

To: Sherborn Zoning Board of Appeals
From: Stephanie Kiefer, Smolak & Vaughan LLP
Date: May 12, 2021
Re: 84-86 Coolidge Street, Coolidge Crossing 40B Application

Introduction: At the prior hearing, a public comment had been made suggesting the Board require the Applicant to provide public sidewalks extending from the project site. The off-site improvement would be not within the project site itself, but rather was proposed to exist along Coolidge Street. The Chairman has asked the Applicant to provide its response to the Board's authority to impose conditions beyond the project site.

Response: Chapter 40B itself was enacted by the Massachusetts legislature without any statutory provision authorizing a local board to require a developer to make off-site improvements to municipal services. See *Archstone Communities Trust v. Woburn*, No. 2001-07, slip op. at 24 (Mass. Housing Appeals Comm. June 11, 2003). Likewise, the Chapter 40B regulations provide that the difficulties in providing municipal services should not stand in the way of the development of affordable housing.

To the extent that in limited instances, off-site improvements may be appropriately conditioned as part of a project approval, those instances are not the rule, but rather the exception. Here, the lack of public sidewalks along Coolidge Street is not a problem that is necessitated by the development itself. The Town currently has no sidewalks in the suggested location; and if the lack of sidewalks along Coolidge Street is a shortcoming, such shortcoming existed long before the Coolidge Crossing project proposal. Moreover, there has been nothing in the traffic impact study and/or the peer review thereof which has identified an existing local concern created by this development proposal for such sidewalks. Similarly, there does not appear to be an issue with respect to the internal roadway and sidewalk configuration for the Coolidge Crossing project.

Hypothetically, even if the lack of public sidewalks could be deemed a valid local concern and such need for the same was directly owing to the proposed development itself- neither of which has been established- the imposition of a condition requiring an offsite sidewalk extending along Coolidge Street would only be justified where a supported technical or financial infeasibility foreclosed the Town from itself providing such public service. Financial infeasibility is not simply established that municipal resources are limited, but instead, that the infeasibility is associated with unusual topography, environmental or other physical circumstances that made the installation of a sidewalk prohibitively costly to the Town. See Way Finders, Inc. and Fuller Future, LLC v. Ludlow Zoning Board of Appeals, No. 2017-13, slip op. at 19 (Mass. Housing Appeals Comm., March 15, 2021); see also, 760 CMR 56.07(2)(b)(4).