



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

Charles D. Baker, Governor ♦ Karyn E. Polito, Lt. Governor ♦ Janelle Chan, Undersecretary

October 24, 2019

Mr. Christopher E. Houston, Chair
Weston Board of Selectman
Town of Weston
Town Hall, 11 Town House Road
Weston, MA 02493

Re: Weston Safe Harbor Decision, 518 South Avenue, Weston, Notification of General Land Area Minimum as Defined under 760 CMR 56.03(3)(b).

Dear Mr. Houston:

The Department of Housing and Community Development (DHCD) is issuing this letter in response to an October 15, 2019, letter from Weston's Town Counsel Johnathan D. Witten, Esq., of KP Law. In the October 15, 2019 letter Attorney Witten requested multiple revisions to the October 9, 2019 DHCD decision. The request was based upon a dispute concerning the Weston Zoning Board of Appeals (Board) and DHCD regarding notification within the timeframe outlined pursuant to 760 CMR 56.03(8). I am attaching a copy of the October 9, 2019 DHCD letter that provides background. DHCD did email the Town regarding this matter earlier today; this letter is intended to accommodate Attorney Witten's request that we issue a formal letter on an expeditious basis.

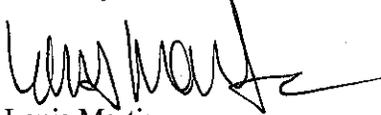
DHCD has diligently searched its records, including our email system and our log of documents received, and we remain unable to locate the certified mail package. DHCD staff member, Phillip DeMartino personally did not receive your September 26, 2019 email referenced in the October 15, 2019 letter from KP LAW. DHCD worked with our Information Technology (IT) staff to search Mr. DeMartino's old (and present) email address and found no emails relevant from Weston in regards to the safe harbor claim for the date in question. Please note, DHCD is not accusing the Town of not sending the email, we just do not have a record of receipt.

DHCD is prepared to accept your submission representing that the Town did send the information to DHCD at the appropriate time and Weston attempted to communicate with DHCD promptly upon receipt of our September 26, 2019 request for proof of the Town's submission. DHCD now has the United States Postal Services (USPS) tracking information which details submission and corresponding date/time of receipt. DHCD appreciates the Town of Weston's responsiveness in providing proof of timely submission.

Accordingly, DHCD hereby retracts the statements in our October 9, 2019 letter indicating that the Board failed to comply with notice requirements concerning the Town's claim of "safe harbor" status. Please be advised that the substantive determinations in our October 9, 2019 letter remain in effect as of the date such determinations were made.

DHCD reminds Weston if either the Board or the Applicant wishes to appeal DHCD's October 9, 2019 decision pursuant to 760 CMR 56.03(8), that party shall file an interlocutory appeal with the HAC on an expedited basis, pursuant to 760 CMR 56.05(9)(c) and 56.06(7)(e)(11), within 20 days of its receipt of that decision, with a copy to the other party and to the Department. If you have further questions, please contact Phillip DeMartino, Technical Assistance Program Coordinator, at (617) 573-1357 or Phillip.DeMartino@mass.gov.

Sincerely,



Louis Martin
Associate Director, Division of Community Services
Department of Housing and Community Development

cc Leon A. Gaumont, Jr., Town Manager, Weston
Imaikalani Aiu, Town Planner, Weston
Winnifred Li, Chair, Zoning Board of Appeals, Weston
Jonathan D. Witten, Esq., KP Law
James Ward, Esq., Nutter McClennan & Fish LLP
Jonathan Buchman, c/o 518 South Avenue, LLC, Weston

Attachment: October 9, 2019 letter

October 15, 2019

Jonathan D. Witten
jdwitten@k-plaw.com

BY ELECTRONIC MAIL (phillip.demartino@state.ma.us)
AND FIRST CLASS MAIL

Mr. Phil DeMartino
Senior Technical Assistance Planning Coordinator
MA Department of Housing & Community Development
100 Cambridge Street
Boston, MA 02114

Re: “Hanover Weston” Comprehensive Permit Application, Decision of the
Weston Board of Appeals Invoking “Safe Harbor” Pursuant to 760 CMR 56.03

Dear Mr. DeMartino:

As you know, the firm of KP Law, P.C. represents the Town of Weston as Town Counsel. I write on behalf of the Board of Selectmen to express the Board of Selectmen’s concern about, and objection to, the content of the October 9, 2019 letter from the Department of Housing and Community Development (“Department”), enclosed herewith, claiming that the Weston Zoning Board of Appeals failed to comply with notice requirements concerning the Town’s claim of “safe harbor” status.

Of course, this correspondence is not intended to address the Department’s ultimate determination on the substantive matters at issue; this is not the proper forum for such action. Rather, the Town’s objection relates to the Department’s repeated assertions in the October 9, 2019 letter that the Board of Appeals did not properly provide the Department with the Board’s assertion of “safe harbor”.

On September 26, 2019, the Department requested that the Weston Town Planner submit proof that the Board’s assertion of “safe harbor” was, in fact, provided to the Department. Less than four hours later, by e-mail dated September 26, 2019 (2:43 pm), I provided proof of delivery to the Department, and proof of receipt by the Department, of the Board’s “safe harbor” assertion. Such proof, in the form of a date-stamped certified letter receipt, together with my legal assistant’s initials, along with the printout from the United States Postal Service’s tracking system that the letter was delivered to the Department at an exact time and date, is unassailable. There is no better evidence that could be provided to prove that the Town properly submitted its letter to the Department, and that the Department received such correspondence.

Where the proof of mailing and delivery are undebatable, it is troubling that the October 9, 2019 letter continues to insist that the Board failed to provide notice. As I raised in my September 26, 2019 e-mail providing the evidence requested, over two weeks passed between the date the

Mr. Phil DeMartino
Senior Technical Assistance Planning Coordinator
October 15, 2019
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Town submitted the Board of Appeals' support for the "safe harbor" assertion and the date the Town Planner received the Department's correspondence claiming not to have received the materials and requesting proof of delivery. It is difficult to understand how that claim could even be made on September 26, 2019, as it is obvious that the applicant's opposition would not have been sent had the Board not properly submitted its claim of "safe harbor". The Town's concern about this issue is underscored by the fact that although the Department demanded proof of delivery to the Department, it never requested a copy of the substantive materials at issue, the Zoning Board of Appeals' assertion of "safe harbor".

As indicated above, based upon the facts at issue here, no conclusion can be reached other than that the Department's October 9, 2019 letter is simply incorrect with respect to the Town's submission. Where the Department is in receipt of both proof of mailing and proof of delivery of the August 27, 2019 certified mailing, and has been since September 26, 2019, at the absolute latest, it is difficult to understand how, or why, the October 9, 2019 letter continues to assert that the Town of Weston or its attorneys failed to properly notify of the Zoning Board of Appeals' "safe harbor" declaration. Such statements are untrue and entirely at odds with the objective evidence submitted to the Department and in its possession for nearly two weeks before the October 9, 2019 letter was issued.

On behalf of the Town of Weston and its Zoning Board of Appeals, therefore, we respectfully request that the Department, forthwith and in no event later than 10 days, revise the October 9, 2019 letter to delete the multiple incorrect assertions therein regarding delivery of the above-noted materials.

Thank you for your courtesy in this matter.

Very truly yours,



Jonathan D. Witten

JDW/lmk

Enc.

cc: Zoning Board of Appeals
Board of Selectman
Town Manager
Town Planner
Linda Balzotti, Manager, Division of Community Services
James Ward, Esq.



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Mr. Christopher E. Houston, Chair
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Re: Weston Safe Harbor Decision, 518 South Avenue, Weston, Notification of General Land Area Minimum as Defined under 760 CMR 56.03(3)(b).

Dear Mr. Houston:

The Department of Housing and Community Development (DHCD) is in receipt of a September 10, 2019, letter from James G. Ward, Esq., of Nutter McClennen & Fish LLP. Attorney Ward represents a proposed Chapter 40B project located at 518 South Avenue, Weston (Applicant).

According to the September 10, 2019, letter from the Applicant, the Town of Weston notified the Applicant via an August 27, 2019, letter that sought to provide notice pursuant to 760 CMR 56.03(8) that the Town of Weston Zoning Board of Appeals (Board) considers the denial of the Applicant's application for a Comprehensive Permit to be consistent with local needs.

The Board (according the Applicant's letter), claims that the Town of Weston Zoning Board of Appeals denial is consistent with local needs based on the following assertion: Subsidized Housing Inventory (SHI) Eligible Housing units occupy sites in Weston comprising more than 1.5% of the total land area as defined under 760 CMR 56.03(3)(b).

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.

DHCD did not receive the Board's notification within the timeframe outlined pursuant to 760 CMR 56.03(8). In light of the September 10, 2019, letter from the Applicant, which made reference to the Board's notification, on September 26, 2019, DHCD reached out to the Town, with a copy to the Applicant, requesting that the Board submit proof that its notification was timely filed with DHCD. Given the regulatory time frames governing DHCD's determination, DHCD requested that the Board submit its proof of timely submission by October 1, 2019. As of the date of this decision, DHCD has not received a response from the Board. DHCD did find posted on the Town of Weston's website a letter dated August 27, 2019, written on behalf of the Board by Johnathan D. Witten, Esq., of KP Law.

Regulatory background: The General Land Area Minimum as Defined under 760 CMR 56.03(3)(b)

For the purposes of calculating whether SHI Eligible Housing exists in the city or town on sites comprising more than 1½% of the total land area zoned for residential, commercial, or industrial use, pursuant to M.G.L. c. 40B, § 20:

1. *Total land area shall include all districts in which any residential, commercial, or industrial use is permitted, regardless of how such district is designated by name in the city or town's zoning by law;*
2. *Total land area shall include all un-zoned land in which any residential, commercial, or industrial use is permitted;*
3. *Total land area shall exclude land owned by the United States, the Commonwealth or any political subdivision thereof, the Department of Conservation and Recreation or any state public Authority, but it shall include any land owned by a housing authority and containing SHI Eligible Housing;*
4. *Total land area shall exclude any land area where all residential, commercial, and industrial development has been prohibited by restrictive order of the Department of Environmental Protection pursuant to M.G.L. c. 131, § 40A. No other swamps, marshes, or other wetlands shall be excluded;*
5. *Total land area shall exclude any water bodies;*
6. *Total land area shall exclude any flood plain, conservation or open space zone if said zone completely prohibits residential, commercial and industrial use, or any similar zone where residential, commercial or industrial use are completely prohibited.*
7. *No excluded land area shall be counted more than once under the above criteria.*

Only sites of SHI Eligible Housing units inventoried by the Department or established according to 760 CMR 56.03(3)(a) as occupied, available for occupancy, or under permit as of the date of the Applicant's initial submission to the Board, shall be included toward the 1½% minimum.

For such sites, that proportion of the site area shall count that is occupied by SHI Eligible Housing units (including impervious and landscaped areas directly associated with such units).

DHCD notes that the Guidelines for Calculating the 40B General Land Area Minimum were issued on January 17, 2018 (the "GLAM Guidelines"). DHCD issued the GLAM Guidelines to increase fairness, improve the efficiency of the application review process, and to ensure consistency with the intent of the regulations for the purposes of calculating whether SHI Eligible Housing is on sites comprising more than 1.5% of the total land area zoned for residential, commercial, or industrial use, pursuant to M.G.L. ch. 40B, § 20.

The GLAM Guidelines requires all application materials to be submitted in specified electronic formats that will enable reviewers to validate the results. The Board must submit digital files showing the boundaries of Total Land Area, Excluded Areas, and the SHI-Eligible Area, and the individual components thereof. Submittals must use digital parcel data compliant with the state's Level 3 Digital Parcel Standard. If a municipality believes that digital parcel boundaries and/or resulting calculated area are incorrect, it may use surveyed boundaries to update the digital parcels, so long as it also provides the same for all adjacent parcels. Submittals that do not include documentation evidencing that the updated digital parcel data is compliant with the Level 3 standard as determined through MassGIS' quality assurance program and that the surveyed boundaries were surveyor stamped within the last year will be considered incomplete.

The Board must also provide accompanying tables with details on each SHI Site, including Directly Associated Areas. This data, along with maps and calculations, must be provided to the Applicant and DHCD within fifteen (15) days of the Board opening a hearing regarding the Comprehensive Permit filed by the Applicant. The technical instructions and specifications of the guidelines reference Esri ArcGIS mapping software. Submittals must be Esri-compatible. Details regarding what must be included in the submittal are included in Appendix A.

Additionally, Section VI (Step 1.3) of the GLAM Guidelines detail a process for a Board to obtain SHI-eligible Group Home acreage in its municipality through a Group Homes Acreage Calculation request in order to invoke the General Land Area Minimum safe harbor in the context of a particular Comprehensive Permit application.

Notice Requirements under 760 CMR 56.03(8) and the January 17, 2018 1.5% Guidelines for Calculating the 40B General Land Area Minimum

DHCD finds that the Board submitted notice to the *Applicant* within 15 days of opening up the local hearing and that the Applicant challenged the Board's assertion within the proper timeframe, 15 days from receipt of the Town's notification. However, DHCD finds that the Board has failed to demonstrate that it submitted notice to *DHCD* within 15 days of opening up the local hearing. If, in fact, the Board failed to submit notice within the regulatory time period, that alone would warrant a finding that the Board has failed to satisfy the regulatory procedures for asserting the 1.5% safe harbor. Nevertheless, as set forth below, DHCD has analyzed the August 27, 2019 letter and attachments posted on the Town's website as if properly submitted.

Board's Submission

- The Board states that Weston has met and exceeded the "1.5% land area" because it has "Affordable Housing Sites Area" (the numerator) on sites comprising one and 1.5% (1.67%) of the "Effective Total Town Land Area" (the denominator).
- The Board claims that based on "publicly available information," the "Affordable Housing Sites Area" is 107.8051 acres and that the "Effective Total Town Land Area" is 6,560.5638.
- In support of its submission, the attachments to the August 27, 2019 letter posted on the Town's website include: a two-page memorandum from the Town Planner to the Board Chair comprised of a "Total Town Land Area (Acres)" chart (listing "reductions" categories and corresponding total acreage), an "Affordable

Housing Sites” chart (listing project name and address and corresponding total acreage) and a one-page map of “reductions” from the Total Town Land Area.”

- According to the Board’s “Total Town Land Area (Acres)” chart, the categories of land deducted from the total land area are identified as: town owned land; Department of Conservation and Recreation Land; MWRA land; Mass Dept. of Transportation Turnpike; rail rights of ways; Weston forest and trail; conservation restriction; preservation restriction; open water; and City of Cambridge owned Land.
- According to the Board’s “Affordable Housing Sites” chart, the Board lists the 13 developments that have units counted on DHCD’s SHI, although the Board does not note the number of SHI units at each development or the total number of units at each development.
- The Board “reserves its rights” to add appropriate land area from “group homes” although the Board does not assert that it has any, nor did the Board seek a group home acreage calculation from DHCD.
- The Board claims that the information it provided complies with the 40B statute and regulations (“subject to the Board’s reservation of rights where the regulations unlawfully conflict with the statute,”) and that the GLAM Guidelines are not in the statute or adopted pursuant to the Administrative Procedures Act and therefore do not have the force of law or any legal relevance.

Applicant’s Submission

- The Applicant claims that Weston has not met the 1.5% General Land Area Minimum because it has SHI Eligible Housing site area (the numerator) comprising only .33% of the total land area (the denominator).
- The Applicant claims that the total acreage attributable to the denominator is 7,166.7 acres, and that the total acreage attributable to the numerator is 23.521 acres.
- The Applicant argues that the Board has not met its burden of proof and that its safe harbor assertion does not include any supportive documentation, or the factual basis for its position since it does not specify how it determined the acreage of the listed properties or even the sources of its data.¹
- The Applicant asserts that the Board has excluded land area from the denominator in contravention of the express language in the regulations since it excludes privately-owned land that is not covered by any of the other exclusion categories under 760 CMR 56.03(3)(b), including the land held by the “Weston Forest and Trail Association” (a non-profit organization), land subject to preservation restrictions (not by order of the Department of Environmental Protection pursuant to M.G.L. c. 131 § 40A) and private rights of way, as well as government-owned SHI Eligible Housing sites.
- The Applicant asserts that the Board made no adjustment whatsoever as to the acreage associated with the entirety of each development that it counts towards the numerator, therefore not excluding non-Directly Associated Areas, including wetlands and unmaintained areas including wooded areas, or taking into account the percentage of area occupied by SHI units.²
- The Applicant argues that the Board’s threat to engage in litigation to uncover the identity of group homes in Weston is frivolous since there are no DDS group homes listed on the SHI for Weston and the Board did not avail itself of the clear process for obtaining group home acreage under the GLAM Guidelines.
- The Applicant argues, with supporting case law, that the Board’s claim that the GLAM Guidelines do not “have legal relevance” is without merit, noting that the regulations require evidence of Statutory Minima to comply with guidelines issued by DHCD, and that the Board has not articulated any alleged inconsistencies between the regulations and the statute.
- The Applicant submitted the following documentation with its response to the Board’s safe harbor assertion: an affidavit of Nels Nelson, a Senior Planner employed by Stantec, delineating the bases for his adjustments to the Board’s denominator and numerator calculations with exhibits, including maps showing SHI Eligible

¹ The Applicant claims that acreage for many of the properties listed by the Board do not even comply with the Town’s GIS, and therefore it is unclear what sources the Board relied on.

² The only SHI Eligible Housing property to which the Applicant does not make acreage adjustments is the Viles Street property (.221 acres).

Housing site and Directly Associated Area boundaries; and a copy of Weston Forest and Trail Association Inc.'s Articles of Organization and associated amendments.

Discussion and Findings

DHCD notes again that the Board's August 27, 2019 letter and supporting documentation have not been received by DHCD within the required time frame outlined in 760 CMR 56.03. In fact, as of the date of this decision, DHCD still does not have any submittal from the Board despite requesting proof of the Board's timely submission to DHCD. Even if the Board were able to demonstrate that the August 27, 2019 letter and attachments were timely submitted, DHCD finds the Board has not met its burden of proof concerning the General Land Area Minimum as defined under 760 CMR 56.03(3)(b).

The Applicant and Board disagree on Weston's total area zoned for residential, commercial, or industrial use (the denominator), as well as the portion of such land that is comprised of SHI Eligible Housing (the numerator). As a general matter, DHCD cannot fully analyze the discrepancies between the Board's and Applicant's calculations of the denominator and the numerator because of the Board's fundamentally inadequate submission with respect to documenting the factual bases for its calculations and providing supportive documentation consistent with the GLAM Guidelines.

DHCD disagrees with the Board's argument that the GLAM Guidelines do not have "any legal relevance as to how cities and towns comport with statutory or regulatory requirements pertaining to the present matter." To the contrary, DHCD's regulations explicitly state that "[e]vidence regarding *Statutory Minima* submitted under 760 CMR 56.03(3) shall comply with any guidelines issued by the Department." 760 CMR 56.03(3)(d). Moreover, the Housing Appeals Committee specifically encouraged DHCD to "establish a methodology that provides clear guidance to municipalities and developers that promotes certainty and consistency," which DHCD has done through the GLAM Guidelines as discussed above.³

Not only has the Board failed to utilize the methodology set forth under the GLAM Guidelines, it has asserted its 1.5% GLAM safe harbor claim on the vague basis of "publicly available information" and without evidence. Accordingly, the August 27, 2019 letter and documentation – even if timely submitted to DHCD, which the Board has failed to demonstrate – by no means suffice to meet the Board's burden of proof under DHCD's regulations, or indeed any reasonable legal standard. Such an assertion of the 1.5% General Land Area Minimum safe harbor frustrates the comprehensive permit process in a manner that is clearly inconsistent with the intent and requirements of the statute, regulations, and guidelines. Based on the inadequacy of the Board's documentation alone, DHCD finds that the Board has failed to meet its burden of proof in asserting the 1.5% General Land Area Minimum safe harbor. DHCD also notes some additional bases as to why the safe harbor has not been met below.

The Denominator

The regulations and GLAM Guidelines clearly delineate exclusions from total land area, and none of such exclusions include the privately owned land that appear to have been deducted by the Board. Since the Board has failed to meet its burden in supporting how it arrived at its denominator calculation generally, and in identifying the particular bases (consistent with the regulations and GLAM Guidelines) for excluding units by parcel, DHCD credits the Applicant's addition of at least 203.9 acres to the Board's denominator of 6,560.5638 acres, resulting in a denominator of at least 6,754.464 acres. The 203.9 acres represents the combined acreage for the privately owned land subject to preservation restrictions and the land owned by the non-profit organization Weston Forest and Trail Association, as detailed in the Applicant's submission. Since the Applicant did not specify whether the SHI Eligible Housing it added to the denominator was owned by the housing authority, and did not specify the actual acreage corresponding to such SHI

³ *Matter of Norwood and David Marcus Partners*, No. 2015-06, slip. op. at FN 6 (Mass. Housing Appeals Comm. Dec. 8, 2016).

Eligible Housing (as distinguished from the acreage it added for private rights of way and railroad rights of way, which were also not separately identified by acreage), DHCD was unable to credit the Applicant's entire proposed addition of approximately 606.1 acres towards the denominator.

The Numerator

The Applicant argues that approximately 84.3 acres should be deducted from the numerator and provided the bases for this deduction. One basis is the Board's inclusion of non-Directly associated areas, including wetlands and unmaintained areas (including wooded areas, not within required side, front, or rear yard dimensional requirements and not within 50 feet of a building footprint). DHCD agrees that such areas are explicitly excluded under the definition of Directly Associated Areas in the GLAM Guidelines, and further notes that DHCD regulations at 760 CMR 56.03(3)(b) explicitly state that the proportion of the site area that counts toward the 1.5% calculation is that proportion of the site area that is occupied by SHI Eligible Housing Units including impervious and landscaped areas directly associated with such units. Another basis is the Board's failure to specify the number of SHI Eligible Housing units and total number of units at each development, and accordingly, calculate the *proportion* of the site area occupied by SHI Eligible Housing units as required under the regulations and guidelines.⁴ Since the Board has failed to meet its burden in supporting how it arrived at its numerator calculation generally, and specifically as to Directly Associated area and proportional (prorated) area, DHCD credits the Applicant's 84.3 acreage deduction from the numerator, resulting in a numerator of 23.521 acres.

DHCD also notes that it does not have a record of Weston requesting information on Group Home acreage. Additionally, contrary to Board's assertion that "DHCD has not been forthcoming as to land area attributed to "group homes" in other municipalities, requiring those cities and towns to obtain judicial relief so as to accurately account for group home land area," the Board did not avail itself of the Group Homes Acreage Calculation process provided under the GLAM Guidelines, which does not require judicial relief. As stated above, the GLAM Guidelines detail a process for obtaining such information under Section VI (Step 1.3). DHCD also notes that the SHI for Weston does not list Group Homes (as of the date of the Applicant's Application and currently) based on reporting by the Department of Developmental Services (DDS) and the Department of Mental Health (DMH).

Conclusion

DHCD finds that the Board has not met its burden of proof concerning the General Land Area Minimum as defined under 760 CMR 56.03(3)(b) because the Board's August 27, 2019 letter and attachments, even if timely submitted to DHCD (which the Board has failed to demonstrate), were wholly inadequate. The Board did not submit data in specified electronic formats that would enable reviewers (including the Applicant) to validate the results. Additionally, the Board's submission included other significant deficiencies or errors discussed above, including without limitation, the Board's failure to adequately support its exclusion of land from the denominator and apparent improper exclusion of at least 203.9 acres from the denominator, as well as the Board's failure to adequately support its inclusion of land in the numerator and apparent improper inclusion of approximately 84.3 acres of non-Directly Associated Areas and non-prorated areas in the numerator. In adjusting for these deficiencies, the appropriate percentage of Weston's total area zoned for residential, commercial, or industrial use that is comprised of SHI Eligible Housing appears to be less than 0.35%, and therefore far below the 1.5% General Land Area Minimum.

⁴ DHCD notes that this is particularly relevant to the Brooks School Apartments site, for which DHCD has only counted 51 units at one development on the site because the other development on the site does not comply with DHCD's SHI eligibility criteria, including an eligible Subsidy program and Affirmative Fair Housing Marketing Plan and Resident Selection Plan, that meet the requirements of DHCD's c. 40B Guidelines (available at <https://www.mass.gov/files/documents/2017/10/10/guidecomprehensivepermit.pdf>). The Applicant did not apply proration to this site in correcting the Board's numerator, perhaps because it is unaware that the site consists of more than 51 housing units.

If either the Board or the Applicant wishes to appeal this decision pursuant to 760 CMR 56.03(8), that party shall file an interlocutory appeal with the HAC on an expedited basis, pursuant to 760 CMR 56.05(9)(c) and 56.06(7)(e)(11), within 20 days of its receipt of the decision, with a copy to the other party and to the Department. If you have further questions, please contact Phillip DeMartino, Technical Assistance Program Coordinator, at (617) 573-1357 or Phillip.DeMartino@mass.gov.

Sincerely,



Linda Balzotti
Manager, Division of Community Services
Department of Housing and Community Development

cc Leon A. Gaumond, Jr., Town Manager, Weston
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Winnifred Li, Chair, Zoning Board of Appeals, Weston
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James Ward, Esq., Nutter McClennan & Fish LLP
Jonathan Buchman, c/o 518 South Avenue, LLC, Weston