

COMMUNITY DEVELOPMENT COMMITTEE

(Town Council Sub-committee)



Contract Zoning Application Concept Review Findings and Recommendations

Homestead Acres, LLC, c/o David Chase - Map Lots U42-15; R07-156, 157, 158 and 158A; U44-35, 35B, 35C, 35D, 35E and U43-12A

The Community Development Committee, under Section 19-26.5.7 of the Code of Ordinances submits these findings and recommendations regarding an application by Homestead Acres, LLC for a contract zoning agreement conceptual review. The project consists of approximately 151 dwelling units (48 multi-family units and 103 single family units) on approximately 52 acres on various parcels as listed above off, Route 100 and Mountain Road.

The concept plans listed below and prepared by Sebago Technics for Chase Excavating dated June 30, 2017 are attached to these findings.

1. "Preliminary Phasing Plan" of Homestead Farms Subdivision"
2. "Concept Sketch 18 of Homestead Farms Subdivision"

The CDC has reviewed the application packet dated April 20, 2017 and subsequent information submitted on June 1, 7, 8, and 27 and July 3, 2017. The committee recognizes that their role is to review the project concept and offer input prior to a formal application. All final negotiations of a contract zoning agreement will occur between the Town Council and the applicant.

1. The proposal as submitted is consistent with the adopted 2013 Comprehensive Plan (Plan). – The CDC concurs that the application meets the goals of the following sections of the Comprehensive Plan..

- a. The project area (Route 100/26 area) is identified in the Plan as a proposed commercial and mixed use growth area.
- b. Executive Summary identifies this area as having potential for compact development and is further shown as a potential area for compact development on Map 10A in the Plan. The contract zoning will provide smaller lots with a street grid where the land characteristics allow.
- c. Future Land Use - Community Vision, states that there is a preference for more of the growth area to be accessible to public sewer service. The proposed contract zoning relies on the extension of sewer to provide compact development.
- d. Future Land Use - Summary mentions generally and specifically the desirability for pedestrian/bicycle connectivity within the Route 100 mixed use area. This development provides an alternative to the use of Route 100 to move north and south in the corridor.
- e. Future Land Use - Growth and Rural Areas - Commercial Growth Areas states "Well-planned residential development is envisioned to be integrated in these commercial areas." The proposed contract zoning will provide a primarily residential component in the area with some commercial development. The entry from the Route 100 supports the existing commercial uses along the Route 100 frontage and provides additional frontage for new commercial development.

- f. **Future Land Use - Residential Growth Areas** recommends that the growth share within this area increase "from less than 50% to a significant majority share of all new residential growth [in the town]." The proposed contract zoning supports this goal as any growth permits issued will limit the available permits in the rural area in each development year of the project as rural area growth permits are not allocated specifically to the rural area and may be consumed in the growth area.
- g. **Implementation Strategies Matrix, Theme 5** calls for pedestrian/bicycle connectivity within and between developments. The contract zoning provides connectivity within and to multiple parcels.

2. The proposal is consistent with the existing, permitted and conditional uses within the underlying zoning district;

The project is in the VMU district with the Route 100 Corridor overlay. Single-family housing, multi-family housing and commercial development are uses permitted in both districts. All development will comply with all shoreland district requirements.

3. The proposal includes only conditions and restrictions that relate to the physical development or operation of the property.

The following variations to current zoning have been submitted to the Town. It is recognized that additional variations may be submitted based on a complete review of all related ordinance provisions. The final list of variations should be developed during the formal application process and will be included in the contract zoning agreement.

CH II-19-14 Village Mixed Use District (VMU)

	<u>Current</u>	<u>Contract</u>
a. Minimum Lot Width	150 feet	50 feet
b. Maximum Lot Coverage	35%	40%

Minimum setbacks for residential lots:

a. Front	25 feet	15 feet
b. Side	15 feet	8 feet
c. Rear	15 feet	8 feet
d. Maximum front setbacks for 100-102 Gray Rd	na	0-25 feet ¹
e. Maximum front setback for new commercial buildings on U42-015	na	0-10 feet
f. Dwelling Unit density allowance (sq ft per unit) (on sewer)	10,000 sf	7,500 sf

Appendix 7-5-E Street Design Standards

	<u>Current</u>	<u>Contract</u>
a. Minimum Distance Between Intersections		

¹ The two existing buildings may be expanded provided that any expansion toward the Mountain Road right of way or the new street frontage for 102 Gray Road shall be a maximum of 25 feet from the edge of the right of way. Any other expansion toward a side or rear lot line may occur up to 50% of the existing building gross square footage. Any expansion beyond 50% shall include compliance with the front setback.

	on the same side:	300 feet	200 feet
b.	Collector Street Minimum Pavement Width	34 feet	28 feet
c.	Subcollector Street Minimum Pavement Width	30 feet	24 feet

Sec.19-69 Rate of Residential Growth

Annual Restriction - Up to 18 single-family units per year may be exempted from a growth permit at such time as there are no available permits in the single-family/two-family category.

Total Project build out

- a. Any unit, either single or multi-family shall be exempt from growth permits if they meet the "housing for older persons" requirements. Any growth permit issued for a spec dwelling may be transferred to another unit if the sale meets the "housing for older persons" zoning requirement.
- b. Up to 34 "entry-level" units shall be exempt from growth permits provided that they are restricted for a three-year period from the date of sale to a sale price equal to or less than the original sale price plus inflation (CPI), are occupied by the deed holder and are restricted from adding accessory dwelling units.
- c. The 48 multi-family units are exempt from growth permits above and beyond the available number at the time of permitting.
- d. A minimum of five multi-family units will meet the zoning definition of "housing for older persons."

Sec. 19-42 Multi family dwelling

The multi-family dwelling units may be constructed in four buildings of twelve units each.

4. The proposal provides public benefit **that would not exist under the current zoning** provided.
 - a. **Rental housing (48 multifamily units with 5 reserved for 55+ in perpetuity)** – It is recognized in the Economic Development Strategy approved by the Town that rental housing is unavailable, both from an inventory perspective as well as a price perspective.
 - b. **Entry level housing (34 single-family units)** – These units will be offered at the entry rate of \$280,000 with a three-year covenant restricting resale at a higher rate.
 - c. **Housing for 55+ (10 single family units)** – These will be at market rate. Commitment would be for the initial sale.
 - d. **Recreation and Open Space** – All improvements will be made by the applicant.
 - Trails – Trails will be created internal to the site and connect to Mill Road. The applicant will pursue a connection to Marston street. The trail will use the historical interurban railroad right of way. The applicant has committed to walking the open space with LMAC to determine the viability of the trail system and design. LMAC will review the final design and make a recommendation to the Council regarding accepting the trails as part of the public network. The applicant is responsible for contacting LMAC to initiate this review.
 - Open Space – The undeveloped area of the site would be preserved. LMAC will review the final design and make a recommendation to the Council regarding accepting the open space as part of the public network. The applicant is responsible for contacting LMAC to initiate this review.
 - One neighborhood park off the proposed roundabout will be developed in the area as shown on the plan with a playground and an informal play field. PACPAC will review

the park design and make a recommendation to the Council regarding accepting the park as part of the public park system. The applicant is responsible for initiating this review.

e. Local commercial and small business

- The applicant will replace the parking for Harmons being removed with the construction of sidewalks and street improvements in the Route 100 ROW. Parking will be located to the rear of the building.
- Commercial development (approximately 6,000 square foot building situated on the northerly entrance off Route 100) will be marketed starting with Phase 1 and constructed by the end of Phase 2.

f. General Impacts. - The applicant agrees to pay, at the time of each building permit, \$1,300 per single-family unit (including the growth permit fee) as a general contribution to the Town. The committee recommends these funds be placed in a special revenue fund, whose purpose will be determined at a future date by the Council.

g. Natural Gas - Applicant will be petitioning Summit Gas to extend to the Route 100 corridor. This will provide access to natural gas for all land owners along the route.

h. Street Connectivity - The Plan provides for connectivity within the development and externally to existing streets Route 100 and Mountain Road. This connectivity is in compliance with the 2010 Street Connectivity Policy adopted by the Town Council and is necessary to the project.

Recommended Phasing Plan – In order to ease the impacts of the development, the committee recommends the following phasing plan. Physical phases are shown on a Plan entitled “Preliminary Phasing Plan” of Homestead Farms Subdivision for Chase Excavating” dated June 30, 2017 by Sebago Technics.

Phase 1 – completion date 18 months from the date of recording

1. Up to 36 single-family units
2. 48 multi-family units
3. Street infrastructure from Mountain and Route 100 and as shown on the plan
4. Neighborhood park at the roundabout
5. Marketing begins for commercial building

Phase 2A, 2B, 2C, 2D– completion date 12 months from the completion due date of Phase 1

1. Up to 34 single-family units
2. Street connection from Route 100, southern entrance.
3. Street connection through to Phase 1
4. Trail system complete
5. Completion of commercial building

Phase 3 – completion date 12 months from the completion due date of Phase 2

1. Up to 33 single family units

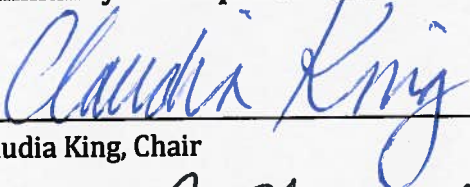
ATTACHMENTS:

- Sample Covenant for entry level housing
- Plan set as described above.

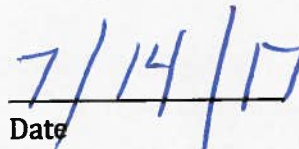
Excerpts from the Economic Development Strategy as adopted by the Town Council:

- The town has a very low share of young adults, especially those in the 25-29 cohort. This can impact companies who are looking for employees. It also speaks to the fact that Falmouth may not meet the needs of this population in terms of the type of community they wish to live in, or housing available. {Page 8}
- Housing too expensive for younger workers and seniors; limited apartment or condo space, {Page 10}
- Housing shortages throughout region {Page 10}
- Another aspect of attracting this type of economic development to Falmouth is for the community to make improvements to be more attractive to the talent and labor pool that will work at these establishments, which tend to be younger and in search of different housing options and amenities. {Page 14}
- Affordable housing in Falmouth remains out of reach for young people and other households with moderate incomes. {Page 37}
- Median gross rents in Falmouth are quite high, and median household income for renters is much lower than it is for owners (\$34,651 vs. \$125,208). Significant concern exists in Falmouth about affordability and availability of housing for young workers and families.

Community Development Committee



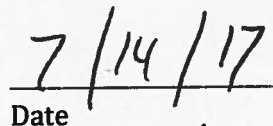
Claudia King, Chair



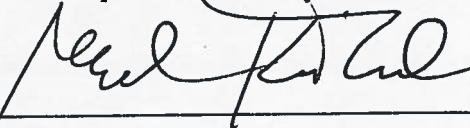
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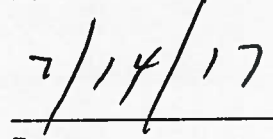
Caleb Hemphill



Date



Ned Kitchel



Date

DECLARATION OF AFFORDABLE HOUSING COVENANTS

THIS DECLARATION OF AFFORDABLE HOUSING COVENANTS (the "Declaration") is executed as of this _____ day of _____, 2017, by Homestead Acres, LLC, a Maine limited liability company (the "Declarant"), in favor of the Town of Falmouth, a Maine municipal corporation, acting by and through its duly authorized Town Council (the "Town").

RECITAL PROVISIONS

WHEREAS, Declarant is the owner of the real estate situated in the Town of Falmouth, County of Cumberland and State of Maine, which is more particularly described in Exhibit A, attached hereto and made a part hereof (the "Real Estate");

WHEREAS, Declarant submits the Real Estate to the Declaration for purposes of complying with provisions relating to Affordable Housing, and the exemptions therefore, as set forth in various sections of the Falmouth Zoning and Site Plan Review Ordinance relating to space, bulk and other dimensional requirements; and

WHEREAS, Declarant deems it desirable, for the purpose of providing "Affordable Housing" (as hereinafter defined), to subject the Real Estate to certain covenants and restrictions, each and all to the extent herein provided, for the benefit of the Real Estate;

NOW THEREFORE, in consideration of the foregoing covenants and other consideration, the receipt and sufficiency of which are hereby acknowledged, Declarant for itself, its successors and assigns, hereby agrees and commits to the following:

1. **Declarations.** Declarant hereby declares that the Real Estate is and shall be subject to the Covenants and Restrictions hereinafter set forth, all of which are declared to be in furtherance of the Real Estate, and are established and agreed upon for the purpose of enhancing and protecting the value of the Real Estate and further for the purpose of compliance with the Ordinance.

2. **Definitions.** The following terms shall have the following meanings as used in this Declaration, unless the context otherwise requires:

a. **Affordable Housing.** The term "Affordable Housing" shall mean decent, safe and affordable residential single-family housing that does not exceed an initial sales price of \$280,000.00 and is used as the purchaser's primary and principal residence.

b. **Affordable Housing Lot.** "Affordable Housing Lot" shall mean a Lot in the development that qualifies as Affordable Housing and, in accordance with the terms and conditions of this Declaration. Excluding any physical improvement to or enhancements for a Lot as contracted with by the purchaser of a Lot, Affordable Housing Lots shall be substantially similar to other Lots in accordance with the Ordinance and any additional requirements imposed by the Town as a condition to the issuance of a certificate of occupancy.

c. **Development.** "Development" shall mean the residential subdivision situated on

the westerly side of Gray Road in Falmouth, Maine to be developed by the Declarant in accordance with various governmental approvals to be received from the Town.

3. Restrictions. The covenants and restrictions set forth herein on the use and enjoyment of the Real Estate (the "Covenants and Restrictions") shall be in addition to any other covenants and restrictions affecting the Real Estate, and all such covenants and restrictions are for the benefit and protection of the Town, and shall run with the Real Estate and be binding on any future owners of the Real Estate and inure to the benefit of and be enforceable by the Town.

4. Compliance with and Enforcement of Restrictions. The Covenants and Restrictions set forth in this Declaration may be enforced by the Town, the Declarant, and by any owner of a Lot within the Development. The Town, the Declarant, and any Lot owner shall be entitled to injunctive or other equitable relief against any violation or attempted violation of any Covenants and Restrictions, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof. No part of this Declaration may be construed to impose on the Town an obligation to enforce any provision hereunder, it being acknowledged that the decision to enforce any provision and the extent of the action taken by the Town, if any, is entirely within the Town's sole and absolute discretion. The Declarant, its designee and its successors and assigns and the Association, its designee and its successors and assigns have the right and duty to take reasonable measures to assure ongoing compliance with the Covenants and Restrictions. Such measures may include a requirement that owners of Lots and members of the owner's household, at the time of the transfer of a Lot, certify all sources of income, as applicable.

5. Resale of Affordable Housing Lots. No Affordable Housing Lot may be voluntarily sold, conveyed or transferred for a period of three (3) years after the date of the issuance by the Town of a Certificate of Occupancy, for any amount in excess of or consideration valued in excess of the initial gross sales price. The restriction set forth in the immediately preceding sentence is of no validity or continuing effect for any sale, conveyance or transfer occurring after the expiration of such period.

Without assigning or delegating its authority to decide all matters related to purchaser qualification and further, without waiver of its sole and absolute authority to make final decisions respecting matters of purchaser eligibility, the Declarant reserves the right to retain attorneys and housing consultants to assist it in making such decisions.

6. Acceptance and Ratification. All present and future owners of the Real Estate and other persons claiming by, through, or under them shall be subject to and shall comply with the Covenants and Restrictions. The acceptance of a deed of conveyance to a Lot or any portion of the Real Estate shall constitute an agreement that the Covenants and Restrictions, as may be amended or supplemented from time to time, are accepted and ratified by such future owners, tenants or occupants, and all such Covenants and Restrictions shall be covenants running with the land and shall bind any person having at any time any interest or estate in the Real Estate, all as though such Covenants and Restrictions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof.

7. Benefit. This Declaration shall run with and bind the Real Estate for a term commencing on the date this Declaration is recorded in the Cumberland County (Maine) Registry of Deeds.

The failure or delay at any time of the Town or any other person entitled to enforce this Declaration shall in no event be deemed a waiver of the same, or of the right to enforce the same at any time or from time to time thereafter, or an estoppel against the enforcement thereof.

8. Secondary Mortgage Market Conditions; Foreclosure of Security Instruments.

Notwithstanding Section 5 of this Declaration, this Declaration and all requirements pertaining to the enforcement and application of any and all Affordability Restrictions shall be interpreted in a way that conforms with the then current requirements of any recognized secondary mortgage market for the purchase and sale of residential mortgages. All affordability restrictions in this Declaration shall terminate and be of no further effect upon the foreclosure any mortgage instrument or other security document or instrument (to include a land installment contract or bond for deed) of record.

9. Use. No use of any Lot other than for residential single-family use may be made except for home occupations as may be permitted by the zoning ordinances of the Town.

10. Costs and Attorney's Fees. In any proceeding arising because of failure of Declarant or any future owner of the Real Estate to comply with the Covenants and Restrictions required by this Declaration, as may be amended from time to time, the Town or any other person so authorized shall be entitled to recover costs and reasonable attorney's fees incurred in connection with such default or failure.

11. Enforcement Easement. The Declarant reserves, and also hereby GRANTS, CONVEYS, QUITCLAIMS and ASSIGNS, WITHOUT ANY COVENANT OF TITLE WHATSOEVER to the Town, the right and easement to enter onto any and all portions of the Real Estate, for the purposes of inspecting compliance with the covenants and restrictions set forth in this Declaration and for the purpose of enforcing any of the covenants and restrictions set forth in this Declaration. At least forty-eight (48) hours' notice shall be given to an owner or lessee of a Lot prior to any entry by the Declarant or the Town. The Declarant through its officers or agents may conduct any such inspection between the hours of 9:00 a.m. and 8:00 p.m. This enforcement easement is included herein for purposes of compliance with Title 33 M. R. S. A. § 122(5) providing that "the instrument creating an affordable housing covenant must designate the manner in which and the times when representatives of the holder of an affordable housing covenant are entitled to enter the real property to assure compliance."

12. Severability. The invalidity of the Covenants and Restrictions, including, without limitation, invalidation because of a violation of the Rule Against Perpetuities or because the Covenants and Restrictions are determined to be an unlawful restraint against alienation, or any other covenant, restriction, condition, limitation, or other provision of this Declaration shall not impair or affect in any manner the validity, enforceability, or effect of the rest of this Declaration and each shall be enforceable to the greatest extent permitted by law.

13. Pronouns. Any reference to the masculine, feminine, or neuter gender herein shall, unless the context clearly requires the contrary, be deemed to refer to and include all genders. Words in the singular shall include and refer to the plural, and vice versa, as appropriate.

14. Interpretation. The captions and titles of the various articles, sections, subsections,

paragraphs, and subparagraphs of this Declaration are inserted herein for ease and convenience of reference only and shall not be used as an aid in interpreting or construing this Declaration or any provision hereof. This Declaration shall be interpreted in accordance with the laws of the State of Maine without regard to conflicts of law.

15. Incorporation. This Declaration incorporates by reference the Affordable Housing Covenants law set forth in Title 33 M. R. S. A. §§ 121 *et seq*, as it may be amended from time to time, the Ordinance, as it may be amended from time to time, the federal Fair Housing Act, as it may be amended from time to time and the Maine Human Rights Act, as it may be amended from time to time, and any other fair housing legislation, notwithstanding any provision herein to the contrary.

16. Amendment. No amendment or modification of this Declaration shall be permitted without consent of the Town, which consent shall be evidenced by a joinder of the Town therewith as set forth in a recordable instrument.

17. Recordation. This Declaration will be filed of record in Cumberland County (Maine) Registry of Deeds by the Declarant at its expense.

IN WITNESS WHEREOF, Declarant has executed this Declaration on the date and year first above written.

HOMESTEAD ACRES, LLC

Witness

By: _____
David Chase
Its Manager

STATE OF MAINE
County of Cumberland, ss

_____, 2017

Personally appeared before me the above-named David Chase and acknowledged the foregoing instrument to be his free act and deed in his aforesaid capacity.

Before me,

Notary Public

(Printed Name)

ACCEPTANCE BY TOWN

Pursuant to Title 33 M. R. S. A. § 122(2), the Town, by and through its Town Council,
accepts this Declaration of Affordable Housing Covenants on _____, 2017.

TOWN COUNCIL MEMBERS

Witness

, Chairman

Witness

, Vice Chairman

Witness

Witness

Witness

EXHIBIT A

