

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT  
CIVIL ACTION NO. 16-01359-B

HUANG, et al.,

Plaintiffs,

v.

LEO BARTOLINI, JR., DAVID EAGLE, AND  
PAUL DREPANOS, as members of the TOWN  
OF SOUTHBOROUGH BOARD OF APPEALS,  
And PARK CENTRAL, LLC and WILLIAM  
DEPIETRI,

Defendants.

**DEFENDANTS' PROPOSED FINDINGS OF FACT**

Park Central, LLC and William A. Depietri (collectively "Applicant" or "Permit Holder") and the Southborough Board of Appeals (the "Board"), hereby submit the following Proposed Findings of Fact.

1. On September 13, 2016 twenty-one (21) residents of Southborough filed a single count Complaint pursuant to M. G. L. c, 40A § 17 appealing the August 24, 2016 grant by the Board of a Comprehensive Permit approving a 180 unit "for rent" affordable housing apartment project (the "Project") to the Permit Holder. All but five (5) of the original Plaintiffs have since dismissed their claims. *See, Trial Court Docket.* The facts recited by the Plaintiffs in the Complaint were limited to the allegations that the integration of the 13.28 acre Affordable Housing component of the Overall Site, with a 158-unit townhouse condominium, which had been previously approved by the Board through a Use Variance,

“greatly” increased “the overall impacts associated with the proposed development, including, but not limited to project access and egress and other traffic related concerns” and that the Use Variance had expired. None of the Plaintiffs alleged that they were “Parties in Interest.” See *Complaint*.

2. The Overall Project Site is a 101+/- acre parcel of vacant land located at the intersection of Route 9 West to the south and I-495 north to the west and is bounded by residential neighborhoods located on Flagg Road, Bantry Road, Tara Road, Lovers Lane and Lynbrook Road to the north and east. (the “Overall Project Site”). See *Exhibit 1, Page 7 (Findings and Decision of Comprehensive Permit)*, *Exhibit 3 (Comprehensive Permit Plans, Rev. 8.15.16)* and *Exhibit 20 (Site Concept Plan date April 8, 2015)*. The Overall Project Site has 202.87 feet of frontage on Flagg Road. See *Exhibit No. 1, Page 7 (Findings and Decision of Comprehensive Permit)*. All vehicular traffic will exit the Project site through its frontage on Flagg Road utilizing a proposed private way (John Boland Road) connecting the site to Flagg Road approximately 275 feet north of Route 9. See *Testimony of Kevin Dandrade at P44/L6 (Trial Day 3, 02/01/21)*. Flagg Road intersects with Bantry Road, Lovers Lane and Deerfoot Road to the north and serves as a connector road between Route 9 and Main Street (Route 30). See *Exhibit No. 1, Pages 7-8 (Findings and Decision of Comprehensive Permit)*. Several neighborhoods feed into Flagg Road and Deerfoot Road which are both categorized as “urban collector” roads. See *Exhibit 17 (Traffic Memorandum by Toole Design Group dated May 9, 2016)*; *Testimony of Kevin Dandrade at P37/L8-15 (Trial Day 3; 02/01/21)*; *Testimony of Jason Degray at P60/L19 to P61/L15 (Trial Day 4; 02/02/21)*. The P. Brent Trottier Middle School is located off of Deerfoot Road approximately one (1) mile north of the proposed John Boland Road /Flagg Road

Intersection. *See Exhibit 17/Figure 1 (Traffic Memorandum by Toole Design Group dated May 9, 2016).*

3. The parties have submitted numerous, photographs, plans and satellite images as separate exhibits or contained within various reports and studies among the 143 Exhibits admitted as evidence during the trial, each of which, together with testimony attendant thereto, present a fair and accurate representation of the subject depicted or set forth therein. I find that the Exhibits, in conjunction with the Court's view of the Project Site and the neighborhood roads, provided the Court with a full and ample understanding of the project site and layout, the project location, the surrounding network and layout of highways, local roads, significant area features and the location of each Plaintiffs' residence.
4. Flagg Road is a two-lane roadway under local jurisdiction, is designated as a Scenic Road, and is oriented in a general north-south direction, though the middle portion curves into an east-west alignment. *See Exhibit 14/Figure 1 (Traffic Memorandum prepared by TEC dated December 4, 2015 (Updated Traffic Impact and Access Study for Proposed Master Plan). and Exhibit 17/Figure 1 (Traffic Memorandum by Toole Design Group dated May 9, 2016).* Flagg Road is classified by the Massachusetts Department of Transportation (MassDOT) as an urban collector road running approximately 1.1 mile in length between Turnpike Road (Route 9 West) and Deerfoot Road, also classified as an urban collector roadway. *See Exhibit 17 at p. 3 (Traffic Memorandum by Toole Design Group dated May 9, 2016); Testimony of Kevin Dandrade at P37/L8 (Trial Day 3 02/01/21); Testimony of Jason DeGray at P61/L15 (Trial Day 4; 02/02/21).* Flagg Road intersects with a number of subdivision roads, including Eastbrook Farm Road, Blackthorn Drive, Lovers Lane, Red Gate Lane, Orchard Road and Strawberry Hill Road. *See Exhibit 14/Figure 1 (Traffic*

*Memorandum prepared by TEC dated December 4, 2015 (Updated Traffic Impact and Access Study for Proposed Master Plan)) and Exhibit 17/Figure 1 (Traffic Memorandum by Toole Design Group dated May 9, 2016).* Flagg Road also connects with Deerfoot Road to form a three-way unsignalized intersection. *See Exhibit 14/Figure 1 (Traffic Memorandum prepared by TEC dated December 4, 2015 (Updated Traffic Impact and Access Study for Proposed Master Plan)) and Exhibit 17/Figure 1 (Traffic Memorandum by Toole Design Group dated May 9, 2016).* Flagg Road, Tara Road, Bantry Road, and Blackthorn Drive vary in width from 20 to 24 feet, with the noted exception of Flagg Road narrowing to approximately 17 feet at the culvert crossing. *See Exhibit 14 at p. 4 (Traffic Memorandum prepared by TEC dated December 4, 2015 (Updated Traffic Impact and Access Study for Proposed Master Plan)) and Exhibit 69 at p.5 (GPI Traffic Impact and Access Study Peer Review, dated 6.20.14).* North of the proposed site drive, approximately 450 feet from Route 9 is a culvert crossing with guardrail in place along each side of the road. *See, Exhibit 14 at p. 4 (Traffic Memorandum prepared by TEC dated December 4, 2015 (Updated Traffic Impact and Access Study for Proposed Master Plan)) and Exhibit 110(a) (Photo of Flagg Road dated 02/02/21 by Huang).* Prior to the Decision there were no pavement markings or centerline on Flagg Road. A center line was installed by the Town after the Decision. *(See Testimony of Karen Galligan at PP19/L1-2 and P54/L23-P55/L18).* There are no sidewalks along Flagg Road. Trees and utility poles exist intermittently along the roadway in close proximity to the pavement edge. *See Exhibit 69 at p. 5 (GPI Traffic Impact and Access Study Peer Review, dated 6.20.14) and Exhibit 112(i-iv) (Photos from 71 Flagg Road to 75 Flagg Road).* Prior to the Decision a 25-mph sign was posted in the northbound direction approximately 0.1 miles from Route 9. Since

the Decision an interactive speed warning sign was installed on Flagg Road by the Town. Land use along Flagg Road consists of primarily residential homes with some wooded undeveloped parcels. *See Exhibits 107(iv-x)(Photos of Tara Road, Blackthorn and Flagg Road); 110(a)(Photo of Flagg Road dated 02/02/21 by Huang); and 112(i-iv)(Photos from 71 Flagg Road to 75 Flagg Road); See Testimony of Karen Galligan at P15/L11-20 (Trial Day 2, 01/14/21).*

5. I find that the current condition and layout of Flagg Road and Deerfoot Road, each a public way and each designated as a Scenic Road, are maintained by the Town of Southborough and are routinely and safely used by the motoring public, present various constraints on pedestrian use and on vehicular movement and traffic flow, but do not present a compelling or inordinate hazardous situation. I find that Flagg Road is not a particularly winding road and that the minimal curving of the road is not a factor that imperils safety. I find that Flagg Road safely handles existing traffic and that pedestrian use requires a reasonable degree of care and common-sense. *See Testimony of William Depietri at P41/L15-P42/L11 (Trial Day 1, 01/13/21) Kevin Dandrade at P94/L5 (Trial Day 2 01/14/21), Jason DeGray at P27/L7-21; P30/L16; P62/L9-15 (Trial Day 5, 02/08/21), Karen Galligan at P15/L25-P16/L7 (Trial Day 2, 01/14/21), , and David Eagle at P93/L24-P93/L3 (Trial Day 10, 03/23/21).; Exhibits 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18. 69, 70<sup>1</sup>; photographs in*

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<sup>1</sup> Exhibit 6 - Traffic Impact and Access Study prepared by Green International dated March 2013.

Exhibit 7 – Traffic Impact and Access Study prepared by Green International dated June 2013.

Exhibit 8 – TEC Crash Data Summary Table for Flagg and Deerfoot Road 1/31/2014.

Exhibit 9 – Traffic Memorandum prepared by TEC dated May 19, 2014 (Second Traffic Impact and Access Study).

Exhibit 10 – TEC Memorandum dated August 18, 2014.

Exhibit 11 - Traffic Memorandum prepared by TEC dated August 19, 2014 (Responses to Comments- Traffic Impact and Access Study).

Exhibit 12 – TEC Letter dated August 21, 2014.

Exhibit 13 – Greenman- Pedersen, Inc. Letter dated October 1, 2014.

Exhibit 14 – Traffic Memorandum prepared by TEC dated December 4, 2015 (Updated Traffic Impact and Access

*Exhibits 72 (Photo: Flagg and Blackthorn), 76 (Photo: Flagg at Route 9, July 2020), 110(a)(Photo of Flagg Road dated 2.2.21 by Y. Huang) and 112(i-iv) (Photos (4): (i) Huang residence and driveway at 75 Flagg; (ii) Flagg Road looking south from 75 Flagg; (iii) Flagg Road looking north from 75 Flagg; (iv) Flagg Road looking south from 71 Flagg); and Testimony of Cram at P146/L22 - P148/L6 (Trial Day 7, 02/25/21).*

6. I further find that the Southborough Department of Public Works is primarily responsible for the maintenance and oversight of public ways, is aware of the conditions, features and layout of the right of way of Flagg Road, Lovers Lane, Deerfoot Road and Lynbrook Road, is mindful of the opportunities, ability and feasibility for the Town to address these existing roadway features and limitations that relate to pedestrian and vehicular movement and safety, as well as the vocal preference of some local residents to maintain the aesthetics of the Scenic Road by limiting traffic volume and eliminating tree removal. *See Testimony of Karen Galligan at P11/L3-P12/L5.* Two cars may simultaneously pass on the culvert. *See Testimony of Karen Galligan at P10/L18-23 (Trial Day 2, 01/14/21).* I find the testimony of Karren Galligan, superintendent of the DPW, and a civil engineer, to be creditable.
7. Plaintiff L’Abri Fellowship Foundation, acting through its co-director, Ben Keyes, is the owner of two large parcels of real property, one with an address of 43 Lovers Lane, shown as Lots 50-39 and 50-49 on the “Property Map Town of Southborough” and the second at

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Study for Proposed Master Plan).

Exhibit 15 – TEC Memorandum dated January 19, 2016.

Exhibit 17 – Traffic Memorandum by Toole Design Group dated May 9, 2016 (Flagg Road/Deerfoot Road Safety Study) prepared on behalf of the Town of Southborough.

Exhibit 18 – TEC Memorandum dated June 28, 2016.

Exhibit 69 – GPI Traffic Impact and Access Study Peer Review, dated 6.20.14.

Exhibit 70 – GPI Traffic impact and Access Study Peer Review, dated 12.23.15.

49 Lynbrook Road, shown as Lots 50-35 on the Property Map. Both properties are adjacent to I-495 to the west. *See Testimony of Ben Keyes at P77, L12-15 (Trial Day 5 02/08/21) and Exhibit 90 (Town of Southborough Assessors Map No. 41).*

8. 43 Lovers Lane contains a large single-family residence on 9.6 acres of land, abuts that portion of the project site identified as Parcel 4A on the Property Map, 21.4 acres of which constitutes the open space portion of the project. Keyes resides in the property with his wife and children and rents space to another couple and their three children. *See Testimony of Ben Keyes at P76/L16-22 (Trial Day 5 02/08/21); Exhibit 20 (Site Concept Plan dated April 8, 2015); Exhibit 90 (Town of Southborough Assessors Map No. 41); Exhibit 91 (2018 ANR Plan of Land in Southborough, Plan Book 938, Plan 24); Photos at Exhibits 97 (Photo: 42 Lovers Lane at intersection with Lynbrook, with L'Abri Fellowship building), 98 (Photo: 49 Lynbrook Rd., toward Lynbrook bulb), and 99 (Photos (5): (i) L'Abri Fellowship building; (ii) 82 Lynbrook; (iii) 49 Lynbrook (picket fence on left); (iv) 49 Lynbrook (stone wall); (v) 99 Lynbrook (bulb).*
  
9. 49 Lynbrook Road is a large parcel of land located west of the intersection with Lover's Lane, and is on a dead-end section of Lynbrook Road that does not service any other homes or properties. *See Exhibits 90 (Town of Southborough Assessors Map No. 41); and Photos at Exhibits 98 (Photo: 49 Lynbrook Rd., toward Lynbrook bulb), and 99 (Photos (5): (i) L'Abri Fellowship building; (ii) 82 Lynbrook; (iii) 49 Lynbrook (picket fence on left); (iv) 49 Lynbrook (stone wall); (v) 99 Lynbrook (bulb); Testimony of Ben Keyes at P70/L5-12 (Trial Day 6 02/18/21).* The large dwelling on the property is used as a commercial retreat

for up to 20 clients who are provided room and board in exchange for services. *See Exhibit 90 (Town of Southborough Assessors Map No. 41); Testimony of Ben Keyes at P67/L14 (Trial Day 6, 02/18/21).*

10. Plaintiff Keyes testified that the increased traffic from the project would create a dangerous situation on Lover's Lane and Lynbrook Road for his family and clients who use the roads for biking and walking. Keyes stated that Lovers Lane and Lynbrook Road currently served as a "cut through" for motorists going to and from Flagg Road to Main Street (Route 30). Keyes also stated that he was concerned about the additional noise that would be created by the increased traffic on Lovers Lane. Keyes was not concerned with noise from I-495. Keyes maintains that traffic from the project will cause him, as a property owner, personal harm. Keyes did not maintain that the site design, proposed drainage or environmental impact from the project would cause him personal harm. *See Testimony of Ben Keyes at P71/L7-8 (Trial Day 6, 02/18/21).*

11. I find that during his testimony Keyes utilized and incorporated the traffic data and volume counts submitted to the Board by the Applicant and vetted by the Town's traffic consultant (*See Exhibits 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 69, and 70*). I further find that Keyes offered no facts to dispute this traffic data or counts or to support his testimony regarding the creation of a dangerous roadway situation; the volume of traffic on or the current use of Lovers Lane or Lynbrook Road as a cut through; the volume of increased traffic to be caused by the project on Lovers Lane; or any increased motor vehicular noise, other than his own observation, photographs, personal opinion and speculation and the opinion of



Kenneth Cram. Keyes trial testimony was substantially consistent with his deposition testimony. (See *Affidavit of Kenneth P. Cram* dated November 17, 2017 incorporated into Plaintiffs' Motion for Summary Judgment; *Exhibit 25* of the Joint Appendix to the parties' Cross-Motions for Summary Judgment; see also, *Trial Exhibits at 27-84; 87; 92-99*).

12. Plaintiff Attila Herzeg is an individual who owns a single-family dwelling situated on a 5.27-acre parcel of real property located at 4 Jacobs Lane, shown as Lot 27 and Lot 4 on the Town Property Map. See *Exhibits 90 (Town of Southborough Assessors Map No. 41), 113 Plan of Land in Southborough, Plan Book 688, Plan 121.) and 114 (Assessor photo of 4 Jacobs Lane)*. The Herzeg property abuts that portion of the project site identified as Parcel 4A on the Property Map, 21.4 acres of which constitutes the open space portion of the project. See *Exhibits 20 (Site Concept Plan dated April 8, 2015) and 90 (Town of Southborough Assessors Map No. 41); and Testimony of Attila Herczeg at P138/L16 – P140/L6 (Trial Day 8, 03/09/21)*. Herczeg owns the property with his wife. See *Testimony of Attila Herczeg at P92/L20-24 (Trial Day 8, 03/09/21); See Complaint*.
13. Plaintiff Herzeg testified that the increased traffic from the project would create a dangerous situation on Lover's Lane which already served as a "cut through" for motorists going to and from Flagg Road to Main Street (Route 30). See *Testimony of Attila Herczeg at P115/L22-25 (Trial Day 8, 03/09/21)*.
14. Herzeg also testified that he was concerned with the impact that the project would have on the wildlife in and around his property and the odor that might emanate from the project's

waste water treatment plant. Herzeg maintains that traffic from the project, the possible impact on wildlife and the possibility of odors, will cause him, as a property owner, personal harm. Herzeg did not maintain that the site design or proposed drainage from the project would cause him harm. *See Testimony of Attila Herzeg at P122/L2 (Trial Day 8, 03/09/21).*

15. I find that during his testimony Herzeg utilized and incorporated the traffic data and counts submitted to the Board by the Applicant and vetted by the Town's traffic consultant (*See Exhibits 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 69, and 70*). I further find that Herzeg offered no facts to dispute this traffic data or to support his testimony regarding the creation of a dangerous roadway situation; the volume of traffic on or the current use of Lovers Lane or Lynbrook Road as a cut through; the volume of increased traffic to be caused by the project, the adverse impact of the project on wildlife; or any offensive or other odors created by the waste water treatment facility, other than his own observation, photographs, personal opinion and speculation and the opinion of Kenneth Cram. Herzeg's trial testimony was substantially consistent with his deposition testimony. (*See Affidavit of Kenneth P. Cram dated November 17, 2017 incorporated into Plaintiffs' Motion for Summary Judgment; Exhibit 29 of the Joint Appendix to the parties' Cross-Motions for Summary Judgment and see also, Testimony of Attila Herzeg.*

16. Plaintiff Yan Tang Huang is an individual who owns a single-family residence located at 75 Flagg Road. Huang resides in the property with his wife and extended family. *See Testimony of Huang at P23/L10 – P24/L8; See Complaint.*

17. 75 Flagg Road abuts the southeastern side of the Park Central parcel. The Huang residence is located approximately 450 feet north of the proposed project access drive, John Boland Road. The driveway serving the Huang residence provides for forward egress to Flagg Road. See *Testimony of Huang at P41/L23 (Trial Day 8, 03/09/21)*; *Testimony of Dandrade at P44/L6 and P92/L21 (Trial Day 3, 02/01/21)*; *Testimony of Cram at P156/L20 (Trial Day 4, 02/25/21)*; see also *Exhibit 14 at p.4 (Traffic Memorandum prepared by TEC dated December 4, 2015 (Updated Traffic Impact and Access Study for Proposed Master Plan) and Exhibit 112(i-iv)(Photos (4): (i) Huang residence and driveway at 75 Flagg; (ii) Flagg Road looking south from 75 Flagg; (iii) Flagg Road looking north from 75 Flagg; (iv) Flagg Road looking south from 71 Flagg).*

18. Plaintiff Huang testified that the increased traffic from the project would create a dangerous situation on Flagg Road by causing delays in his family's ability to exit their driveway and by inhibiting their occasional use of the road for walking and biking. Huang confirmed that he typically exited his driveway and headed south on Flagg Road to Route 9 west so as to access I-495 North. See *Testimony of Huang at P72/L24 (Trial Day 8, 03/09/21)*. Huang stated that he was concerned that the development of the project might result in increased noise from I-495 reaching his property. Huang maintains that traffic from the project on Flagg Road will cause him, as a property owner, personal harm. Huang did not maintain that the site design, proposed drainage or environmental impact from the project would cause him harm. See *Testimony of Huang at P69/L18 (Trial Day 8, 03/09/21)*.

19. I find that during his testimony Huang utilized and incorporated the traffic data submitted to the Board by the Applicant and vetted by the Town's traffic consultant (*See Exhibits 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 69, and 70*). I further find that Huang offered no facts to dispute this traffic data or to support his testimony regarding the creation of a dangerous roadway situation, increased traffic volume or delays on Flagg Road or increased noise, other than his own observation, photographs, personal opinion and speculation and the opinion of Kenneth Cram. Huang's trial testimony was substantially consistent with his deposition testimony. *See Affidavit of Kenneth P. Cram dated November 17, 2017 incorporated into Plaintiffs' Motion for Summary Judgment; Exhibit 23 of the Joint Appendix to the parties' Cross-Motions for Summary Judgment (Deposition of Yan Huang) and Exhibit 111 (Letter from Huang to Southborough ZBA, dated 8/22/16).*
20. Plaintiff Linda Perkins is an individual who owns and lives in a single-family residence located at 1 Tara Road, Southborough, MA 01772. *See Complaint.*
21. 1 Tara Road abuts the eastern side of the Park Central parcel, is proximate to the proposed emergency connection to Blackthorn Drive, is several hundred yards west of and not visible from Flagg Road and is shown as Lot 33-42 on the Town Property Map. *See Exhibit 90 (Town of Southborough Assessors Map No. 41 and Exhibit 107(i-x)(Photos (10): (i) 1 Tara Rd.; (ii) view of Blackthorn from Tara with minivan and flag pole; (iii) 4 Tara Rd.; (iv) 44 Flagg looking north toward Blackthorn; (v) 40 Flagg Rd.; (vi) 49 Flagg looking south toward Blackthorn; (vii) 42 Flagg looking south at Blackthorne intersection with bus; (viii) 51 Flagg looking south; (ix) 61 Flagg; (x) 57 Flagg looking south at Estabrook Farm Ln.).*

The only egress from the Tara Road neighborhood is Flagg Road. *Testimony of Linda Perkins at P145/L5 (Trial Day 6, 02/18/21).*

22. Plaintiff Perkins, a stay-at-home mother of one, testified that she believed the intersection of Flagg Road and Route 9 was very dangerous, that the increased traffic from the project would create a dangerous situation on Flagg Road and would have prevented her then high school aged son (who has since enrolled in college) from using the late school bus and from walking and biking on Flagg Road. Perkins also testified that the proposed location of mail boxes at the project would be visible from her home. Perkins confirmed that she was identified as being represented by Attorney Daniel Hill during the public hearing process (*See Exhibit 1 attached to Exhibit 1 (Findings and Decision of Comprehensive Permit entitled, "Neighborhood Contributors")*) and was solicited to join in the judicial appeal by former Plaintiff Karen Shimkus. Perkins maintains that increased traffic on Flagg Road, proximity of her property to the emergency access and visible mailboxes from the project will cause her, as a property owner, harm. Perkins did not maintain that proposed drainage or environmental impact from the project would cause her harm. *See Testimony of Linda Perkins P202/L16 (Trial Day 6, 02/18/21).*

23. I find that Perkins utilized and incorporated the traffic data submitted to the Board by the Applicant and vetted by the Town's traffic consultant (*Exhibits 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 69, and 70*) during her testimony. I further find that Perkins offered no facts to dispute this traffic data or to support her contention that the Route 9 Flagg Road intersection is extremely dangerous or her testimony regarding the creation of a dangerous

roadway situation, increased traffic volume on Flagg Road, or harm personal to her from the location of the emergency access or project mailboxes, other than her own observation, photographs, personal opinion and speculation and the opinion of Kenneth Cram. . Perkin’s trial testimony was substantially consistent with her deposition testimony. *(See Affidavit of Kenneth P. Cram dated November 17, 2017 incorporated into Plaintiffs’ Motion for Summary Judgment; Exhibit 31 of the Joint Appendix to the parties’ Cross-Motions for Summary Judgment (Deposition of Linda Perkins) Summary Judgment and Exhibits 102-106<sup>2</sup>).*

24. Plaintiff Matthew Brownell owns a single-family dwelling situated on a large parcel of real property located at 8 Jacobs Lane, Southborough, shown as Lot 25 on the Town Property Map. The Brownell property abuts that portion of the project site identified as Parcel 4A on the Property Map, 21.4 acres of which constitutes the open space portion of the project. *See Exhibit 20 (Site Concept Plan dated April 8, 2015), 90 (Town of Southborough Assessors Map No. 41) and Exhibit 113 (Plan of Land in Southborough, Plan Book 688, Plan 121).* Brownell did not testify at trial but testified during his deposition that he was concerned about traffic, safety, noise and criminal activity that the project would create would cause him as a property owner, harm. *See Exhibit 27 of the Joint Appendix to the parties’ Cross-Motions for Summary Judgment (Deposition of Matthew Brownell).* I find that Brownell offered no additional facts to dispute Applicant’s traffic data or to support his concerns of safety, noise or criminal activity.

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<sup>2</sup> Exhibit 102. Photos (4) by Perkins on 2.2.21: (i) walkers on Flagg; (ii) two cars passing on Lovers; (iii) car at 36 Lovers Lane; (iv) car at 5 Lovers Lane

Exhibit 103. Perkins photos from interrogatory response (Pl. 4)

Exhibit 104. Letter to BOS from Christopher and Linda Perkins, dated 12.27.15

Exhibit 105. Email from L. Perkins to Southborough BOS, dated 4.7.16, and email from Mark Purple, Town Administrator, to Perkins, dated 3.17.16, bates label PL-1416-1418 (Pl. 16)

Exhibit 106. Email from L. Perkins to Southborough BOS and K. Finelli, dated 8.23.16, bates label PL-1407

25. I find that all Plaintiffs incorporated and accepted the opinions of their retained traffic consultant, Kenneth Cram, as set forth in Plaintiffs' formal expert disclosure in September, 2017 and Cram's Affidavit dated November 17, 2017, as the sole basis of expert support for their individual claims of personal harm from forecasted increased traffic.
26. I specifically find that Plaintiffs, despite having the opportunity to obtain supporting data, (following summary judgment in which this Court found an existing dispute over material facts regarding the impacts of traffic on Plaintiffs), through traffic counts or studies conducted consistent with industry standards, or by any other scientific quantified means, have failed to establish that Lovers Lane and Lynbrook Road presently serve as a routine cut through between Flagg Road and Route 30. I further find that Lover's Lane is a substantially straight public roadway that safely handles existing traffic and that pedestrian use requires a reasonable degree of care and common sense.
27. I specifically find that Plaintiffs, despite having the opportunity to obtain supporting data, (following summary judgment in May 2019 which this Court found an existing dispute over material facts regarding the impacts of traffic on Plaintiffs), through traffic counts or studies conducted consistent with industry standards, or by any other scientific quantified means, have failed to establish that the increase in traffic forecasted by the Defendants' consultants would substantially acerbate existing conditions and create a roadway situation that would imperil the Plaintiffs.

28. Defendant Southborough Zoning Board of Appeals (the “Board”) is a duly organized municipal board with a principal office, at all times material to the instant appeal, at 9 Cordaville Road, Lower Level, Southborough, MA 01772.
29. Section 174-25(4) of the Zoning Bylaws establishes that the Board may issue comprehensive permits for publicly subsidized housing, as provided in MGL c. 40B, § 21. *See Exhibit 50 (Southborough Zoning By-Law, Art. VI, § 174-25).*
30. Defendant Park Central, LLC (“Park Central”), is a domestic limited liability company, with a principal office at 259 Turnpike Road, Suite 100, Southborough, MA 01772. Park Central is the owner of a 101.25 parcel of land located at the intersection of Turnpike Road (state highway 9) and Interstate 495. *See Exhibit 2 (Park Central Comprehensive Permit Application, 2.11.14) and Testimony of Depietri at P8/L19 (Trial Day 1, 01/13/21).*
31. Defendant William A. Depietri (“Depietri”) is an individual residing at 15 Presidential Drive, Southborough, and has been a resident of Southborough for over twenty years. *See Testimony of Depietri at P6/ L3 (Trial Day 1, 01/13/21).* Depietri is the Manager and co-owner of Park Central. Depietri, through various entities, is a known and experienced developer, manager and owner of commercial and residential properties in Southborough, in other Massachusetts communities and in Florida. *See Testimony of Depietri at P6/L19-P8/L10 (Trial Day 1, 01/13/21).*
32. On or about February 11, 2014, Park Central, LLC and Depietri filed an application for the issuance of a comprehensive permit pursuant to G.L. c. 40B with the Southborough Zoning



Board of Appeals for the construction of a 180-unit for a stand-alone “for sale” condominium project with 45 affordable units. *See Exhibits 1 (Findings and Decision of Comprehensive Permit) and 2 (Park Central Comprehensive Permit Application, 2.11.14).*

33. I find that at the time of the Application, and thereafter the he Applicant qualified, pursuant to 760 CMR 31.01 for Board consideration of the grant of a comprehensive permit in that: (a) it is or will become a “limited dividend corporation” as that term is used in G.L. c. 40B, § 21 and 760 CMR 31.01 (1); (b) it has a funding commitment from a subsidizing agency as shown by the Project Eligibility Letter from MassHousing dated February 11, 2014 and as amended and confirmed by letter from MassHousing dated June 19, 2015; and (c) has “control of the site” which is owned by Park Central, LLC. *See Exhibit 6 attached to Exhibit 1 (1. Findings and Decision of Comprehensive Permit); See Exhibit 2 (Park Central Comprehensive Permit Application, 2.11.14).*

34. I find that at the time of Application, the subsidized housing inventory in the Town of Southborough as maintained by DCHD was 8.83%. Site eligibility for the project was first approved by MassHousing on February 11, 2014. *See Exhibit 2 at pp. 19-27 (Park Central Comprehensive Permit Application, 2.11.14).*

35. The full Board consists of five members and two associate members. Prior to the August 24, 2016 Bartolini had stepped down as Chairman of the Board and member Eagle was appointed Chairman Pro-Temp. At the time of the August 24, 2016 Decision (*See Exhibit 1 (Findings and Decision of Comprehensive Permit)*) members Eagle, Bartolini and Drepanos were the only acting and voting Members of the Board due to the attrition of

other members. I find that the Applicant agreed to allow the three (3) member panel to rule on its application notwithstanding that approval would require the unanimity of all three members.

36. On August 30, 2016 David Eagle resigned from the Board. *See Exhibit 46 (Eagle resignation letter dated 8.30.16)*. I find that although the Eagle residence located at 11 Sarsen Way, Southborough, which had been on the market prior to August 24, 2016 was sold on August 25, 2016, Eagle remained a duly appointed and qualified voting member of the Board until his formal resignation. *See Exhibit 119 (Eagle to Zhao/Shen Quitclaim Deed and Release of Homestead, Worcester County South Registry of Deeds Book 55860 Page 367-371, 8.24.16 (Pl. 22 and 23))*.

37. Eagle testified that several years prior to the Park Central's application, his family-owned company (Eagle Leasing, Inc.) engaged in occasional limited commercial activity (leasing or sale of construction trailers) with William Depietri. Eagle stated that this limited activity, which constituted a minute portion of the company's business, did not influence his action as a member of the Board. Eagle also testified that his 2005 disclosure during his original application review to be a member of the Board during which he referred to "Mr. Depietri" was a reference to William Depietri's brother. I find that Mr. Eagle was aware of his obligation to disclose possible conflicts to the State Ethics Commission and complied with those requirements. *(See Exhibit 117)*. I further find that the dated commercial activity between Eagle Leasing and companies owned by William Depietri did not rise to a conflict such that Eagle was disqualified as a voting member of the Board on Park Central's application. *See Testimony of Depietri at P92/L19-23; P135/L6-P136/L9 (Trial Day 9,*

*03/22/21; Testimony of David Eagle at PP6/L21-P7/L14; P11/L17-P14/L3 (Trial Day 10, 03/23/21).*

38. At the outset of the public hearing then Chairman Bartolini publicly disclosed a commercial relationship that his company had with William Depietri. Bartolini submitted written disclosure to the State Ethic Commission as required by M. G. L. c. 268A §23(b)(3) which declined to sanction Mr. Bartolini. During the public hearing process, following complaints regarding Mr. Bartolini's demeanor during public hearings made by members of the public who opposed the project to the Southborough Board of Selectmen, the Selectmen determined not to remove Bartolini from the Board or from consideration of Park Central's application. I find that Bartolini was not disqualified as a voting member of the Board on Park Central's application. *See Testimony of Brian Shea at P50/L7 (Trial Day 11, 03/24/21).*

39. Public hearings on the comprehensive permit were commenced on March 26, 2014 and were continued until August 24, 2016. Of the thirty (30) noticed public hearings eleven (11) were for purposes of continuing the public hearing to a subsequent date or to provide brief updates without the submission of new information or public comment. *See Exhibit 1 (Findings and Decision of Comprehensive Permit); Exhibit 143 (Stipulation on Continuances).* I find that the public hearings were duly noticed and properly conducted and provided the Applicant, residents and town officials full opportunity to be heard.

40. I find that the Plaintiffs failed to establish the existence of any conflict of interest on the part of Eagle or Bartolini or that the Board incorporated any favoritism to Depietri or bias to the Plaintiffs in reaching its Decision.
41. During the public hearing process, the Board retained Edward Marchant as a special c. 40B consultant. I find that Mr. Marchant was duly qualified to serve in this capacity and that the Board's consideration of and reliance on Mr. Marchant's guidance was reasonable and appropriate.
42. During the public hearing process, the Board engaged and utilized the services of engineering and technical consultants to assist in the review of the application, the site design and site plans. Fuss & O'Neil, a civil engineering firm with offices in Boston, provided site design engineering Peer Review services. Greenman Pederson, Inc. (PDI) and Toole Design Group of Boston, MA ("Toole") provided traffic and safety engineering Peer Review and safety study services. I find that each of these professional firms was duly qualified to serve in their respective capacities and that the Board's consideration of and reliance on consultant guidance was reasonable and appropriate. *See Exhibit 1 (Findings and Decision of Comprehensive Permit); Testimony of Jason DeGray at P55/L3-L14 (Trial Day 4, 02/02/21); Testimony of Donald Morris at P22/L23-P23/L15 (Trial Day 11, 03/24/21).*
43. I further find that Jason Degray, while employed first by PDI, and later as Office Director of Traffic Engineering at the Boston office of Toole Design ("Toole") of Boston,

Massachusetts and who served as the Board's primary traffic and safety consultant, provided thorough written Peer Review to the Board in response to the two Traffic Impact and Access Studies ("TIAS" ) submitted to the Board by Applicant's traffic and safety engineer as well as written comments to additional materials provided to the Board by the Applicant's consultants during the public hearing process. I further find that Mr. DeGray is a qualified expert on traffic and safety engineering and that the Board's consideration of and reliance on Mr. DeGray's guidance was reasonable and appropriate. *See Exhibits 13 (Greenman-Pederson, Inc. Letter dated October 1, 2014), 17 (Traffic Memorandum by Toole Design Group dated May 9, 2016), 69 (GPI Traffic Impact and Access Study Peer Review, dated 6.20.14) and 70 (GPI Traffic impact and Access Study Peer Review, dated 12.23.15) .*

44. During the public hearing process twenty-seven (27) residents, including Plaintiff Linda Perkins, all of whom resided in the Tara Road, Bantry Road and Blackthorn Drive neighborhood located adjacent to the Project Site and which required the use of Flagg Road for access and egress, engaged the services of Attorney Daniel Hill to represent them before the Board and with negotiations with the Applicant regarding the design and scope of the project. I find that the Board and Mr. Marchant actively encouraged these discussions. As the result of these negotiations, public comment, meetings with the Town Planner and mediation by Marchant, Park Central applied for a Use Variance so as to allow for the construction of up to 158 market rate townhomes adjacent to the affordable housing project and agreed to a comprehensive settlement, subject to Use Variance approval, with six (6) of Attorney Hill's clients, whose property directly abutted the project and required specific

landscaping and easements *See Exhibit 1 Decision of Exhibit 1. Testimony of Ed Marchant at P69/23 – P73/17 (Trial Day 1, 01/13/21); Testimony of William A. Depietri at P26/L10-P31/L19-25 (Trial Day 1, 01/13/21) and P132/L12-21 (Trial Day 9, 03/22/21); and Testimony of Perkins at P173/L19-P175/L2 (Trial Day 6, 02/18/21).*

45. I find it significant that of the 27 residents represented by Attorney Hill only Perkins appealed the Decision. I find no evidence that any other resident was prevented or discouraged by the Board to meet or negotiate with the Applicant or that the Applicant refused to meet with any resident at any time. *See Exhibit 1 (Findings and Decision of Comprehensive Permit); Complaint; Testimony of Depietri at P33/18-P35/L1 (Trial Day 1, 01/13/21).*

46. On May 27, 2015 the Board voted 4-1 to grant the Use Variance to Park Central, conditioned on the subsequent granting of a final comprehensive permit, allowing for the construction of up to 158 market rate “for sale” townhomes on approximately 56.75 acres of the 101.25-acre parcel to be integrated into and share a connector road, stormwater, drainage infrastructure and wastewater infrastructure with the affordable housing apartment complex as depicted on a Concept Plan. *See Exhibit 20 (Site Concept Plan dated April 8, 2015) and Exhibit 47 (Notice of Decision on Use Variance) .*

47. The Use Variance was not appealed by any of Attorney Hill’s clients, including Perkins, or any other resident or Town Board. I find that the Use Variance remains a valid and operative permit subject to its terms, the validity of which has been affirmed by the Appeals

Court in the case of *Jonathan Green v. Board of Appeals* 96 Mass App. Ct. 126 (2019), for which further appellate review was denied by the Supreme Judicial Court FAR-27117.

48. The Use Variance incorporated the specific terms of the Declaration of Restrictive Covenants and Agreement (*See Exhibit 47 (Notice of Decision on Use Variance)*) between Park Central and Attorney Hill's clients. Park Central substantially modified its project proposal to include the townhouse component and other features consistent with the Concept Plan including dedicating 21.64 acres to restricted Open Space. (*See Testimony of Marchant at P76/L8 Trial Day 1, 01/13/21*). The Use Variance also imposed that the tenure of the proposed affordable housing development be changed from a "for sale" condominium to "rental" apartments. (*See Testimony of Marchant at P74/L4; Trial Day 1, 01/13/21; Testimony of Depietri at P28/L12 (Trial Day 1, 01/13/21)*). I find that this change allows the Town to apply 180 units of the apartment complex to its subsidized housing inventory, rather than 45 units had the affordable housing component remained a "for sale" project, resulting in significant "safe harbor" protection for the Town for future affordable housing projects. *See Testimony of Marchant at P84/L20 (Trial Day 1, 01/13/21)*.

49. In accordance with the Use Variance, the Concept Plan and the Settlement Agreement the Applicant also modified the project proposal by reducing the affordable housing component from five (5) three (3) story buildings on 13.28 acres to two (2) four (4) story buildings which were relocated from an area directly abutting resident properties on Tara Road and Bantry Road to a 9.03-acre portion of the overall site situated adjacent to I-495.

*See Testimony of Depietri at P27/L8-12 and P30/L18- P31/L6 (Trial Day 1, 01/13/21), See Exhibit 3 (Comprehensive Permit Plans, Rev. 08/15/16); Exhibit 20 (Site Concept Plan) and Exhibit 47 (Notice of Decision on Use Variance).*

50. Other significant changes to the Applicant's proposal from its original application involved change in traffic pattern including the elimination of access to the adjoining neighborhood through Tara Road or Bantry Road and changing the connection to Blackthorn Drive to an emergency access only. *See Exhibit 1 (Findings and Decision of Comprehensive Permit); Exhibit 3 (Comprehensive Permit Plans, Rev. 08/15/16); Testimony of Depietri at P31/L10-25 (Trial Day 1, 01/13/21), Dandrade at P61/L13-P62/L4-15 (Trial Day 2, 01/14/21) and Marchant at P76/L2 (Trial Day 1, 01/13/21).* Access to the project remained directly from Route 9 to Park Central Drive and from a new private way (John Boland Road) connecting to Flagg Road. Egress from the Site was limited, by application of Massachusetts Department of Transportation ("MassDOT") requirements, to John Boland Road. John Boland Road intersects with Flagg Road approximately 275 feet north of Route 9. *See Exhibits 3 (Comprehensive Permit Plans, Rev. 08/15/16); and Exhibit 20 (Site Concept Plan); Testimony of Dandrade at P44/L3-15 (Trial Day 3, 02/01/21).*

51. I find that the site layout, access, egress, tenure and other changes made to the proposal originally submitted by the Applicant in February 2014, were consistent with the requirements of the Use Variance and Concept Plan and were reasonable. I find that the 9.03-acre affordable housing component of the Overall Site is the specific locus of the Comprehensive Permit and is situated adjacent to the 56.75 townhouse component which



is a distinct project permitted pursuant to the Use Variance. I further find that integration of the internal roadway and other infrastructure to service both residential components for access and egress and as access for possible future development was reasonable.

52. I find that the Comprehensive Permit Plans incorporate the requirements of the Use Variance and presents a detailed professionally engineered site plan subject to the requirements set forth in the Decision. *(See Exhibit 3 (Comprehensive Permit Plans, Rev. 08/15/16)).*

53. In advance of Applicant's submission of its application for comprehensive permit, Applicant retained Green International Affiliates, Inc. ("Green International") to conduct two Traffic Impact and Access Studies ("TIAS") dated March 2013 and June 2013 each of which were provided to the Board. *See Exhibit 1 at p.2 (Findings and Decision of Comprehensive Permit), Exhibit 6 (Traffic Impact and Access Study prepared by Green International dated March 2013) and Exhibit 7 (Traffic Impact and Access Study prepared by Green International dated June 2013).* The scope of the Green International TIAS was limited to the original 180-unit affordable housing project proposed by Applicant. *Testimony of Depietri at P43/L3 (Trial Day 1, 01/13/21); Testimony of Dandrade at P21/L4 (Trial Day 2, 01/14/21).*

54. During the public hearing, the Applicant retained The Engineering Corporation ("TEC"), first to review the Green International TIAS as a second look at the traffic impact of the original proposal, and thereafter to serve as the Applicant's traffic and safety engineer in

relation to Applicant's expanded Overall Project which included, in addition to the 180-unit affordable housing for sale apartment component, the potential for 158 two-bedroom market rate townhomes and possible sites for a 125-bed hotel and 150 room Assisted Living Facility. *See Testimony of Depietri at P43/L3 (Trial Day 1, 01/13/21). See Exhibit 14 (Traffic Memorandum prepared by TEC dated December 4, 2015 (Updated Traffic Impact and Access Study for Proposed Master Plan)).*

55. Kevin Dandrade, Principal and Worcester Regional Director of TEC in the Worcester office, served as Applicant's principal traffic and safety engineer.

56. I find that Dandrade is a qualified expert on traffic and safety engineering with 24 years of personal familiarity with the location of the Project and the neighborhood roadways in the vicinity of the Project. *See Testimony of Dandrade at P7/L6 - P20/L11 (Trial Day 2, 01/14/21).*

57. TEC, as the Applicant's primary traffic and safety engineer during the public hearings before the Board, initially prepared a comprehensive "Second" Traffic Impact and Access Study (TIAS) for the original proposed project (*See Exhibit 9 (Traffic Memorandum prepared by TEC dated May 19, 2014 (Second Traffic Impact and Access Study))*) and thereafter an Updated Traffic Impact and Access Study (UTIAS) for the overall "Full-Build" "project which included the 180 for sale condominium units, 140 market rate "for sale" townhomes, an assisted living residence and a 125-room hotel (*See Exhibit 14 (Traffic Memorandum prepared by TEC dated December 4, 2015 (Updated Traffic Impact and*

*Access Study for Proposed Master Plan*)). The purpose of the studies was to forecast the traffic impacts of the revised Project. I find that the written materials submitted to the Board by TEC provided specific data, traffic counts crash summaries and detailed analysis of scientifically predictable impacts of the project within the project site and on surrounding neighborhood roads and highways and incorporated data and analysis that was included in the two Green International 2013 TIASs. *See Testimony of Kevin Dandrade P45/L21-P46/L11; Exhibits 5 (Commonwealth of Massachusetts, Department of Public Works Permit 4/19/99), 6 (Traffic Impact and Access Study prepared by Green International dated March 2013), 9 (Traffic Memorandum prepared by TEC dated May 19, 2014 (Second Traffic Impact and Access Study)) and 14 (Traffic Memorandum prepared by TEC dated December 4, 2015 (Updated Traffic Impact and Access Study for Proposed Master Plan))*.

58. During the course of the public hearing process TEC prepared and submitted to the Board subsequent reports and responses to specific and various inquiries made by the Board and by the public regarding the traffic impact of the project, as well as responses to Peer Review comments submitted to the Board by the Town's consultants. *See Exhibits 8 (TEC. Crash Data Summary Table for Flagg and Deerfoot Road 1/31/2014), 9 (Traffic Memorandum prepared by TEC dated May 19, 2014 (Second Traffic Impact and Access Study)), 10 (TEC. Memorandum dated August 18, 2014), 11 (Traffic Memorandum prepared by TEC dated August 19, 2014 (Responses to Comments- Traffic Impact and Access Study)), 12 (TEC. Letter dated August 21, 2014), 14 (Traffic Memorandum prepared by TEC dated December 4, 2015 (Updated Traffic Impact and Access Study for Proposed Master Plan)), 15 (TEC. Memorandum dated January 19, 2016), and 18 (TEC. Memorandum dated June 28, 2016).*

59. In 2016 Mr. DeGray and Toole were independently retained by the Town of Southborough through the Board of Selectmen to conduct a Roadway Safety Study with Flagg Road and Deerfoot Road as the study area. A written report dated May 9, 2016 was submitted to the Town and the Board (*See Exhibit 17 (Traffic Memorandum by Toole Design Group dated May 9, 2016 (Flagg Road/Deerfoot Road Safety Study) prepared on behalf of the Town of Southborough.*)). The Safety Study included traffic counts and crash data obtained in 2016 and presented recommendations to the Town for off-site traffic mitigation of existing roadway conditions. *See Testimony of Jason Degray at P112/L1-20 and P113/L1-P114/L5 (Trial Day 4, 02/02/21). Testimony of Dandrade at P59/L9 (Trial Day 2, 01/14/21); Testimony of Kenneth Cram at P140/L15-18 (Trial Day 7, 02/25/21). Testimony of Karen Galligan at P26/L7-P27/L3.*

60. When comparing the Automatic Traffic Recording counts (“ATR”) for the traffic data taken in 2013 and 2016, Mr. Degray testified that the ambient traffic growth rate of 5% is “essentially flat” given the low volume to begin with. *See Testimony of Jason Degray at PP55/L6-P56/L19 (Trial Day 5, 02/08/21); See Exhibit 17, page & (Traffic Memorandum by Toole Design Group dated May 9, 2016 (Flagg Road/Deerfoot Road Safety Study) prepared on behalf of the Town of Southborough.*

61. Mr. Degray estimated that the traffic heading north of John Boland Road was the equivalent of eight households. DeGray found that the traffic would be relatively minor. To come to this conclusion, DeGray “looked at the amount of traffic projected north of John Boland Road and understood that amount of traffic on an average hourly

basis, and conducted essentially a comparison to the amount of traffic to be generated by single residence homes and determined that eight homes would generate equivalently the same amount of traffic.” *See Testimony of Jason Degray at P60/L11-L17 (Trial Day 5, 02/08/21).*

62. Mr. Degray testified that as part of his December 2015 peer review, he created a table describing hypothetical traffic conditions along Flagg Road in a “worst case scenario” for travel to and from the north on Flagg Road toward Route 30. (*See Table 2 of Exhibit 70 GPI Traffic Impact and Access Study Peer Review, dated 12/23/15*). Mr. Degray opined that the amount of traffic that would be contributed under the worst-case scenario described in Table 2 which neither he nor GPI would have stood behind as a reasonable projection, contribute to the amount of traffic that is essentially one vehicle per minute and deemed this “relatively minor in terms of the contribution of traffic to Flagg and Deerfoot Road north of John Boland Drive.” *See Testimony of Jason Degray at PP51/L25-P52/L7 (Trial Day 5, 02/08/21).*

63. I find that the amount of traffic to be contributed by the full build project development is a relatively minor increase in traffic and any fair share contribution requested of the developer regarding off-site mitigation should be commiserate with that relative increase. *See Testimony of Jason Degray at P51/L16-L19. (Trial Day 5, 02/08/21).*

64. The Southborough DPW was directly involved in recommending to the Board that a \$25,000.00 contribution for mitigation to be made by Park Central as a fair share contribution toward a portion of the cost for installing driver feedback signage and center line striping along Flagg Road in addition to installation of speed humps. *See Testimony*

*of Karen Galligan at P31/L2-12 (Trial Day 2, 01/14/21).*

65. I find that the TEC submissions, and follow up reports, as supplemented by the oral presentation of Mr. Dandrade and other TEC engineers during the public hearing process as well as Mr. Dandrade's trial testimony as vetted by the written Peer Review reports provided by GPI to the Board and the Safety Study prepared and submitted by Toole, as supplemented by the testimony of Mr. DeGray during the public hearing process as well as Mr. DeGray's trial testimony, provided the Board during the public hearing process, and this Court at trial, with a thorough and comprehensive overview, analysis and forecast of traffic impacts from the project on local roads and highways.

66. I find that during the public hearing process, in connection with required MEPA approval, the Applicant routinely communicated with MassDOT regarding traffic impacts of the project and that the Department carefully reviewed the TIAS and UTIAS including the methodology employed and the data obtained and utilized by TEC in connection with the project and concluded that the same was thorough and sufficient. *See, Exhibit 67 (MassDOT Memo re: DEIR, dated 7.22.16 (Def. 9) and 71 (Email from Lori Shattuck, District 3 Traffic Engineering Department to Lionel Lucien, Public/Private Development Unit Manager – District 3 comments on the EENF, dated 2.16.16 (Pl. 14)).*

67. I find that both Green International and TEC prepared their respective TIASs and UTIASs in a manner consistent with transportation engineering standards (including the MassDOT Guidelines) and reasonably evaluates the Project's potential impacts. *See*

*Testimony of Jason DeGray at P68/L8-19 and P94/L10-16 (Trial Day 4, 02/02/21) and Exhibits 69 (GPI Traffic Impact and Access Study Peer Review, dated 6.20.14) and 70 (GPI Traffic impact and Access Study Peer Review, dated 12.23.15).*

68. I find that the Peer Review and Safety Study conducted and authored by Mr. DeGray were prepared and carried out in accordance with MassDOT Guidelines and professional standards and are reliable. *See Testimony of Jason DeGray and Exhibits 17 (Traffic Memorandum by Toole Design Group dated May 9, 2016 (Flagg Road/Deerfoot Road Safety Study) prepared on behalf of the Town of Southborough); Exhibit 69 (GPI Traffic Impact and Access Study Peer Review, dated 6.20.14) and Exhibit 70 (GPI Traffic impact and Access Study Peer Review, dated 12.23.15).*

69. I find that the Crash Data Summary Table provided by TEC from information collected from the MassDOT Crash Database was for the most recent three-year period available (2012-2014) (*See Exhibit 8*) and was for the same period as the crash history summary submitted by Mr. DeGray in the Toole 2016 Safety Study (*See Exhibit 17 p. 9 (Traffic Memorandum by Toole Design Group dated May 9, 2016 (Flagg Road/Deerfoot Road Safety Study) prepared on behalf of the Town of Southborough)*) which was obtained from the Town of Southborough Police Department crash records. *Testimony of Jason Degray, See Exhibit 17, p. 9 ((Traffic Memorandum by Toole Design Group dated May 9, 2016 (Flagg Road/Deerfoot Road Safety Study) prepared on behalf of the Town of Southborough)).* I find and credit the opinions and testimony of both Mr. Dandrade and Mr. DeGray that the Crash Data does not support the conclusion that the neighborhood

roads are unsafe or do not present an inordinate safety hazard. I further find that the use of Crash Data for the stated time period was consistent with industry standards as being the most recent and reliable source of such information, was not outdated and was acceptable to MassDOT (*See, Exhibit 67 (MassDOT Memo re: DEIR, dated 7.22.16)*) I further find that prior to its Decision the Board was provided with all Crash Summary Data and that it was reasonable for the Board to rely on the Crash Summary Data that it was provided. *See Exhibits 8 (TEC. Crash Data Summary Table for Flagg and Deerfoot Road 1/31/2014) and 17 at p. 9 (Traffic Memorandum by Toole Design Group dated May 9, 2016 (Flagg Road/Deerfoot Road Safety Study) prepared on behalf of the Town of Southborough).*

70. In order to gather daily traffic-volume data during a continuous 48-hour time period, the Applicants' initial traffic engineer, Green International, utilized Automatic Traffic Recorder ("ATR") counts performed by Precision Data Industries, LLC ("PDI") that were conducted along Flagg Road and Deerfoot Road from Tuesday, February 5 to Wednesday, February 6, 2013 and along Blackthorn Road from Wednesday, May 29 to Thursday, May 30, 2013. *See Exhibit 9 at p. 6.* I find that PDI is a reputable data collection company regularly engaged by traffic and safety engineers in the Commonwealth. *See Exhibit 17 at p.6 (Traffic Memorandum by Toole Design Group dated May 9, 2016 (Flagg Road/Deerfoot Road Safety Study) prepared on behalf of the Town of Southborough).;* *Testimony of Dandrade at P104/L12-23 (Trial Day 2, 01/14/21); Testimony of DeGray at P110/L1 – P111/L17; Testimony of Cram at PP128/L4-8; P178/L1 (Trial Day 7, 02/25/21).*

71. TEC's initial forecasted site generated traffic impacts for a stand-alone 180-unit apartments



project, were based on standard trip-generation data published by the Institute of Transportation Engineers (ITE) *Trip Generation Manual*. *See Testimony of Dandrade at P56/L15-19 (Trial Day 2, 01/14/21)*. The trip generation data for Land Use Code (“LUC”) 230 for Residential Condominium/ Townhouse published by the ITE was evaluated to determine the expected trip generation for the project’s components. *See Exhibit 9 at p. 17 (Traffic Memorandum prepared by TEC dated May 19, 2014 (Second Traffic Impact and Access Study)) and Exhibit 14 at p. 18 (Traffic Memorandum prepared by TEC dated December 4, 2015 (Updated Traffic Impact and Access Study for Proposed Master Plan))*.

72. TEC relied on the Green International traffic counts and included same in the TIAS and thereafter in the UTIAS at “Table 1-Existing Weekday Traffic Volume Summary” (*Exhibit 14 at page 6 (Traffic Memorandum prepared by TEC dated December 4, 2015 (Updated Traffic Impact and Access Study for Proposed Master Plan))*) which disclosed, *inter alia*, that the total weekday traffic volume on Flagg Road was 978 vehicles per day (“vpd”) and that 84.3% of peak morning traffic of 89 vehicles would go southbound towards Route 9. *See Exhibit 14 at page 6 (Traffic Memorandum prepared by TEC dated December 4, 2015 (Updated Traffic Impact and Access Study for Proposed Master Plan))*.

73. Additional ATR counts, also utilizing PDI, were collected as part of the 2016 Toole Traffic Safety Study for a 48-hour period from Tuesday, March 8 to Wednesday, March 9, 2016 at the following locations: (1) Deerfoot Road adjacent to the P. Brent Trottier Middle School, south of the Middle School driveway; and (2) Flagg Road in the vicinity of 35-37 Flagg Road. *See Exhibit 17 at p.6*. The 2016 traffic counts set forth in the Toole Study

disclosed a *vpd* of 1,014 on Flagg Road on March 8, 2016 with 55% of the 110 vehicles during the morning peak heading southbound. See Exhibit 17 at p. 7 (Traffic Memorandum by Toole Design Group dated May 9, 2016 (Flagg Road/Deerfoot Road Safety Study) prepared on behalf of the Town of Southborough). The Study also disclosed that on March 9, 2016 the *vpd* on Flagg Road was 956 for an average *vpd* over the continuous 48-hour period of 985. *See Exhibit 17 at p. 3 and 64 of 87 (ATR Counts)(Traffic Memorandum by Toole Design Group dated May 9, 2016 (Flagg Road/Deerfoot Road Safety Study) prepared on behalf of the Town of Southborough).*

74. I find that the 2016 Flagg Road traffic volume count, as obtained by Toole with an average of 985 vpd, disclosed substantially the same traffic volume as the 978 vpd determined by the 2013 count obtained by Green International and utilized by TEC in the UTIAS. I further find that prior to its Decision the Board was provided with the details of all traffic volume counts, that the consolidated traffic count data was not outdated or in contravention of MassDOT guidelines or industry standards, and that the data was reliable. *See Testimony of Dandrade at P104/L12-23 (Trial Day 2, 01/14/21) and Testimony of DeGray at P112/L10-20 (Trial Day 4, 02/02/21).* I find that it was reasonable for the Board to rely on the traffic volume counts that it was provided.

75. TEC's December 1, 2015 updated Study (UTIAS) considered the possible Full-Build project, notwithstanding that neither the hotel or the assisted living residence had been permitted. TEC, based on standard trip rates published in the ITE publication *Trip Generation, 9<sup>th</sup> Edition* for the four applicable Land Use Codes, estimated a combined **total**

**trip of 3,222 trips** to and from the site, from both Route 9 and Flagg Road on a regular weekday. Fifty per cent (50%) of the 3,222 daily trips (1,611) would be **entering** the project site primarily *through Route 9 and Park Central Drive* and fifty per cent (50%) of the daily trips would **exiting** the project site through John Boland Road and Flagg Road (1,611). *See Testimony of Dandrade at P68/19-P70/25 (Trial Day 2, 01/14/21); See Exhibit 14 at p. 18 (Traffic Memorandum prepared by TEC dated December 4, 2015 (Updated Traffic Impact and Access Study for Proposed Master Plan); See Exhibit 67 (MassDOT Memo re: DEIR, dated 7.22.16 (Def. 9)); Exhibit 71 (Email from Lori Shattuck, District 3 Traffic Engineering Department to Lionel Lucien, Public/Private Development Unit Manager – District 3 comments on the EENF, dated 2.16.16 (Pl. 14)).*

76. I find that the Plaintiffs presented no reliable evidence, including the testimony of Mr. Cram, quantitatively contradicting, refuting or rebutting the traffic counts and trip generation data and forecasts provided to the Board and this Court through TEC and reviewed and confirmed by the Board’s Peer Review Consultant and as testified to by both Mr. Dandrade and Mr. DeGray. *See Testimony of Cram at P142/L18-P143/L2 (Trial Day 7, 02/25/21).*

77. I specifically find, of the total 3,222 full build projects vpd, TEC forecasted the distribution as follows:

- a) that the affordable apartments, approved in the comprehensive permit, will generate a total of 1,214 vpd, 607 entering, primarily from Park Central Drive and 607 exiting, entirely from John Boland Road); and

- b) that the townhomes, permitted by the use variance, would generate a total 862 vpd 431 entering, primarily from Park Central Drive and 431 exiting, entirely from John Boland Road); and
- c) that the 150-room assisted living component, if permitted, would generate 400 vip, 200 entering entirely from Park Central Drive and 200 exiting entirely from John Boland Road);
- d) that the 125-room hotel, if permitted, would generate 746 vpd 373 entering, entirely from Park Central Drive and 373 exiting, entirely from John Boland Road. *See, Exhibit 14 at p. 18 (Traffic Memorandum prepared by TEC dated December 4, 2015 (Updated Traffic Impact and Access Study for Proposed Master Plan); Testimony of Dandrade at PP68/L19-P69/L19 (Trial Day 2, 01/14/21).*

78. TEC's December 1, 2015 Study included, in addition to the various tables and figures setting forth and illustrating Full-Build Project Trip Generation and Trip Distribution data, a comprehensive analysis and estimates for peak and non-peak hours, including the conclusion that 85% of traffic exiting John Boland Road onto Flagg Road would turn right (south) including during peak travel hours, significantly limiting any traffic impact on Flagg or other neighborhood roads north of John Boland Road. *See Testimony of Dandrade at P90/L14-P93/L16 (Trial Day 2, 01/14/21); Jason DeGray at P134/L1-6 (Trial Day 4, 02/02/21); and Kenneth Cram at P192/L21-P193/L11 (Trial Day 7, 02/25/21). See also Exhibit 14 at pp. 6, 18-25 (Traffic Memorandum prepared by TEC dated December 4, 2015 (Updated Traffic Impact and Access Study for Proposed Master Plan)).*

79. The industry standard and methodology for forecasting the distribution of site-generated traffic-volumes for residential and assisted living trips employed by TEC were based upon a gravity model using 2000 U.S. Census Journey-to-Work data for residents residing in the Town of Southborough, as the 2000 Census was the most recent year in which journey-to-work information was collected as part of the U.S. Census. See *Exhibits 14 (Traffic Memorandum prepared by TEC dated December 4, 2015 (Updated Traffic Impact and Access Study for Proposed Master Plan), Exhibit 69 (GPI Traffic Impact and Access Study Peer Review, dated 6.20.14) and Exhibit 70 (GPI Traffic impact and Access Study Peer Review, dated 12.23.15)*. See *Testimony of Dandrade P82/L15-23 (Trial Day 2, 01/14/21)* and *Testimony of DeGray at P69/L23-P70/L14*. I find that the analysis and forecasting of traffic volume generation was conducted by TEC in accordance with MassDOT Guidelines and professional standards. See *Exhibit 14 at p. 18 (Traffic Memorandum prepared by TEC dated December 4, 2015 (Updated Traffic Impact and Access Study for Proposed Master Plan)*. *Testimony of Dandrade at P56/L15-19 (Trial Day 2, 01/14/21)*.; *Exhibit 66 (Memo from David Mohler, Executive Director Office of Transportation Planning to Secretary Matthew Beaton (EOEA) – Comments on the EENF to MEPA, dated 2.19.16 (Pl. 15))*, *67 (MassDOT Memo re: DEIR, dated 7.22.16 (Def. 9))* and *71 (Email from Lori Shattuck, District 3 Traffic Engineering Department to Lionel Lucien, Public/Private Development Unit Manager – District 3 comments on the EENF, dated 2.16.16 (Pl. 14))*.

80. I find that the trip generation and traffic volume forecasts presented by TEC appropriately

allocated traffic volume between daily and peak and non-peak hours. I find that the “Worst Case Scenario” reported to the Board by Mr. DeGray in his December 23, 2015 Technical Memorandum (*Exhibit 70 at pages 5-6 [including Table 2] GPI Traffic impact and Access Study Peer Review, dated 12.23.15*) carefully reviewed, analyzed and confirmed the Traffic Distribution forecast by TEC and that the Board could and this Court can reasonably rely on those forecasts. I find that the Trip Generation forecast of 85% of peak morning hour traffic heading south when existing John Boland Road does not impose or will it create a roadway situation that will imperil the community or any of the Plaintiffs.

81. I find that since the granting of the Decision, and as a result of conditions set forth therein requiring compliance with the Wetlands Protection Act, that the number of townhouse units has been reduced from the 140 assumed by TEC in its UTIA, to a potential of not more than 114. I find that a reduction in the number of townhouse units will result in a proportionate reduction in traffic volume created by the project. *See Testimony of Depietri at P43/L16-20 (Trial Day 1, 01/13/21) and Testimony of Dandrade at P70/L16-25 (Trial Day 2, 01/14/21).*

82. I find that both the assisted living and hotel components of the project, proposed as future phases, as well as any other additional or alternative use within the Full-build Project, are subject to future use and dimensional zoning requirements and permitting and the imposition of reasonable conditions, including conditions pertaining to offsite traffic and roadway mitigation. *See Testimony of Depietri at P10/L12-P11/L4 ; Testimony of Dandrade at P65/L18 – P66/L18 (Trial Day 2, 01/14/21); Testimony of Cram at P153/L5-*

*17 (Trial Day 7, 02/25/21); Exhibit 71 (Email from Lori Shattuck, District 3 Traffic Engineering Department to Lionel Lucien, Public/Private Development Unit Manager – District 3 comments on the EENF, dated 2.16.16 (Pl. 14)).* I find that the future conditioning of unpermitted projects on the site is a fact implicit in the Decision and a factor that may be reasonably considered by the Board and this Court.

83. The 2016 Toole Safety Study, requisitioned by the Board of Selectmen to address concerns raised during the ongoing comprehensive permit public hearings, presented a detailed analysis of existing conditions on Flagg and Deerfoot roads and advanced **off-site** traffic mitigation recommendations that could be implemented **by the Town** on Flagg Road and neighborhood roads, including traffic calming, signaling, pavement markings intersection reconfigurations and sidewalks. I find that the recommendations proffered by Toole involved improvements to existing conditions to public ways under the authority of the Department of Public Works and the Board of Selectmen. I find that residents expressed a concern over mitigation that would change the aesthetic character of their neighborhood and the scenic roads that service same. I further find that the Applicant is willing to participate in the implementation of reasonable off-site mitigation once determined by the Town. *Testimony of Depietri at P43/L43-P45/L10 (Trial Day 1, 01/13/21), Dandrade at P23/L4-13 (Trial Day 2, 01/14/21); DeGray at P105/L15-21; Galligan at P24/L-9P27L12; Exhibit 60 (Memo from K. Galligan, DPW to Southborough BOS, dated 9.11.2013); Exhibit 61 (Memo from K. Galligan, DPW to Southborough ZBA, dated 8.24.16 and Exhibit 69 (GPI Traffic Impact and Access Study Peer Review, dated 6.20.14).*

84. Both Mr. Dandrade and Mr. DeGray, during their respective trial testimony, recognized the existing conditions on Flagg Road and neighborhood roads and opined that the increased traffic resulting from the full-build project will not create or exacerbate conditions on neighborhood roads that will imperil residents or motorists generally. I find and credit the opinions of Mr. Dandrade and Mr. DeGray.

85. I find that the existing conditions on Flagg and neighboring roads do not present any unusual topographical, environmental or other physical circumstances which are technically infeasible to address and which would be cost prohibitive to the Town. I further find that these existing conditions do not present a valid Local Concern of health or safety which will imperil the residents of the project or the neighborhoods and which outweigh the need for affordable housing.

86. Kenneth Cram, Director of Traffic Engineering with Bayside Engineering, Inc. ("Bayside") of Woburn, Massachusetts, testified on behalf of the Plaintiffs. Mr. Cram was engaged by the Plaintiffs in the summer of 2017. He stated that has over 20 years of experience in traffic and safety engineering and that he has worked with TEC and GPI on unrelated projects. *See Testimony of Cram at P127/L16 Trial Day 7, 02/25/21*). Mr. Cram testified that in addition to visiting the site, he reviewed the, Decision, the TIAS and the UTIAS prepared and submitted by TEC as well all Peer Review reports and the Safety Study prepared by GPI and/or Mr. DeGray as well as TECs responses to all Peer Review. Mr. Cram was also familiar with the DEIR. *See Exhibits 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 24, 25, 69, and 70*) and related communications exchanged with the Commonwealth



by the Applicant as part of the MEPA review processes being advanced for Applicant by Mr. Dandrade. *See Testimony of Cram at P171/L5-10 (Trial Day 7, 02/25/21) and Dandrade at P66/L10 (Trial Day 2, 01/14/21).*

87. Mr. Cram testified that increased traffic from the project would create and exacerbate conditions along Flagg Road and neighboring roads that will imperil the safety of residents along those roads by resulting in more crashes. Mr. Cram testified that he would not ride a bike on Flagg Road because of those existing conditions. Mr. Cram agreed that addressing existing conditions on public ways was not a “one glove fit all” science. *(See Testimony of Cram at P160/L9-11 Trial Day 7, 02/25/21).* He stated that narrowing of a roadway could serve as traffic calming mitigation if sufficiently wide for two vehicles. *Testimony of Cram at P185/L1-3,(Trial Day 7, 02/25/21).* Mr. Cram agreed that signage limiting directional turning during certain hours was appropriate mitigation in certain circumstances and was not necessarily unenforceable. *Testimony of Cram at P162/L18-163/L24 (Trial Day 7, 02/25/21).* Mr. Cram also acknowledged that when he represented a developer on a project in Wayland, Massachusetts he did not recall if he recommended the installation of sidewalks on a residential scenic road that was used as a heavily travelled cut-through between two major roads and opined that the installation of impediments on the side of that road (referred to by My Cram as “decorative side friction devices to reduce speeds” such as “fences, stone walls”) would serve as appropriate traffic calming mitigation. *See Testimony of Cram at PP163/L7-13; P164/L9-13 Trial Day 7, 02/25/21).*

88. Although Mr. Cram was engaged in mid-2017, Mr. Cram did not prepare a TIAS, and did

not engage in any studies or data collection or obtain any new traffic volume counts. [See \(Testimony of Cram at PP128-129 /L14-17; P141-143/L2 Trial Day 7, 02/25/21\)](#). Mr. Cram did not submit to, or seek peer review of, his conclusions and opinions to any independent traffic and safety engineer. Mr. Cram, when presented with the 2016 traffic volume counts obtained by Mr. DeGray, conceded that the 2016 counts were compliant with MassDOT advisory Guidelines for projects applied for in 2014 and considered by the Board between 2014 and 2016 and that the traffic counts were consistent with the 2013 traffic volume counts utilized by TEC. [\(See Testimony of Cram at P142/L15-22 Trial Day 7, 02/25/21\)](#). I find that the traffic volume counts submitted to the Board and this Court by TEC and as confirmed by Mr. DeGray, were compliant with MassDOT Guidelines and are reliable.

89. Although Mr. Cram was engaged in mid-2017, Mr. Cram did not provide the Plaintiffs or the Court with any data, facts or studies to support his assumption, based only on the assertions of the Plaintiffs, that Lovers Lane and Lynbrook Road, served as a high-volume cut-through for motorists travelling between Route 9 and Main Street, as an alternate route to I-495 north. [\(See Testimony of Cram at PP 142/L23-P143/L2; P166/L19-23; and P167/L16-22 Trial Day 7, 02/25/21\)](#). I find that Mr. Cram's opinion that TEC's failure to include Lovers Lane, Deerfoot Road and Lynbrook Road in its scope of study was somehow a deviation from sound traffic and safety engineering standards is without factual or scientific foundation. Plaintiffs and Mr. Cram had full post-Decision opportunity to support these assertions by offering actual quantitative facts and did not do so. I find that the absence of such evidence is fatal to Plaintiffs' claim that the scope of the TEC TIAS

and UTIAS, the GPI Peer Review and the Toole Safety Study were deficient. I further find that the area of study included by TEC and approved by GPI was found adequate by MassDOT (*see Exhibit 71, Email from Lori Shattuck, District 3 Traffic Engineering Department to Lionel Lucien, Public/Private Development Unit Manager – District 3 comments on the EENF, dated 2.16.16 (Pl. 14)*) and was reasonable for the Board and for this Court to rely on.

90. Although Mr. Cram was engaged in mid-2017, Mr. Cram did not provide the Plaintiffs or the Court with any data or facts (traffic volume counts, studies, references to specific industry standards or guidelines) to controvert the distribution of project generated traffic determined and utilized by TEC and the Town's consultant, generally (*See Testimony of Cram at P128/L14-22; P129/L3-19; P141/L19-P142/L1; Exhibit 14 at p. 18 (Traffic Memorandum prepared by TEC dated December 4, 2015 (Updated Traffic Impact and Access Study for Proposed Master Plan))*) or specifically the conclusion that approximately 85% of traffic exiting from John Boland Road on to Flagg Road would head south to Route 9 (as analyzed and explained in the UTIAS at *Exhibit 14 at pp. 18-25 (Traffic Memorandum prepared by TEC dated December 4, 2015 (Updated Traffic Impact and Access Study for Proposed Master Plan))*). I find that Mr. Cram's view that TEC significantly underestimated the number of vehicles that will turn left (north on Flagg Road) due an anticipated decline in the Level of Service was without any factual predicate. (*Testimony of Cram at PP145/L23-P146/L1, Trial Day 7, 02/25/21*). I also find that Mr. Cram's postulation that 20-25% of vehicles exiting John Boland Road would head north is not significantly greater than the 15% forecast by Mr. Dandrade. *Testimony of Cram at*

*P150/L1-25.*

91. I find that Mr. Cram's forecast of queuing delays on Flagg Road were not the product of independent study or analysis and is speculative. I find that the absence of such evidence and analysis is fatal to Plaintiffs' claim that TEC's traffic generation forecast, as accepted by the Town's consultant, was deficient. I further find that a decrease in the peak hour Level of Service caused by full project buildout is a factor that primarily relates to convenience and not safety to any degree that will impose a danger or imperil residents or the motoring public.

92. Mr. Dandrade testified that the increase peak hour traffic on Flagg Road could result in possible queuing of motor vehicles traveling south on Flagg Road to Route 9 and could result in a 2–3-minute delay during the morning peak. Mr. Dandrade opined that based on current traffic volume on Flagg Road, coupled with forecasted Full-build traffic exiting on to Flagg Road from John Boland Road, queuing could occur on the 270 feet of Flagg Road between John Boland Road and Route 9 and that traffic exiting from John Boland Road, would first queue at the stop sign on John Boland Road before entering Flagg Road, limiting any queuing on Flagg Road north of John Boland Road. *See Testimony of Dandrade at pp. P93/L25-P99/L4 (Trial Day 2, 01/14/21)*

93. I credit and accept the testimony of Mr. Dandrade that although peak hour Level of Service would decrease as a result of the increased full-build traffic on Flagg Road, that such delays would be at most of 2-3 minutes, would not present a dangerous situation on Flagg Road or at the intersection of Route 9 and would not compel project or Flagg Road residents to

seek alternate routes to I-495 north, namely Lovers Lane and Lynbrook Road. I credit and accept Mr. Dandrade's testimony both as an expert and as a motorist who frequently used Flagg and connected roads. *Testimony of Dandrade at PP7/L4-7; P96/L25 -P97/L19 (Trial Day 2, 01/14/21).*

94. In the Affidavit that Mr. Cram submitted to this Court as part of Plaintiffs claim of standing based on increased traffic during summary judgment, Mr. Cram stated at paragraph 8. *"The project will generate three thousand two-hundred and twenty-two (3,222) new daily trips. These will be new trips on Flagg Road, where the volume will more than triple. Flagg Road and the neighboring roads are narrow, winding, scenic roads with blind curves and sight distance issues"*. I find that Mr. Cram's Affidavit was submitted to the Court so as to advance Plaintiffs' claim of standing based on traffic impacts from the project Testimony of Cram at P131/L21-P132/L9). I further find that Mr. Cram's Affidavit, as did his trial testimony (*Testimony of Cram at P149/L9-P150/L17, Trial Day 7, 02/25/21*) misstated and incorporated the forecasted daily volume of traffic from the full-build project on Flagg Road as 3,222, where the data and analysis set forth in the UTIAS (*Exhibit 14, p.18, Traffic Memorandum prepared by TEC dated December 4, 2015 (Updated Traffic Impact and Access Study for Proposed Master Plan)*), together with internal project roadway layout and direction limitations as shown on the Project Plans (*Exhibit 3 Comprehensive Permit Plans, Rev. 8.15.16*) clearly disclosed that 3,222 was total number of trips entering **and** leaving the project daily, and that ONLY 1,611 vehicles, throughout the entire day, would exit the project onto Flagg Road. *See Testimony of Dandrade at PP68/L17-P69/L19 (Trial Day 2, 01/14/21 and Testimony of Cram at P149/L21-P150/L7; P192/L17-19, Trial Day*

7, 02/25/21). I find that between 243 (15% of 1611) and 322 (20% of 1611) of **vehicles per day** will turn left on Flagg Road when exiting John Boland Road over a 24-hour period. I find that this is *de minimus* impact on Flagg Road and will not imperil the Plaintiffs or residents. I find that Mr. Cram's incorporation of *incorrect* traffic volume and trip generation data infects his opinions and conclusions as to traffic impacts and renders them unreliable.

95. I similarly find that Plaintiffs' repeated assertion, in testimony and as used in cross-examination of Defendants' witnesses, that the Full-build project would "dump" 3,222 vehicles onto Flagg and nearby neighborhood roads, embraced Mr. Cram's Affidavit, is not true, is not supported by the evidence, is an intentional misstatement of the very traffic data which the Plaintiffs and Mr. Cram utilized, is a gross exaggeration of the actual traffic impacts on neighborhood roads advanced so as to generate fear and concern in the community, engender opposition to the Project and create the appearance injury. *See Testimony of Cram at P149/L21-P150/L7; P192/L17-19, Trial Day 7, 02/25/21); Testimony of Keyes at P166/L14-P167/L3 Trial Day 5, 02/08/21); Testimony of Perkins at P185/L3 -P186/L6 (Trial Day 6, 02/18/21); Testimony of Huang at P65/L23-P67/L13, Trial Day 8, 03/09/21; and Testimony of Herczeg at P144/L19-P145/L5, Trial Day 8, 03/09/21).*

96. On August 24, 2016, the Southborough Zoning Board of Appeal (the "Board") voted to approve the application of Defendant Park Central, LLC for a comprehensive permit under G.L. c. 40B by a vote of 3-0. *See Exhibit 1 (Findings and Decision of Comprehensive*

*Permit*). I find that the Decision was thorough, comprehensive and appropriately conditioned.

97. Prior to construction and to receiving any building permit, the Applicant must first obtain Final Approval from the Subsidizing Agency pursuant to 760 CMR 56.04(7) and must provide evidence of such Final Approval to the Building Commissioner and the Board. *See, Exhibit 1 at "Regulatory Condition 18 at page 11 (Findings and Decision of Comprehensive Permit)*. I find that Decision is appropriately conditioned on this Approval which will certify Applicant's compliance with c. 40B and without which Approval the project cannot be built.

98. I find that during the public hearing process representatives of the Planning Board, the Conservation Commission and the Board of Selectmen regularly attended, participated in and routinely submitted materials, documented in the Decision, for the Board to review and consider. *Testimony of Depietri at P106/L21-P107/22, (Trial Day 9, 03/22/21); Morris at P30/L15-P31/L3 (Trial Day 11, 03/24/21); Possemato at P77/L22-24; P79/L17-P81/L13 (Trial Day 11, 03/24/21)*. I find that there is no evidence that the Board did not consider all material submitted to it as the Court has also done.

99. In order for any additional vehicles to be allowed to enter the Park Central development from Route 9, the project requires a final Highway Access Permit from MassDOT Central Drive, which application is pending and which Permit as part of the pending MEPA review process and will supersede the current 1988 permit. *Testimony of Depietri at P50/L25-*

*P51/L1 (Trial Day 1, 01/13/21); Testimony of Dandrade at PP30/L5-P34/L6 (Trial Day 2, 01/14/21); and Exhibit 1, at General Condition 20 and Special Condition 5 (Findings and Decision of Comprehensive Permit); See Exhibit 67 (MassDOT Memo re: DEIR, dated 7.22.16 (Def. 9)) Testimony of Cram at P169/L22-P171/L10 (Trial Day 7, 02/25/21). I find that Decision is appropriately conditioned on this Highway Access Permit which will certify MassDOT's approval of the Projects use for Route 9 for access purposes without which Approval the project cannot be built. I further find that Route 9 is exclusively within the jurisdiction of the Commonwealth which has also provided recommendations for improvements to the intersection of Route 9 and Flagg Road and has implemented lane changes and pavement markings between Crystal Pond Road and the I-495 north on ramp so as to address traffic concerns. See Testimony of Dandrade at P87/L1-8 (Trial Day 2, 01/14/21); Exhibits 25 (Figure 3-10 of the DEIR: TEC's mitigation plan for Route 9 and Flagg Road), 26 (Mass DOT I-495 & Route 9 Interchange Improvement Study (2013), § 4.2.5), 66 (Memo from David Mohler, Executive Director Office of Transportation Planning to Secretary Matthew Beaton (EOEA) – Comments on the EENF to MEPA, dated 2.19.16 (Pl. 15)); Exhibit 67 (MassDOT Memo re: DEIR, dated 7.22.16 (Def. 9)); and Exhibit 68 (Memo from Neil Boudreau, State Traffic Engineer to Lionel Lucien, Public/Private Development Unit Manager – Comments on the EENF, dated 2.1.16 (Pl. 13)).*

100. The project is subject to approval of an Order of Conditions by the Southborough Conservation Commission (and/or Superseding Order of Conditions issued by Massachusetts Department of Environmental Protection (“DEP”) pursuant to the Massachusetts Wetlands Protection Act, and implementing regulations (310 CMR 10.00 et



seq.), and shall comply with the DEP Stormwater Policy. *See Exhibit 1, Findings and Decision of Comprehensive Permit at Condition 1 under Wetlands and Stormwater at p. 21; Testimony of William A. Depietri at P50/L19-25 (Trial Day 1, 01/13/21) and Mark Possemato at P83/L15-20.*

101. Park Central duly filed a Notice of Intent with the Conservation Commission seeking an Order of Conditions for the project under the Wetlands Protection Act during which Park Central submitted detailed engineered plans in support of its request. The Conservation Commission denied Park Central's request and Park Central has appealed to the Department of Environmental Protection (DEP). *Testimony of William A. Depietri at P50/L22 (Trial Day 1, 01/11/21) and Mark Possemato at P85/L2-25 and P87/L18-22 (Trial Day 11, 03/24/21).* I find that the Decision is appropriately conditioned on the issuance of a Final Order of Conditions without which the project cannot be built.

102. In order to construct and operate a proposed waste-water treatment plant Park Central must obtain a valid Groundwater Discharge Permit issued by the DEP for the wastewater treatment plant. *(See Exhibit 1 at p. 21 (Findings and Decision of Comprehensive Permit and Testimony of Depietri at P51/L1-3).* I find that the Decision is appropriately conditioned on the issuance of a Final Groundwater Discharge Permit without which the project cannot be built.

103. Prior to construction and the issuance of a building permit for any work on the Project Site Applicant must provide a Stormwater and Erosion Control Management Plan for the

Project satisfactory to the Conservation Commission or its Designee before. *See Exhibit 1 at p. 21.* I find that the Decision is appropriately conditioned on the issuance of this Plan without which the project cannot be built.

104. The Decision requires the installation of No-Left Turn signs in order to prohibit left-hand turns from John Boland Road onto Flagg Rd between the hours of 7am and 9am Monday through Friday, with the exception of school buses. *See Exhibit 1 at Special Condition 7 on p. 22 (Findings and Decision of Comprehensive Permit).* I find that the Decision is appropriately conditioned on the installation of the sign which addressed resident fears of increased traffic heading north on Flagg Road during morning peak. I further find that the efficacy of the sign can be determined by the Town and if directed by the Town the sign, for traffic safety reasons, can be removed. I acknowledge but do not credit the testimony of Police Chief Paulus or the inconsistent testimony of Mr. Cram that such signs are not enforceable. *See Testimony of Cram at p162/L20-24.*

105. I find that the increased traffic forecasted for the full-build project by TEC does not result in or create a condition or circumstance that will imperil the lives or safety of the project residents or the residents of the neighborhoods including the Plaintiffs. I further find the granting of the comprehensive permit was the product of a thorough and lawful public process, considered a sufficient quantity and quality of information submitted to the Board and now considered by this Court, much of which was professionally vetted, was subject to review of the Commonwealth through the MEPA review process, and duly considered. I find that the Decision was not arbitrary, capricious or based on legally untenable grounds.

106. I find that M.G.L. c 40B protects a party in interest from actual harms created by a proposed project that imperil their lives and safety and that traffic impacts, if factually proven as seriously injurious to an individual Plaintiff, fall within this protection.

107. In ruling on Summary Judgment this Court determined that the Plaintiffs' claim that "the Board's decision fails to protect the plaintiffs' health and safety by creating unsafe traffic conditions that specifically affect them" as supported by the Affidavit of Kenneth Cram, created a sufficient dispute of fact as to support the plaintiffs' claim of standing, which Defendants had challenged by citing "to the extensive reports and analysis regarding traffic impacts and safety by professional engineers engaged by the Town, stating that the consultants concurred that the increase in traffic anticipated in the completed integrated project would not make the roads at issue unsafe or over congested," *inappropriate for determination on summary judgment as facts were sufficiently disputed*. I find that the evidence presented at trial by both parties fully resolved all disputes of material facts on the issue of unsafe traffic conditions created by the Project.

108. I find that the TIASs submitted by Green International and TEC as reviewed and affirmed by GPI and Toole, together with the Testimony of Mr. Dandrade, Mr. DeGray, Ms. Galligan and the written materials authored by MassDOT fully rebut the assertions advanced by the Plaintiffs that the increased traffic that will result from the full build project will create a safety hazard that will imperil or specially and personally harm any one of them. I find that the evidence advanced by the Defendants, through their experts

and otherwise, demonstrate that the allegations of harm from forecasted increase in traffic are mere impacts and/or are unfounded or *de minimums*. I accordingly further find that the traffic impacts presented by Plaintiffs at trial are not interests protected by c. 40B and that the none of the Plaintiffs are truly and measurably harmed by increased traffic.

109. I find that the testimony of Kenneth Cram was devoid of any facts supporting his opinion that the motor vehicle distribution on Flagg Road, Lovers Lane and Lynbrook Road as forecast by TEC and confirmed and embraced by GPI and Toole were inaccurate or the product of misapplication of or failure to adhere to applicable professional and industry standards and methodology. I further find that Mr. Cram's conclusions were susceptible of independent study and fact gathering and that his failure to support his opinion render the same unreliable. Stated another way, if Lovers Lane and Lynbrook Road currently serve as frequent cut through for a heavy volume of traffic, such an assertion was susceptible of quantitative proof. Similarly, if Flagg Road presented serious safety concerns, crash summaries would have clearly disclosed the deficiency. No such proof was presented during trial.

110. I find that the Board was reasonable in relying on the information and testimony presented to it by TEC, GPI and Toole in reaching its Decision.

111. I find that Plaintiff Huang failed to demonstrate by direct facts and not by speculative personal opinion that he will be truly and measurable harmed by the forecasted increased in traffic or otherwise or that his harm is different from the concerns of the rest of the

community. I find that Mr. Huang is not aggrieved by the Decision.

112. I find that Plaintiff Perkins failed to demonstrate by direct facts and not by speculative personal opinion that she will be truly and measurable harmed by the forecasted increased in traffic or otherwise or that her harm is different from the concerns of the rest of the community. I find that Ms. Perkins is not aggrieved by the Decision.

113. I find that Plaintiff Herczeg failed to demonstrate by direct facts and not by speculative personal opinion that he will be truly and measurable harmed by the forecasted increased in traffic or otherwise or that his harm is different from the concerns of the rest of the community. I find that Mr. Herczeg is not aggrieved by the Decision.

114. I find that Plaintiff L'Abri Fellowship Foundation and its principal Mr. Keyes failed to demonstrate by direct facts and not by speculative personal opinion that it will be truly and measurable harmed by the forecasted increased in traffic or otherwise or that his harm is different from the concerns of the rest of the community. I find that L'Abri Fellowship Foundation is not aggrieved by the Decision.

115. I find that Plaintiff Brownell failed to demonstrate by direct facts and not by speculative personal opinion that he will be truly and measurable harmed by the forecasted increased in traffic or that his harm is different from the concerns of the rest of the community. I find that Mr. Brownell is not aggrieved by the Decision.

116. I find that the local concern for health and safety on the roadways in the neighborhoods proximate to the Project is outweighed by the needed for Affordable Housing in Southborough which has failed to attain the affordable housing inventory mandated by c. 40B. I find that the Board appropriately and reasonably considered and applied c.40B and the regulations promulgated thereunder in fashioning its Decision.

Date: June 4, 2021

THE DEFENDANTS,  
Park Central, LLC and William A. Depietri  
By Their Attorneys,

*/s/ Angelo P. Catanzaro*

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PAUL DREPANOS, as members of the TOWN OF  
SOUTHBOROUGH BOARD OF APPEALS  
By their attorney,

*/s/ Aldo A. Cipriano*

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above document was **served via email** upon counsel for all parties on June 4, 2021.

*/s/ David M. Click* \_\_\_\_\_