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*Please respond to our Exeter office*

September 15, 2021

Lorne Parnell, Vice Chair  
Durham Planning Board  
8 Newmarket Road  
Durham, NH 03824

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RETIRED  
MICHAEL J. DONAHUE  
CHARLES F. TUCKER  
ROBERT D. CIANDELLA  
NICHOLAS R. AESCHLIMAN

Re: Mulhern Conditional Use Permit Application

Dear Chair Parnell and Members of the Board:

Enclosed please find a revised declaration for The Crossings Condominium. This revised declaration takes into account various questions raised either by Planning Board members or by Michael Behrendt. It is also my understanding that the Town Attorney, Laura Spector Morgan has reviewed the documents, so presumably any comments previously presented also include any she may have made.

The revisions also reflect a lengthy discussion held on September 1, 2021 between myself, Michael Behrendt and my client Marti Mulhern. The result is a product which we believe satisfies the Town's concerns as they relate to the relevant provisions of the zoning ordinance. In reviewing the attached document, please note that particular attention was paid to Article 7, Common Areas regarding the discussion of Association obligations for private infrastructure, and the absence of such obligation by the Town.

We also clarified that there is open space which is subject to conservation restrictions and which is more particularly addressed in Article 11, and that the area noted as " Crossing Green " is not subject to conservation restrictions but is to be of use for recreation for the residents. Two issues were raised by Michael Behrendt regarding the conservation restriction area;

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first, whether an executory interest is needed, and second, whether a contribution is needed for the stewardship fund. We believe that neither is required and that both can be waived. Pursuant to RSA 674:21-a, conservation restrictions are enforceable by a municipality. This statutory authority provides adequate protection to the Town without need of an executory interest. With regard to the Stewardship Fund, the public will not be utilizing the open space, the Association is obligated to maintain the space, including assuring that the restrictions are followed, and the Conservation Commission is welcome to inspect the site with reasonable notice to the Association and no costs will be incurred which would necessitate a contribution to the stewardship fund.

Finally, several questions were raised regarding the nature of the land units. While condominium units are commonly presented as either portions of a building or the entirety of a building, the statute allows for the flexibility to describe the unit as a portion of the condominium property, and which will include all improvements. It is my understanding that this model has already been used in Durham. In the case of The Crossings, a person buying one of the units would buy the land unit depicted as well as the right to construct a structure and driveway, or in later years, the improvements already in existence. The owner of the unit will have the rights and obligations to the unit described in the declaration and will have the obligation to maintain the Unit, although the owner will be subject to all of the restrictions of the condominium documents and any rules and regulations which may be adopted by the Association. Further, with regard to the duplex units, the condominium documents will reflect the Unit boundary to be the common wall and will note the obligations arising following a casualty loss.

We appreciate the opportunity to work through these revisions following on the covenants and questions of the Board and staff. We trust that this revised version satisfies the issues over which the Board has jurisdiction and we look forward to the grant of conditional approval.

Lorne Parnell, Vice Chair  
Durham Planning Board  
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Please contact me if you have any questions.

Very truly yours,  
DONANUE, TUCKER & CIANDELLA, PLLC

A handwritten signature in black ink that reads "Sharon Cuddy Somers". The signature is written in a cursive, flowing style.

Sharon Cuddy Somers, Esq.  
[ssomers@dtclawyers.com](mailto:ssomers@dtclawyers.com)

SCS/jlh

cc: Michael and Martha Mulhern

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