and services than the vast majority of the Town of North Reading. Route 28 represents the only significant commercial corridor in North Reading, and it is only a short drive away, as is the Route 114 corridor in Middleton. The site access to amenities and services is perfectly adequate.
- **Town's Comment:** "There are limited employment opportunities within walking distance to the site."

⁹ The Town, in its HPP, also notes, vaguely, that it is "exploring development opportunities along Route 28/Main Street." This presumably refers to the 9 parcels of land that were rezoned in 2017 to be included in the Main Street Mixed Use overlay district. This overlay district consists entirely of privately-owned properties located near the junction of Main Street and Winter Street, all of which are already fully developed – most with commercial or industrial uses. Even if these already-developed properties could be redeveloped with housing, the mixed use overlay district imposes no affordable housing requirements. Of the 152 affordable units that the Town's HPP establishes as its 5-year production goal, half (76 units) are contained in these properties. Absent from the HPP, however, is any concrete indication that residential redevelopment is actually planned by the owners of these sites. Another 40 units of the Town's production goal (26%) are vaguely proposed to be located at Carpenter Drive. This presumably refers to a Town-owned parcel off Chestnut Street with significant development limitations, including wetlands, zoning nonconformities, and lack of physical access. In other words, the development prospects of 76% of the Town's 5-year production goal appear questionable at best.

- ***Applicant's Response:*** This comment applies equally to the vast majority of properties in most of the suburban/exurban communities of Massachusetts outside of the Route 128 corridor.
- **Town's Comment:** "The project provides 1.6 parking spaces per unit. This number is insufficient in this location, with no transit or pedestrian access to services nearby."
 - ***Applicant's Response:*** The ratio of 1.6 parking spaces per unit slightly exceeds the statewide standard of 1.5 spaces per unit typical for Chapter 40B multifamily developments. This ratio also slightly exceeds the required parking ratio in the Town's Berry Center Residential Smart Growth overlay district (1.5) and that of the Town's affordable housing overlay district (which would also require only 1.5 spaces per unit based on the proposed unit mix).
- **Town's Comment:** "The sidewalks along the opposite side of Route 62 contain no barrier between the sidewalk and roadway and are often impassable during the winter, creating potentially dangerous conditions."
 - ***Applicant's Response:*** This alleged concern relates to an existing infrastructure condition that is under the Town's control, and which is not relevant to this application. *See* 760 CMR 56.05(8)(d)(1). To the extent the Town believes that existing conditions on Route 62 are unsafe to pedestrians, they should upgrade the roadway accordingly, as this condition would exist irrespective of whether the proposed project is built.
- **Town's Comment:** "The submittal notes that garage spaces will be available to market-rate units, while surface spaces will be assigned to the affordable units. The Town takes exception to this singling out of owners of the subsidized [*sic*: "affordable"¹⁰] units and would request that spaces be assigned in a manner that does not identify to all residents who the units of the affordable units are."
 - ***Applicant's Response:*** The parking arrangements for the proposed project are (as they must be) in compliance with Chapter 40B and the regulations thereunder. The developer is open to reviewing the parking arrangements with the local permitting authority (ZBA) to address any concerns.
- **Town's Comment:** "The Town would like to see a larger proportion of handicapped accessible units in the project, particularly the affordable units."
 - ***Applicant's Response:*** The project, including the designation and locations of handicapped-accessible units, will be in compliance with state building code

¹⁰ The Town presumably meant to refer here to the *occupants/renters* of the *affordable* units, not the *owners* of *subsidized* units, as all of the units will be rental apartments, and none will be subsidized.

requirements, and all units will be visitable. More specifically, the building code requires that 5% of the units be designated as “Group 2” units, which are designed to be fully accessible without modification. The balance of the units will be “Group 1” units, which are designed to be adaptable to be accessible for disabled residents. In addition, all building entries and corridors are designed to be fully accessible. The developer is open to reviewing this matter with the local permitting authority (ZBA) to address any further concerns.

- **Town’s Comment:** The Town's emergency services are located far from the site. Many emergency calls are made to the western edge of the Town (406 units at 100 Lowell Road, and soon another 450 at 104 Lowell Road). A proposal for 200 units at 20 Elm Street puts a strain on Town services, since this property's location is in the easternmost part of the Town.
 - **Applicant’s Response:** This alleged concern relates to an existing infrastructure condition that is under the Town’s control, and which is not relevant to this application. *See* 760 CMR 56.05(8)(d)(1). To the extent the Town believes that the proposed project will increase the demand for emergency services, the Town is under an obligation to upgrade such services to ensure adequate coverage. The applicant further notes that the increase in property tax revenue generated by this project is projected to more than cover any additional need for Town services.
- **Town’s Comment:** “The Town requests the developer to provide information on the anticipated impact on the condition of Route 62; is any mitigation possible for wear and tear on this road?”
 - **Applicant’s Response:** The applicant anticipates no undue adverse impact to “the condition of Route 62” as a result of this project. Notably, Route 62 is a public way, so it is not appropriate to request/demand “mitigation” for use of that road by traffic associated with this project. In any event, the increase in property tax revenue generated by this project is projected to more than cover any additional need for investments in town services.
- **Town’s Comments:** “The Town requests assistance in predicting the number of new school children so as to better plan for enrollment and facilities needs. As noted in the attached letter from the Town's Superintendent of Schools, such numbers from previous projects have been erroneous or difficult to rely on.”

“School bus service will need to be expanded into this area.”

 - **Applicant’s Response:** Presently, North Reading school bus routes make multiple stops along Elm Street in close proximity to the project site, with stops at Elm Street/Gillis Drive, Elm Street/Judith Drive, Elm Street/Mid Iron

Drive, and 38 Elm Street. This route leads directly by the project site, so accommodating this project would merely require adding one additional stop at 20 Elm Street.

Furthermore, school enrollment is not relevant in the context of a Chapter 40B project. In any event, the increase in property tax revenue generated by this project is projected to more than cover any additional need for Town services, including local schools and associated bus services.

- **Town's Comments:** "The submitted plans will need to better define the second egress from the site. The Town requests better definition of the drive shown in the site plan, including whether it will continue all the way out to Elm St. It appears to go onto the abutting property; will an easement be put in place? This driveway also currently accommodates delivery trucks — it cannot be used for both without widening/ensuring access for emergency vehicles exists at all times. This area will need to be widened or rerouted. The fire access must be 20 feet."

"The application notes that the emergency fire road will be 'gravel'; this is not a suitable material for a fire road."

- ***Applicant's Response:*** The proposed second egress way will be accessible by emergency vehicles only. It will connect to the existing driveway system on the Teresa's Prime property. Easement(s) will be put in place to the extent necessary to ensure that this access way remains in place for the life of the project. The egress way will comply with any/all applicable state and federal fire code, building code, and other requirements. After this application is filed with the local permitting authority, the applicant intends to meet with representatives of the North Reading Department of Public Works, Engineering Department, Fire Department, and Police Department to work out any concerns that local authorities may have.

- **Town's Comment:** "The Town requests an NFPA13 sprinkler system."

- ***Applicant's Response:*** The fire suppression systems for the proposed development will comply with all applicable fire code requirements. After this application is filed with the local permitting authority, the applicant intends to meet with representatives of the North Reading Department of Public Works, Engineering Department, Fire Department, and Police Department to work out any concerns that local authorities may have.

- **Town's Comment:** "Adequate lighting will be needed for all parking areas."

- ***Applicant's Response:*** The lighting systems for the proposed development will comply with all applicable building code requirements. After this

application is filed with the local permitting authority, the applicant intends to meet with representatives of the North Reading Department of Public Works, Engineering Department, Fire Department, and Police Department to work out any concerns that local authorities may have.

- **Town's Comment:** "There should be a school bus stop area with a turnaround included in the plans."
 - ***Applicant's Response:*** The location(s) of bus stop(s) in or near the proposed development can and will be worked out during the local permitting process. Whether this suggestion is feasible likely depends, in large part, on whether local school busses are permitted to enter onto private property. After this application is filed with the local permitting authority, the applicant intends to meet with representatives of the North Reading School Department, Department of Public Works, Engineering Department, Fire Department, and Police Department to work out any concerns that local authorities may have with respect to matters like this.
- **Town's Comment:** "Water service to the apartments will need to be looped."
 - ***Applicant's Response:*** The design for the water service for the proposed development will comply with all applicable state and federal requirements. After this application is filed with the local permitting authority, the applicant intends to meet with representatives of the North Reading Department of Public Works, Engineering Department, Fire Department, and Police Department to work out any concerns that local authorities may have with respect to matters like this.
- **Town's Comment:** "A plan will need to be provided showing the construction and occupancy phasing of the project, as well as what measures will be taken to protect occupants from ongoing work (considering dangers from foundations, machinery, etc.)."
 - ***Applicant's Response:*** Prior to construction, the applicant will submit a detailed construction management plan outlining all such matters.
- **Town's Comment:** "Wetlands will need to be shown on the plans, including those on private abutting properties."
 - ***Applicant's Response:*** All wetlands resource areas relevant to the project are shown on the project site plans. The wetland resource area shown on the site plans were flagged by a professional wetland scientist and then located by instrument survey. The location of non-relevant wetlands resource areas on abutters' properties, as mapped by MassDEP, can be ascertained by the Town

using its GIS mapping system, which can be found at:
<https://www.northreadingma.gov/gis/links/online-interactive-map>.

- **Town's Comment:** "With the project site being located on the Ipswich River, the Town would like to see as much infiltration as possible. Green spaces should be revegetated with trees where possible and work in wetland buffer areas minimized."
 - ***Applicant's Response:*** The project, including waste water discharge and management and stormwater management, will be in compliance with all applicable state/federal regulations, including DEP guidelines for stormwater infiltration.
- **Town's Comment:** "A peer review of the plans will be needed, including stormwater, civil and traffic, as well as peer review of the construction plans, fire, etc."
 - ***Applicant's Response:*** Peer review of 40B project plans is a routine part of the permitting process before the local permitting authority.
- **Town's Comment:** "The Town requests further information on the developer's plan for future use of the pool, including the following: Whether events/parties/concerts will continue; if apartment residents will be charged membership fees; and whether paid membership will still be open to the general public."
 - ***Applicant's Response:*** The applicant commits to provide further information to the Town regarding the future use of the pool when such plans are finalized. At present, such matters remain to be determined.
- **Town's Comment:** "The Town requests more information about the handicapped parking spaces/van spaces, including their location and dimensions."
 - ***Applicant's Response:*** Details such as these will be provided to the local permitting authority in the site plans that will be submitted in connection with the local permitting process.
- **Town's Comment:** "The Town requests information about the ventilation systems that will be used in the garages."
 - ***Applicant's Response:*** Details such as these will be provided to the local permitting authority in the site plans that will be submitted in connection with the local permitting process.
- **Town's Comment:** "The Town requests that the application consider whether there is a way to work in canopies with solar panels over the outdoor parking spaces."

- ***Applicant's Response:*** The applicant presently has no plans to incorporate solar panels into the project design but will take this suggestion into consideration.
- **Town's Comment:** "The Town requests manifest numbers and information about where material will be going."
 - ***Applicant's Response:*** Details such as these will be handled in the construction management plan submitted to the Town prior to construction.
- **Town's Comment:** "The Town is concerned about traffic impacts. A traffic study should be conducted during the golf season and wedding season, when significantly more traffic is present, and more of the residents of the Greens return to their homes following the winter season. Ideally, traffic counts would be taken in May."
 - ***Applicant's Response:*** A traffic study complying with the guidelines and standards as set forth in MassDOT's *Transportation Impact Assessment (TIA) Guidelines* manual and those of traffic engineering and transportation planning professionals will be submitted to the local permitting authority. Consistent with such guidelines, the traffic study will, if necessary, be seasonably adjusted to account for higher traffic volume during different periods of the year. The applicant expects that the results of this study will be subject to peer review, if required by the local permitting authority.
- **Town's Comment:** "Board of Health requests a best management practice plan explaining the work, excavation, truck routes during construction, plans for spillage, etc. Routes of construction vehicles will need to be approved by the Town (including DPW, Fire, Police)."
 - ***Applicant's Response:*** Details such as these will be handled in the construction management plan submitted to the Town prior to construction.
- **Town's Comments:** "In accordance with the Commonwealth of Massachusetts State Sanitary Code 310 CMR 15.000 -The State Environmental Code, Title V 'Sanitary Drainage System Required' & 'Subsurface Disposal Of Sanitary Sewage' the Board of Health requires the applicant to develop and implement a stormwater management policy to ensure stormwater/surface drainage during construction does not interfere with any property abutters or public ways to create any Public Health nuisance."

"In accordance with the Commonwealth of Massachusetts State Sanitary Code 310 CMR 15.000 -The State Environmental Code, Title V 'Sanitary Drainage System Required' & 'Subsurface Disposal of Sanitary Sewage' the Board of Health requires that all proposed commercial/ residential dwellings be properly connected to the Town of North Reading Municipal Water system if applicable."

“The proposed plan for the storage of refuse and solid waste from the site must be submitted to the Health Department for review and approval.”

- ***Applicant's Response:*** As it must, the project's waste disposal systems will be designed in conformity with all applicable state and federal regulations, including the State Sanitary Code (Title 5).
- **Town's Comment:** “In accordance with the Commonwealth of Massachusetts State Statutes M.G.L. Chapter 111 Sections 122 to 142, ‘Public Nuisance’ The Board of Health requires during the construction process that all Local, State and Federal environmental control measures be implemented to retain dirt, dust, runoff, and noise as feasibly practical from leaving the proposed site and interfere with any property abutters to create a public health nuisance.”

“All provisions of M.G.L Chapter 111 Section 122 must be adhered to.”

- ***Applicant's Response:*** The project will be required to comply with the EPA's National Pollutant Discharge Elimination System (NPDES) program, as it will have discharges of stormwater from construction activities disturbing more than 1 acre of land. Prior to construction, the applicant will file a Notice of Intent with the EPA, which includes the preparation of a Stormwater Pollution Prevention Plan (SWPPP). As a courtesy, the applicant will be sure to forward a copy of the SWPPP to the North Reading Board of Health.
- **Town's Comment:** “A copy of the SWPPP report must be forwarded to the Health Department for its review and approval.”
 - ***Applicant's Response:*** As it must, the project's stormwater management systems will be designed in conformity with all applicable state and federal regulations.
- **Town's Comments:** “The Health Department may have additional control requirements to ensure proper and adequate containment of air pollution of dirt, dust and noise.”

“The North Reading Board of Health reserves the right to amend any site plan at any time as it pertains to the Local, State, and Federal Regulations and to the health, safety and protection of the general public within the Commonwealth of Massachusetts.”

- ***Applicant's Response:*** The project design and construction will be in conformity with all applicable state and federal regulations.
- **Town's Comments:** “In accordance with the provisions of the Commonwealth of

Massachusetts State Sanitary 105 CMR 410.000, Code Chapter II, The Board of Health requires a preventive maintenance program/Integrated Pest Management (IPM) policy be set in place. During pre and post excavation, the area is to be properly baited and exterminated by a Massachusetts licensed exterminator and an invoice be submitted to the Health Department - if applicable.”

“The proposed Integrated Pest Management Control Plan is to be forwarded to the Health Department for review and approval. The IPM must contain not only a plan for the "Duration of Construction" but also a "Best Management Plan" that will include pre and post baiting for rodents.”

- ***Applicant's Response:*** The project design and construction will be in conformity with all applicable state and federal regulations, including the State Sanitary Code.

IV. Town Comments Regarding the Application Submittal

The Town's letter also contains several comments regarding the application materials filed by the applicant. Those comments, and the applicant's responses, are as follows.

- **Town Comment:** “The name of the project is referred to in MassHousing's letter to the Town as ‘Sailmaker Place,’ but everywhere else in the submittal appears to be ‘Elm Street Apartments.’”
 - ***Applicant's Response:*** This reference is presumably a typographical error. The Town should check with MassHousing to confirm this.
- **Town Comment:** “On Page 3 of the Rental Application, ‘government agency’ is checked off as a means of describing the developer, which is not accurate.”
 - ***Applicant's Response:*** This is a typographical error. The applicant is a limited dividend organization (*see* PEL Application, Tab 1).
- **Town Comment:** “On Page 27 of the Rental Application, official written notice to the Town was made in December 2018 (not December 2017).”
 - ***Applicant's Response:*** This is a typographical error. Notice to the Town was made in December of 2018, not 2017.
- **Town Comment:** “The cover letter to MassHousing also refers to the Wellesley Board of Selectmen, rather than North Reading.”
 - ***Applicant's Response:*** This is a typographical error. Any erroneous reference to Wellesley should be understood as referring to North Reading.

- **Town Comment:** “In the ‘Development Summary’ included with the application to MassHousing, the applicant states that meetings with the Town had occurred. While this is true, the applicant does not state that they did not disclose the nature of the construction project in advance of the May, 2018 meeting with the Town Planner. Further, the applicant does not state that when the Town provided feedback to the applicant in June, 2018, the applicant indicated they would revise the project for review with the Town. After the passage of a few months, the Town inquired of the status of the revision and was told that they would review the revisions with the Town once the revisions were complete, and prior to filing with MassHousing. The next communication the Town received was notice that the Site Approval application had been filed.”
 - ***Applicant’s Response:*** The applicant held an initial meeting with Town personnel, in which the Town expressed opposition to any project permitted under Chapter 40B. Following this meeting, the applicant made the determination that a 40B development was the only reasonably permissible and financially viable development option. In view of the concerns expressed by Town personnel, the applicant made the decision to scale down the 40B project from 240 units to 200 units. However, based on the Town’s expressed resistance to any 40B project, further meetings would not have been productive until after a determination of site eligibility has been made by MassHousing.
- **Town Comment:** “Comments were made by the developer's team at the December 18th site walk that the Town had ‘left the developer no choice’ but to apply for a 40B project. The Town has never indicated that, subject to the appropriate environmental approvals, housing development could not occur at the site. In fact, during the initial meeting, the Town expressed a willingness to consider a development that was denser than otherwise permitted by zoning — citing the townhouse development known as ‘The Greens’ across the street from 20 Elm Street as an example for the developer to consider.”
 - ***Applicant’s Response:*** As noted, following an initial meeting with Town personnel, the applicant made the determination that a 40B development was the only reasonably permissible and financially viable development option. All alternative development options suggested by Town personnel would have required a re-zoning of the site location, which the applicant determined not to be a reasonable or financially viable alternative.
- **Town Comment:** “At a September 4, 2012 Alcoholic Beverage License hearing in front of the North Reading Select Board, manager of NY Ventures, LLC stated, ‘One of the things that, when we first announced we’re, you know, going to buy the club, everybody heard that we were going to build houses, we’re going to knock

down pools. That isn't what we've got planned for this property. We're going to keep pretty much all of it green.”

- ***Applicant's Response:*** This comment was made over six years ago in the context of an unrelated permitting hearing pertaining of the liquor license transfer from the prior owner of the property to the Teresa's Prime restaurant. Since then, based on the lack of use/demand for the driving range and tennis courts on the property, as well as the high cost of maintaining the swimming pool complex, the property owner's plans for the site location have changed. While the driving range and tennis courts will be removed on the proposed plan, the swimming pool and restaurant/function facilities will remain.


V. Conclusion

In conclusion, the applicant respectfully disagrees with the Town's assessment of the project, and requests that MassHousing proceed to issue a favorable determination of site eligibility based on the project's compliance with all performance standards under the Chapter 40B regulations for assessing site and project eligibility. Notably, if permitted, this project would by itself bring the Town of North Reading well above the required 10% affordability threshold of Chapter 40B, would singlehandedly accomplish the Town's 5-year affordable housing production goal in its HPP, and would likely insulate the Town from the possibility of falling below 10% affordable after the near-term completion of the 450-unit Pulte Homes at Martins Landing development – and indeed for years to come.

Very Truly Yours,

REGNANTE STERIO LLP
Attorneys for NY Ventures LLC

By:



THEODORE C. REGNANTE
JESSE D. SCHOMER

cc: Katherine Miller, MassHousing Planning & Programs (via e-mail)
Michael P. Gilleberto, North Reading Town Administrator (via FedEx & e-mail)
Danielle McKnight, Town Planner of the Town of North Reading (via e-mail)
Lynne Sweet (project 40B consultant) (via e-mail)
Chris Sparages (project engineer) (via e-mail)
David O'Sullivan (project architect) (via e-mail)
Nick Yebba (property owner) (via e-mail)