

November 18, 2025

Town of Franklin
Town Council
355 E Central Street
Franklin, MA 02038

Re: Resolution 25-73
Proposal to Withdraw Support of Proposed Chapter 40B
Affordable Housing Project Located at 444 East Central Street

Dear Town Councilors:

The undersigned are legal counsel to TAG Central, LLC (“Applicant”), the applicant with respect to the proposed affordable housing development known as the Residences at 444 Central (“Project”), located at 444 East Central Street, Franklin, MA (“Project Site”). We write to convey our client’s position regarding Resolution 25-73, in which the Council is considering whether to withdraw its support for this Project. We respectfully request the Council’s leave to speak on behalf of our client during your discussion of this Resolution at your November 19 meeting to convey our client’s position.

Background and history: the Project and the Local Initiative Program (LIP)

By way of background and reminder, the Project was designed in consultation with the Town of Franklin as a Local Initiative Program (LIP) project (a/k/a “Friendly 40B”). The LIP program was created in 1991 based on the recommendations of a special legislative commission as a means of creating a municipal planning tool with which towns and cities may “control their own destiny” with respect to the development of affordable housing in their communities. Rather than waiting for private developers to descend on the community with “unfriendly” 40B projects, municipalities are encouraged to avail themselves of the LIP program, and by doing so gain a seat at the table in the planning and development of affordable housing projects.

The LIP program is intended to be a public-private collaboration – if not a partnership – between private developers and municipal leaders to facilitate the creation of affordable housing. The success of this program depends on there being a cooperative, good faith



working relationship between developers and municipalities to respond to the need for affordable housing while also advancing local planning initiatives.

To that end, our client participated in a rigorous, nearly yearlong review process under the procedures of the Town of Franklin LIP Review Process, which consisted of numerous public meetings before the Planning Board, Conservation Commission, and Town Council. Following that process, each of these departments voted to support the Project, including unanimous votes from the Planning Board and the Conservation Commission. Following these votes of support, the Council voted on June 5, 2024 to support the Project under the LIP program and to co-sign a request for a determination of project/site eligibility by the Executive Office of Housing and Livable Communities (“HLC”). HLC later issued that finding by Project Eligibility Letter (“PEL”) dated February 12, 2025.

On February 27, 2025, our client filed with the Franklin Zoning Board of Appeals (“ZBA”) an application for a Comprehensive Permit approving the Project. That application is currently under review by the ZBA. Consistent with the cooperative approach that the LIP program requires, our client has worked in good faith with the ZBA, including agreeing to a review period that has already significantly exceeded the time periods allotted to the ZBA by law.

HLC’s Chapter 40B *Guidelines* require municipalities to act in good faith and prohibit unreasonable withdrawal of support for LIP projects

In recent months, there have been public calls by some members of the Franklin community for the Council to reconsider its support for this Project. These efforts seemingly coincided with the ZBA’s consideration of possible Project alternatives to address issues of parking and building height. With the Council’s written support, these issues were addressed by maintaining the proposed 3-story building height and reducing the parking count. The current Project plans are not only consistent with the plan that the Council originally supported, they also include concessions that are beneficial to the Town, neighbors, and the neighborhood – including a reduced unit count, reduced building roof heights, increased buffer areas, increased setback to neighbors, and enhanced screening through the preservation of existing trees and the planting of new trees.

Following a recent change to the membership of the Council, Resolution 25-73 now proposes to do just that. We write to urge the Councilors not to take such an action. The position of the Applicant is that it would be not only legally improper for the Council to do so, but also it would have no legal effect regarding the Project’s ability to proceed as a Chapter 40B development going forward.



The procedural particulars of the LIP program are outlined in Section VI of HLC's *Guidelines: G.L. c. 40B Comprehensive Permit Projects*, promulgated in December 2014 under the authority set forth in Chapter 40B regulations, 760 CMR 56. *Guideline* VI.3.1.a requires municipalities participating in the LIP program to “act in good faith” and prohibits “local support for housing proposed under the LIP [from being] unreasonably withheld.” This is because “[t]he purpose of LIP is premised on the fact that a municipality and a developer are working in concert on a project that meets the community’s needs.” As such, **municipal support for a LIP project may be withdrawn only “[i]f a project changes substantially during the course of the permitting process, such that it is no longer consistent with that which was approved by the chief executive officer and [HLC].”** *Guideline* VI.3.1.a .

In circumstances in which there is a change to a project that is so substantial that the project is no longer consistent with its PEL, *Guideline* VI.8.d requires the applicant to obtain an amended PEL – as well as the “concurrence of the [municipality’s] chief executive officer for the proposed change.” However, even in this situation where there is a project change so substantial that the project is out of compliance with its PEL, this *Guideline* prohibits the chief executive officer from unreasonably withholding municipal support and authorizes HLC “issue an amended Determination without such local approval, [if] it is unreasonably withheld”.

Applying these *Guidelines* to the Project, although there have been various minor changes to the Project, there have been no substantial changes to the Project since the Council’s June 5, 2024 vote of support of the Project – and certainly none that render the Project inconsistent with the PEL issued by HLC.¹ The minor changes that have occurred routinely occur in the context of the iterative Chapter 40B review process – and indeed are indicative of the Applicant’s good faith dealings inasmuch as the changes reflect the Applicant’s responsiveness to public feedback. It therefore follows that it would be unreasonable for the Council to withdraw its support for the Project. See *Guideline* VI.3.1.

It bears noting also that the Applicant has worked in good faith for over two years in designing the Project in concert with the Town – and has expended significant time and effort and incurred great expense in doing so. It would be prejudicial to our client – and plainly unreasonable – for the Council to now renege on its support of the Project due to nothing more than a change in heart, or a change in the Council’s membership.

¹ For reference, whether a project change is “substantial” is determined in accordance with 760 CMR 56.07(4). Examples of substantial changes include increases of more than 10% in unit count or building height, or a change in housing tenure (i.e., rental vs. ownership). None of the changes to this Project even approach this level of substantiality.



We therefore respectfully urge the Councilors to vote “no” on Resolution 25-73.

**A vote by the Council to withdraw support for the Project
will not affect the Project’s ability to proceed under Chapter 40B**

Although it is our client’s earnest hope that the Council will not vote to renege on its support of the Project, it may be instructive to consider what would occur if the Council does do so. From public discussions and media coverage of the public pressure campaign to induce the Council to rescind its support for the Project, the apparent motivation for doing so is a misguided belief that the Council’s withdrawal of support would spell the demise of the Project. That is incorrect.

Even if the Council votes to withdraw its support for the Project, that is not something that the ZBA would be legally permitted to take into consideration in its review and assessment of the Project. Specifically, 760 CMR 56.04(4)(a) states that “[t]he Board shall not address matters in the hearing that are beyond its jurisdiction under M.G.L. c. 40B, §§ 20 through 23 and 760 CMR 56.00 and that lie solely within the authority of the Subsidizing Agency.” Per 760 CMR 56.04(1), the Project’s eligibility under the LIP program is one of the matters that is exclusively within the jurisdiction of the Subsidizing Agency (i.e., HLC). As regards the ZBA’s hearing, where, as here, HLC has issued a PEL for the Project, that PEL constitutes “conclusive evidence that the Project and the Applicant have satisfied the project eligibility requirements of 760 CMR 56.04(1).” 760 CMR 56.04(6).

It follows from these regulations that the ZBA lacks jurisdiction to consider issues relating to the Project’s eligibility under the LIP program – including whether the Council may have withdrawn its support for the Project. Thus, it would be an abuse of discretion for the ZBA to take into consideration such information in its determination as to whether to approve the Project. Rather, the ZBA is legally obligated to limit its review of the Project to the question of whether it is Consistent With Local Needs, as defined in the 40B regulations.

Even if the ZBA were to improperly take into consideration any action by the Council to rescind its support for the Project, **Chapter 40B case law affords our client a reasonable opportunity to obtain a new PEL** either under the LIP program or under a different subsidy program without the need to start from scratch or file a new Comprehensive Permit application.

In sum, even if the Council votes to withdraw support for the Project, HAC case law establishes that the Applicant is entitled to a reasonable period of time to either negotiate with the Town with respect to getting back the Town’s support for the Project, or to seek a PEL from a different subsidizing agency under a different subsidy program. It is anticipated that in this scenario, the Applicant would do the latter.



Seeking a new PEL from a different subsidizing agency will be costly and time consuming to our client. If our client is forced to do so as a result of adverse action by the Council, it bears noting that the Town will lose its seat at the table in the design of the Project. Moreover, certain concessions, public contributions, and impact mitigation measures offered by our client during the review process may unfortunately need to be withdrawn in order to cover the increased expense our client would be forced to incur, resulting in a Project that may be less responsive to public feedback and more impactful to abutters. The same result would occur if this matter results in litigation. This is an outcome that our client earnestly wishes to avoid, but our client must reserve all rights with respect to protecting their significant investment-backed expectations with respect to the development of this Project.

Conclusion

In conclusion, I again respectfully urge the Council, on behalf of our client, to reconsider the action proposed to be taken at your November 19, 2025 meeting. Please vote no on Resolution 25-73. Thank you for your attention to this matter and for taking our client's position into consideration.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read 'J. D. Schomer', written over a horizontal line.

Jesse D. Schomer, Esq.
Dain, Torpy, Le Ray, Wiest & Garner, P.C.

/s/ Peter L. Freeman, Esq.

Peter L. Freeman, Esq.
Moriarty, Bielan, & Malloy, LLP

- cc. Jamie Hellen, Town Administrator
Mark Cerel, Esq., Town Counsel
Julie McCann, Town Council Operations Manager
LIP Program, Executive Office of Housing and Livable Communities (EOHLC)
Clients