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Attorneys At Law

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Admitted in: MA, ME

May 12, 2022

HAND-DELIVERY

John J. McNicholas, Chair
Office of the Board of Appeals on Zoning
495 Main Street
Town of Medfield
Medfield, MA 02052

RECEIVED
TOWN OF MEDFIELD, MASS.
2022 MAY 12 P 2:30
OFFICE OF THE
TOWN CLERK

Re: Chapel Hill Landing Condominium / Michael Larkin / Country Estates of Medfield, LLC: Comprehensive Permit dated April 5, 2017, Decision Number 1300
Notice of Appeal Pursuant to G.L. c. 40A, §§ 8 and 15 to the Town of Medfield
Zoning Board of Appeals

Dear Mr. McNicholas

Please find enclosed as follows:

1. G.L. c. 40A, §§ 8 and 15, Notice of Appeal of the April 12, 2022 decision of the Building Inspector, Gary Pelletier.

Thank you for your attention to this matter.

Please call me if you have any questions.

Very truly yours,

MARCUS, ERRICO, EMMER
& BROOKS, P.C.

Norman F. Orban

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Town Clerk
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Re: Chapel Hill Landing Condominium / Michael Larkin / Country Estates of Medfield, LLC: Comprehensive Permit dated April 5, 2017, Decision Number 1300
Notice of Appeal Pursuant to G.L. c. 40A, §§ 8 and 15 to the Town of Medfield
Zoning Board of Appeals

This firm and the undersigned represents the Board of Trustees for the Chapel Hill Landing Condominium, which is the organization of unit owners for the Chapel Hill Landing Condominium (“the Condominium Trust”). The Condominium Trust has been aggrieved by the decision of the Town of Medfield Building Inspector dated April 12, 2022 and hereby Appeal said decision of the Building Inspector to the Zoning Board of Appeals.¹

The Condominium Trust states as ground for this appeal that said decision of the Building Inspector violates G.L. c. 40A and the Town of Medfield Zoning Bylaws. On or about March 29, 2022 this Office sent a letter to The Town of Medfield Building Commissioner, the Office of the Board of Appeals on Zoning and the Town Planner requesting that the Town of Medfield, through its Building Commissioner and/or Zoning Board of Appeals to take action to enforce the provisions of a Comprehensive Permit issued to Michael Larkin concerning the Chapel Hill Landing Condominium. A copy of this letter is attached hereto as **Exhibit “A”**. In particular this letter raised concerns relating to the (1) infrastructure; (2) driveways and landscaping; (3) stone walls; (4) stormwater management escrow; and (5) Comprehensive Permit Maintenance Obligations.

On or about April 12, 2022, the Town of Medfield Building Commissioner provided a written response to the Condominium Trust’s Letter. A copy of this letter is annexed hereto as **Exhibit “B”**. While the Building Commissioner’s response addressed some of the Condominium Trust’s concerns, the Building Commissioner failed to adequately address and/or

¹ The April 12, 2022 Decision of the Building Inspector was prepared by Building Commissioner, Gary D. Pelletier in response to the Condominium Trust’s G.L. c. 40A, § 7 request to the Town of Medfield Building Inspector to enforce the Zoning Bylaws.

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495 Main Street
Medfield, MA 02052
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enforce the Condominium Trust's concerns with respect to Michael Larkin and/or Country Estates of Medfield LLC's ("Larkin") Comprehensive Permit Maintenance Obligation.

The Comprehensive Permit at Section IV.K.4 provides that Larkin **shall be responsible for the following obligations at the Condominium until 75% of the units have been sold:**

- a. Access to Fire Hydrants;
- b. Maintenance of Landscaping;
- c. Private Street Maintenance;
- d. Private Sidewalk Maintenance;
- e. Private Trash Removal;
- f. Centralized mail delivery facilities;
- g. Maintenance of all sewer and water lines;
- h. Maintenance of Project Storm Water Management Facilities; and
- i. On site driveways, roads, utilities, drainage systems and all other infrastructure.... including but not limited to snow removal and landscape maintenance.

Contrary to the recited provision of the Comprehensive Permit above, from the date of creation of the Condominium on December 29, 2017 until the conveyance of the 37th unit (75% sales) Larkin has not exclusively paid for the landscape maintenance, road and driveway maintenance (i.e., snowplowing), and trash removal. All of those items have been paid by condominium fees collected from the unit owners during the applicable period. That figure by unit owners is approximately \$207,000.

In response to this the Building Commission stated as follows:

"Comprehensive Permit Maintenance Obligation.

After reviewing your complaint and reviewing CP Condition K.1-K.4, I find no language addressing, specifying or exempting use of funds for the required private maintenance obligations of the Condominium Association. Therefore I cannot make a determination relative to responsibility, compliance or violation with regards to the source of funds used to meet the required private maintenance obligations, so I will take no action but defer to each parties counsel and/or Medfield ZBA to make a determination of law and or intent of the condition."

(See **Exhibit "B"**).

This provision was inserted to protect condominium unit owners from high condominium expenses during the construction phase of the condominium, as the payment requirement for certain expenses terminated at 75% sales. It presumably terminated at 75% sales because it was assumed that the entire project would be at 75% completion when 75% of the units had been sold. The project is far from complete, even though it is almost sold out. What is deeply

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concerting is that portions of this \$207,000 obligation belonging to Larkin have been paid by affordable unit owners, already resulting in a substantial increase in monthly dues. Moreover, some of these payments were made by Larkin improperly transferring the Condominium's reserves to cover the costs (leaving all unit owners with far less reserve protection than intended). The Condominium Trust requests that this condition of the permit be enforced and no further certificates of occupancy be issued until the condition has been satisfied.

Therefore, in accordance with the provisions of G.L. c. 40A, §§ 8 and 15, the Condominium Trust does by this Notice appeal the April 12, 2022 decision of the Building Inspector, Gary Pelletier in refusing to enforce Larkin to comply with the Comprehensive Permit's Maintenance Obligations.

Thank you for your attention to this matter.

Please call me if you have any questions.

Very truly yours,

MARCUS, ERRICO, EMMER
& BROOKS, P.C.

Norman F. Orban

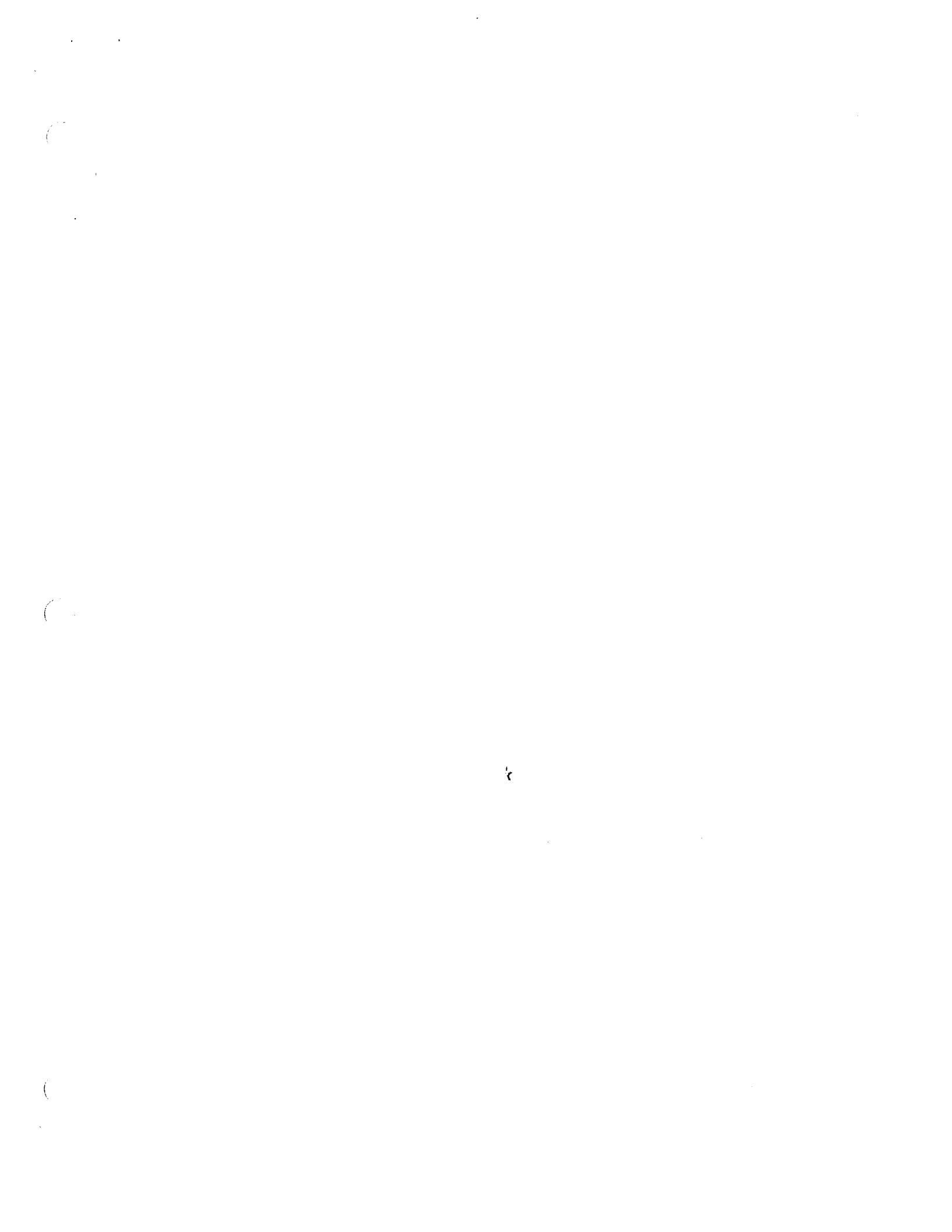
Norman F. Orban

/NFO

cc: Chapel Hill Landing Condominium Trust
Tim Schofield, Esq.

Gary Pelletier, Building Commissioner
Town of Medfield
495 Main Street
Medfield, MA 02052

John J. McNicholas, Chair
Office of the Board of Appeals on Zoning
495 Main Street
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Medfield, MA 02052



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Attorneys At Law

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Edmund A. Allcock
781.843-5000 x 137
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Admitted in: MA, NH and RI

March 29, 2022

BY E-MAIL TRANSMISSION ONLY

Gary Pelletier, Building Commissioner
Town of Medfield
495 Main Street
Medfield, MA 02052

John J. McNicholas, Chair
Office of the Board of Appeals on Zoning
495 Main Street
Town of Medfield
Medfield, MA 02052

Sarah L. Raposa, AICP
Town Planner
495 Main Street
Town of Medfield
Medfield, MA 02052

**Re: Chapel Hill Landing Condominium / Michael Larkin / Country Estates of Medfield,
LLC: Comprehensive Permit dated April 5, 2017, Decision Number 1300**

Dear Mr. Pelletier, Mr. McNicholas, and Ms. Raposa:

This firm and the undersigned represents the Board of Trustees for the Chapel Hill Landing Condominium, which is the organization of unit owners for the Chapel Hill Landing Condominium. At the outset it is important to point out that the developer of the Condominium, Country Estates of Medfield, LLC and its principal Michael Larkin (collectively "Larkin") are no longer Trustees of the Condominium Trust, as the Developer control period has ended. The current Trustees of the Condominium are two of its unit owners, Brad Miller and Lloyd Sanders, both of whom were elected to serve in that role by their fellow condominium owners. Pursuant to the condominium documents, the Massachusetts Condominium Act and applicable law, the Condominium Trust is in control of the Condominium. Any inquiries with respect to condominium approval or authority should be addressed to the Condominium Trust and not to Larkin.

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Office Hours: Monday – Friday ■ 9:00 AM – 5:00 PM
New Hampshire 603.891.2006 ■ Rhode Island 401.351.2221

Gary Pelletier, Building Commissioner
John J. McNicholas, Chair, Zoning Board of Appeals
Sarah L. Raposa, AICP, Town Planner
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As you know, in 2017 the Town of Medfield issued a Comprehensive Permit to Larkin for the construction of a 40B affordable housing project for 49 condominium units (13 of which are affordable). To date 41 of those units have been sold to third parties. The final eight units are nearly complete and are expected to be sold in the next couple of months. Unfortunately, nearly five years into this project, there remain numerous unfinished, incomplete and non-compliant permit items at the Condominium. The Condominium Trust and its units owners have been in communication with Larkin (through counsel) relative to some of these items (mostly with respect to completion timelines), as the Condominium Trust and its unit owners (26.5% of whom are affordable) are very concerned that Larkin is inclined to finish the project, sell the final eight (8) units, and leave the Condominium and its residents holding the bag, as there is no bond in place for the completion of the condominium infrastructure. My clients are astonished that a project in the Town of Medfield would be allowed to proceed in this fashion (i.e., unfinished roads, torn up front lawns (with irrigation piping protruding above ground in many locations), sidewalks never installed, temporary curbing ripped up over six months ago and not restored pending delays in installation of never-installed final granite curbing, torn up irrigation system, unfinished landscaping, unfinished driveways) among other issues (see below), when nearly all of the units have been sold.

Even more disconcerting, Larkin recently advised the Condominium Trust that he intended on meeting with the Town Planner and the Building Commissioner this week to discuss what he characterizes as minor modifications to the Comprehensive Permit to eliminate or limit some of his obligations under the permit. While we do not believe any formal modification request has been made, as of yet, the Condominium Trust does not believe that elimination of project specific requirements contained in the Comprehensive Permit would constitute a “minor modification”, such that it would not require notice and an opportunity to be heard. The Condominium Trust believes that any such modifications would be major modifications requiring abutter notice (including notice to every condominium unit owner) and a public hearing. To the extent Larkin is going to have communications with the Town relative to completion or modification of this Condominium Project, the Condominium Trust wants to be involved.

Moreover, at this juncture, the Condominium Trust believes that it is appropriate for the Town, through its Building Commissioner and/or Zoning Board of Appeals to take action to enforce the provisions of the Comprehensive Permit. The issues that should be enforced at this point include the following:

1. Infrastructure. Notwithstanding the fact that the condominium project is almost finished and sold out as far as units are concerned, the project infrastructure, namely the roads, front lawns, temporary asphalt curbs, and irrigation system literally were ripped up last year and remain in that state today. There is no identified date for completion and no bond or other security provided to the Town or to the Condominium by Larkin to ensure completion of the infrastructure. As noted above,

this is disconcerting to the condominium residents as there is no bond in place and there is no definitive timeline for completion. While Larkin claims to have set aside some monies with his lender, the amount is outdated and insufficient in both size and scope to complete the project, and in any event may protect the lender but does not protect the Condominium or the Town. At this point the Condominium Trust believes that no further certificates of occupancy should issue until either (1) the infrastructure is completed or (2) appropriate security or bonding is put in place to secure the same (and which includes a definite timeline for completion of the infrastructure).

2. Driveways and Landscaping. Additionally, none of the granite curbing has been installed nor have driveways been finished. Some of the required guest parking spaces have been partially installed and many are damaged; moreover, Larkin has refused to pave the guest parking spaces with cobblestones as specifically required by the plans, instead opting for cheaper and less durable concrete pavers (the plans specifically distinguishes between the cobblestones for the guest spots and pavers that are approved for use in front and rear patios). Landscaping for the last approximately 15 units (half of which have been conveyed to third parties) is incomplete or non-existent. Erosion control has been an ongoing concern of the Town, and with some temporary curbs and all front lawns ripped out approximately six months ago, the situation has been aggravated.

Moreover, Larkin has failed to remove and replace dead trees, and has failed to install many of the trees and bushes specified on the submitted landscape plan. We are in the process of conducting a survey of the same. The Condominium Trust opposes any attempt to modify the submitted plan and requests that the conditions be enforced immediately and/or appropriate security be provided to ensure timely completion.

Finally, despite the condition of Amendment No. 1372 dated October 9, 2019 to the Comprehensive Permit of “[i]nstallation and maintenance of dark sky compliant lights at the entrances of the property,” Larkin has refused to install such compliant fixtures, and for months has failed to repair one broken fixture at the entrance to Stoneridge Way.

3. Stone Walls. The Landscape Plan approved as part of the Comprehensive Permit requires the re-building of stone walls at the North and West boundaries of the condominium property. See, **EXHIBIT “A”**. These stone walls were significant improvements that were considered by the Town in issuing its decision. Note that Section I.(9) of the Comprehensive Permit provides:

At the Board’s January 12, 2017 hearing, the Applicant proposed several changes to the development it was willing to accept in the context of a mutually agreeable Comprehensive Permit issued by the Board. The proposal, under which

Applicant agreed to add one (1) additional affordable unit....**also included enhanced landscaping improvements**.....See, Comp. Permit Section I.(9).

Discussions with Larkin have indicated that he has no intent in rebuilding these stone walls around the North and West perimeters of the condominium property, despite the fact that they were offered as landscaping improvements in connection with the permitting process. Instead, he has stated he will only make repairs to existing walls. In fact, the Condominium and its residents believe that Larkin will request a modification eliminating this requirement from the permit entirely. The stone walls also provide a certain distinctive feel and character to the property consistent with other homes in Medfield and were a selling point to the residents. The Condominium Trust opposes any attempt to remove this condition/requirement from the Comprehensive Permit and requests that the condition be enforced immediately and/or appropriate security be provided to ensure timely completion.

4. Stormwater Management Escrow: Section IV.K.1 of the Comprehensive Permit for the Project requires that Larkin establish a reserve for the repair and replacement and maintenance of the common storm water management facilities at the Condominium. The reserve including the amount was originally to be determined and funded **prior to the first conveyance of a unit. That deadline was extended to prior to the sale of the 10th unit** (by Amendment No. 1352 to the Comprehensive Permit dated October 12, 2018) at Larkin's request. In any event, the escrow has not been determined or funded and as indicated above, 41 units have been conveyed. It should also be noted that many unit owners have experienced water infiltration into their basements, some of which seem to have been resolved but others have not. We believe that if the stormwater and drainage system of the project had been properly designed and was in good working order, these conditions likely would not have occurred. No further certificates of occupancy should be issued until these issues are examined and Larkin funds an appropriate reserve (presumably in an amount satisfactory to the Town's consultant (Tetra Tech)).

5. Comprehensive Permit Maintenance Obligation: The Comprehensive Permit at Section IV.K.4 provides that Larkin **shall be responsible for the following obligations at the Condominium until 75% of the units have been sold**:
 - a. Access to Fire Hydrants;
 - b. Maintenance of Landscaping;
 - c. Private Street Maintenance;
 - d. Private Sidewalk Maintenance;
 - e. Private Trash Removal;
 - f. Centralized mail delivery facilities;
 - g. Maintenance of all sewer and water lines;
 - h. Maintenance of Project Storm Water Management Facilities; and

Gary Pelletier, Building Commissioner
John J. McNicholas, Chair, Zoning Board of Appeals
Sarah L. Raposa, AICP, Town Planner
March 29, 2022
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- i. On site driveways, roads, utilities, drainage systems and all other infrastructure... including but not limited to snow removal and landscape maintenance.

Contrary to the recited provision of the Comprehensive Permit above, from the date of creation of the Condominium on December 29, 2017 until the conveyance of the 37th unit (75% sales) Larkin has not exclusively paid for the landscape maintenance, road and driveway maintenance (i.e., snowplowing), and trash removal. All of those items have been paid by condominium fees collected from the unit owners during the applicable period. That figure by unit owners is approximately \$207,000.

This provision was inserted to protect condominium unit owners from high condominium expenses during the construction phase of the condominium, as the payment requirement for certain expenses terminated at 75% sales. It presumably terminated at 75% sales because it was assumed that the entire project would be at 75% completion when 75% of the units had been sold. As noted above, the project is far from complete, even though it is almost sold out. What is deeply concerning is that portions of this \$207,000 obligation belonging to Larkin have been paid by affordable unit owners, already resulting in a substantial increase in monthly dues. Moreover, some of these payments were made by Larkin improperly transferring the Condominium's reserves to cover the costs (leaving all unit owners with far less reserve protection than intended). The Condominium Trust requests that this condition of the permit be enforced and no further certificates of occupancy be issued until the condition has been satisfied.

There are other issues as well, however the above are the primary issues with the condominium and the permit. The Condominium and its residents would like to enjoy their new community and love the Town in which it is located. They just want the Condominium infrastructure finished as it was originally permitted and for Mr. Larkin to be required to honor and satisfy the conditions contained in the Comprehensive Permit. Since many of the condominium residents are affordable unit owners, it would be unconscionable to saddle them with Mr. Larkin's obligations (including his required escrow and maintenance obligations).

The Condominium and its residents respectfully request that any requested modifications at this point to the Comprehensive Permit be denied and instead all of the conditions above be enforced and that the Town use its powers to enforce the same. Finally, the Condominium Trust requests that they be involved in any future discussions or decisions at the Town level relative to the Condominium.

Gary Pelletier, Building Commissioner
John J. McNicholas, Chair, Zoning Board of Appeals
Sarah L. Raposa, AICP, Town Planner
March 29, 2022
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Thank you for your attention to this matter.

Please call me if you have any questions.

Very truly yours,

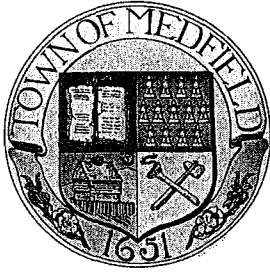
MARCUS, ERRICO, EMMER
& BROOKS, P.C.

Edmund A. Allcock

Edmund A. Allcock

/EAA

cc: Chapel Hill Landing Condominium Trust
Tim Schofield, Esq.



TOWN OF MEDFIELD

Office of the
BUILDING DEPARTMENT

Phone (508) 906-3005

Fax (508) 359- 6182

Gary D Pelletier, CBO
**Building Commissioner/
Zoning Enforcement Officer**

April 12, 2022

Mr. Edward Allcock
Marcus, Errico, Emmer & Brooks PC
45 Braintree Hill Office Park, Suite 107
Braintree, MA 02184-8733

Re: Chapel Hill Landing

Dear Mr. Allcock:

This letter is in response to your request for enforcement relative to Medfield Comprehensive Permit (CP) 1300, Chapel Hill Landing/ Country Estates, Michael Larkin et al. Your requested enforcement/ action taken to enforce provisions of Decision 1300 on the following specific issues detailed in your letter of 3/29/22 to wit;

1. Infrastructure
2. Driveways and Landscaping
3. Stonewalls
4. Storm water Management & Escrow
5. Comprehensive Permit Maintenance Obligation

Since receiving your request for enforcement I have taken the following actions:

- Met with Mr. Michael Larkin and Medfield Town Planner Sarah Raposa at Medfield Town Hall to discuss the status of the project and outstanding items to be completed and the proposed timeline. (note: this meeting was scheduled prior to the receipt of your complaint)
- Conducted a site visit to establish my own assessment of the project and current conditions
- Reviewed the Comprehensive permit file, Decisions and plans
- Met on site with Medfield Town Planner, Brad Miller, Steve Dannin and Lloyd Sanders

With regard to your comments relative to Mr. Larkin requesting minor changes/modification to the Approved Plans as described in section A.9 of the Comprehensive permit. As of the date of this letter no request for any change/modification has been received. Any future request by Mr. Larkin will be reviewed and addressed as stipulated in section A.9. With regard to your list of concerns, my response is as follows.

1. **Infrastructure** (CP sec A.17)

The infrastructure is to be installed in accordance with the Approved Plans. There is not timeline in the condition and no bond was required. In response to inquiry directly to Mr. Larkin on this subject, he has committed to commencing in mid-April and completing the curbing and paving by May 30, 2022 (weather permitting) and the remaining landscaping irrigation and final paving by June 30, 2022. Once again there is no required completion timeline in the decision, so no enforcement action can be taken at this time, however given the season, and amount of work to be completed, I believe those target dates are reasonable and appropriate. I will monitor Mr. Larkins progress, but I will take no enforcement action at this time.

2. **Driveways and Landscaping**

This is partially addressed above regarding paving, curbing and landscaping. As for the change from cobblestones to pavers I am awaiting clarification from McKenzie 7/10/17 submission. Additionally on my site visit I did not observe any dead landscape stock, albeit most are still in winter hibernation, but the CP section E.8 requires replacement within 1 year. With regard to “Dark Sky” the site is largely compliant with the notable exception of the lights on the 2 entry walls, which Mr. Larkin has committed to replace with approved “Dark Sky” fixtures.

3. **Stone Walls**

The CP Approved Landscaping plans from 1/30/17 detail the requirement to “rebuild stone wall at property line” on two areas. However there is currently a question as to whether or not the walls in question are actually on the Country Estates property. I have advised Mr. Larkin to have his land surveyor stake the property lines, so that a clear determination can be made in the field. If the walls are in fact on Country Estates property, then Mr. Larkin will be responsible to repair/rebuild in accordance with the approved plans and I will provide verification of compliance. If in fact the walls are not on Country Estates Property then the landscape plan will need to be amended to remove the notation and thus the requirement for rebuilding the walls. This will need to be a modification approved by Medfield ZBA. I will continue to monitor the site work but will take no further enforcement action at this time.

4. **Storm water Management**

Compliance with the approved plans has been and will continue to be inspected and certified by Tetra Tech, and McKenzie Engineering Group and escrow funds are still intact and available. Regular field inspections are scheduled in the coming weeks. Regarding basement flooding on site, there have been a few isolated incidents which I have personally investigated and ordered abated, none of which were related to a failed storm water management system. The causes varied from either improper or incomplete grading which directed water towards foundation walls, downspouts not connected to drains, sump pumps discharging improperly, bulkhead improperly attached and sealed, bulkhead doors left open during a storm and other correctable issues. All of these instances, to my knowledge, have been successfully abated, and I have not received a complaint about a wet basement in over a year. Furthermore, a “dry basement” is generally covered in the builder’s warranty and is the responsibility of the Licensed Construction Supervisor who supervised the construction under the building permit. All foundations at Country Estates have been fully inspected for code compliance by the Medfield Building Department. Those inspections included, Excavation, Footing Steel Reinforcement, Wall Steel Reinforcement, Foundation Damp Proofing, and Foundation Drainage. A mid-project review was conducted and in August 2019 to detail storm water

and foundation drainage existing and proposed (attached memo and plans) on site. A final as built certification will be required prior to the close out of the comprehensive permit and I will continue to monitor conditions on site but I will take no further enforcement action at this time.

5. **Comprehensive Permit Maintenance Obligation.**

After reviewing your complaint and reviewing CP Condition K.1-K.4, I find no language addressing, specifying or exempting use of funds for the required private maintenance obligations of the Condominium Association. Therefore I cannot make a determination relative to responsibility, compliance or violation with regards to the source of funds used to meet the required private maintenance obligations, so I will take no action but defer to each parties counsel and/or Medfield ZBA to make a determination of law and or intent of the condition.

In closing please be assured that since my tenure began for the Town of Medfield in 2018, I have closely monitored the construction of Chapel Hill Landing/ Country Estates and have strictly enforced the requirements of the MA State Building Code and Medfield Zoning Bylaws including ZBA and Planning Board decisions as my record can attest, and I will, in concert with other Medfield departments continue to require compliance by Mr. Larkin, as I do with all developers working in Medfield. Occupancy Certificates are and will continually be issued in strict compliance with 780 CMR 51 sec R111. The remaining Certificates of Occupancy, all of which are forecast to be issued in the final 90-120 days of the project, will all be issued with “conditions” (see attached letter 4/12/22 to Michael Larkin) and in strict compliance with 780 CMR 51 sec R111.

Please be additionally advised that any decision to act or not to act on my behalf that aggrieves a resident of Medfield can be appealed to the Medfield Zoning Board of Appeals.

Feel free to contact me with any question.

Respectfully,

Gary D Pelletier, CBO
Building Commissioner
Zoning Enforcement Officer

Cc: File
Medfield Town Planner
Medfield Town Counsel
Medfield Town Administrator