

CORRECTED

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

No. SJC-13316

TERRENCE MARENGI JR. & others,

Plaintiffs-Appellants

v.

6 FOREST ROAD, LLC & others,

Defendants-Appellees

ON INTERLOCUTORY APPEAL FROM AN
ORDER OF THE SUPERIOR COURT

BRIEF OF THE FOLLOWING AMICI CURIAE:
CITIZENS' HOUSING AND PLANNING ASSOCIATION; THE MASSACHUSETTS
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT; 2LIFE
COMMUNITIES INC.; ABUNDANT HOUSING MA, INC.; CAPSTONE
COMMUNITIES LLC; CITY OF CHELSEA, MASSACHUSETTS; COMMUNITY
ECONOMIC DEVELOPMENT ASSISTANCE CORP.; ENGINE 6 NEWTON HOUSING
ASSOCIATES; GREATER BOSTON REAL ESTATE BOARD (GBREB); HOME
BUILDERS AND REMODELERS ASSOCIATION OF MASSACHUSETTS, INC.;
LOWER CAPE COD COMMUNITY DEVELOPMENT CORPORATION D/B/A THE
COMMUNITY DEVELOPMENT PARTNERSHIP; MALONEY DEVELOPMENT, LLC;
METROPOLITAN AREA PLANNING COUNCIL; MASSACHUSETTS ASSOCIATION OF
COMMUNITY DEVELOPMENT CORPORATIONS; MASSACHUSETTS ASSOCIATION OF
REALTORS; MASSACHUSETTS CHAPTER OF THE NATIONAL ASSOCIATION OF
HOUSING AND REDEVELOPMENT OFFICIALS; MASSACHUSETTS HOUSING
FINANCE AGENCY; MASSACHUSETTS HOUSING INVESTMENT CORPORATION;
MASSACHUSETTS HOUSING PARTNERSHIP FUND BOARD; NAIOP
MASSACHUSETTS, THE COMMERCIAL REAL ESTATE DEVELOPMENT
ASSOCIATION; PRESERVATION OF AFFORDABLE HOUSING, INC.; BEACON
COMMUNITIES LLC; and THE COMMUNITY BUILDERS, INC.

IN SUPPORT OF DEFENDANTS-APPELLEES AND IN FAVOR OF AFFIRMANCE

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STATEMENT OF INTEREST OF AMICI CURIAE

Citizens' Housing and Planning Association ("CHAPA"), the Massachusetts Department of Housing and Community Development ("DHCD") and all the named amici curiae with a shared interest in this case, as stated herein, (collectively, "Amici"), submit this Amici Curiae Brief in support of Defendants-Appellees and to address how a new provision of the state Zoning Act, G.L. c. 40A, § 17, ¶ 3, applies to plaintiffs challenging permits issued pursuant to G.L. c. 40B ("Chapter 40B").

CHAPA is a nonprofit organization devoted to affordable housing and community development in the Commonwealth. CHAPA members include nonprofit and for-profit developers, local housing providers and advocates, municipal officials, lenders, property managers, architects, consultants, homeowners, tenants, local planners, and others.

Since 1967, CHAPA's mission has been:

to encourage the production and preservation of housing that is affordable to low and moderate income families and individuals and to foster diverse and sustainable communities through planning and community development.

See Citizens' Housing & Planning Association, About CHAPA, <https://www.chapa.org/about> (last visited August 29, 2022).

DHCD is a department within the Massachusetts Office of the Housing and Economic Development whose mission includes the promotion of safe, decent affordable housing opportunities. As part of its mission, DHCD administers numerous programs that fund affordable housing, as well as programs that encourage housing development.

DHCD implements and furthers the statutory scheme of G.L. c. 40B through its promulgation of regulations, as well as its administration of subsidy programs that enable developers to seek a comprehensive permit under Chapter 40B. DHCD joins this brief in support of its mission, which is frustrated by frivolous appeals that unduly delay and interfere with affordable housing development.

CHAPA, an active participant in the legislative process that led to the adoption of many zoning reforms enacted in of Chapter 358 of the Acts of 2020 (the "Act"), DHCD and the other named Amici, which all have an interest in encouraging the development of safe and affordable housing in Massachusetts, submit

this Amici Curiae Brief in furtherance of their mission and to raise two points for the Court's consideration: 1) While crafting the Bond Language, as defined below, the Legislature was aware that "permits and approvals" granted pursuant to Chapter 40B are equivalent to "a special permit, variance or site plan"; and 2) the historic context and legislative history of the Act indicate that the Bond Language was meant to apply to Chapter 40B abutter appeals and, if the Bond Language is deemed not to apply to the appeal of a comprehensive permit, meritless appeals will continue to inhibit the legislative intent and policy promoted by the Act.

CORPORATE DISCLOSURE STATEMENT

2Life Communities Inc., Abundant Housing MA, Inc., The Home Builders and Remodelers Association of Massachusetts, Lower Cape Cod Community Development Corporation d/b/a the Community Development Partnership; GBREB, Massachusetts Association of Community Development Corporations, Massachusetts Housing Investment Corporation, Preservation of Affordable Housing, Inc., and The Community Builders, Inc., hereby state that each such entity is a Massachusetts not-for-profit organization that has no

parent corporation and no publicly traded corporation owns 10% or more of its stock.

DECLARATION OF AUTHORSHIP AND CONTRIBUTIONS

Neither any party nor any party's counsel authored this brief in whole or in part. Likewise, neither any party nor any party's counsel contributed money that was intended to fund the preparation or submission of this brief. None of the Amici nor their counsel represents or has represented any of the parties to the present appeal in any other proceeding involving similar issues, proceedings, or transactions.

SUMMARY OF ARGUMENT

This appeal concerns the proper interpretation of a new provision of the state Zoning Act, G.L. c. 40A ("Chapter 40A"), § 17, ¶ 3, enacted to encourage the construction of more affordable housing in the Commonwealth and to deter meritless challenges to permits to build that housing issued in accordance with Chapter 40A and Chapter 40B. Any person aggrieved by the issuance of a comprehensive permit pursuant to Chapter 40B may make an appeal to court "as provided in" G.L. c. 40A, § 17. G.L. c. 40B, § 21. The addition of paragraph 3 to Chapter 40A, § 17 therefore

impacts appeals made under each, interrelated, statutory scheme.

Effective January 14, 2021, the Act was passed as "emergency legislation" to "promote economic opportunity." St. 2020, c. 358. The Act includes several amendments to Chapter 40A intended to promote housing production through local zoning reform.

Section 25 of the Act added a new zoning reform measure, long advocated for by CHAPA, affordable housing advocates, and the real estate industry. That measure, now codified as the third paragraph of G.L. c. 40A, § 17, provides:

The court, in its discretion, may require a plaintiff in an action under this section appealing a decision to approve a special permit, variance or site plan to post a surety or cash bond in an amount of not more than \$50,000 to secure the payment of costs if the court finds that the harm to the defendant or to the public interest resulting from delays caused by the appeal outweighs the financial burden of the surety or cash bond on the plaintiffs. The court shall consider the relative merits of the appeal and the relative financial means of the plaintiff and the defendant.

(St. 2020, c.358, § 25) (hereinafter, the "Bond Language").

Plaintiffs-Appellants challenge the order of the Superior Court (Karp, J.) requiring that they

collectively post a \$35,000 bond pursuant to G.L. c.40A, §17 and G.L. c. 40B § 21 to secure the costs of their appeal. Reviewing the Plaintiffs-Appellants' petition under G.L. c. 231, § 118, ¶ 1, the Single Justice of the Appeals Court (Neyman, J.) granted permission for Plaintiffs-Appellants to take an interlocutory appeal of the bond order to a full panel of the Appeals Court, but refused to vacate the bond order because "the plaintiffs have failed to conclusively demonstrate that the recently added bond provision of G.L.c.40A, §17, is inapplicable to an appeal from an allowance of a comprehensive permit pursuant to G.L. c. 40B." Terrence Marengi & others v. 6 Forest Road, LLC & others, Appeals Court Dkt. #7, No. 22-J-0174. The case was transferred to this Court sua sponte.

Amici submit this brief to explain why the Single Justice correctly concluded that the Bond Language of G.L. c. 40A, § 17, applies to appeals of comprehensive permits issued under Chapter 40B. The plain text of the provision, its legislative history, and the aim of the Legislature in enacting the Act demonstrate that the provision was written and intended to facilitate the prompt resolution of Chapter 40B appeals and, in

turn, to promote the development of affordable housing in Massachusetts.

ARGUMENT

I. While crafting the Bond Language, the Legislature was aware that "permits and approvals" granted pursuant to Chapter 40B are equivalent to "a special permit, variance or site plan."

The plain text of the Bond Language, which gives the Superior Court discretion to require a plaintiff "appealing a decision to approve a special permit, variance or site plan" to post a bond, covers appeals of Chapter 40B comprehensive permits. This Court has recognized that the appeal procedures set forth in Section 17 apply to the judicial appeal of comprehensive permits. Standerwick v. ZBA of Andover, 447 Mass. 20, 28 (2006) ("[T]he Legislature chose in G.L. c. 40B, § 21, to incorporate the judicial review procedure established in G.L. c. 40A, § 17"). Plaintiffs under Chapter 40B have a higher burden to establish standing than under Chapter 40A, and this difference is based on the policy protected by Chapter 40B, which includes overriding certain local interest in order to further the Commonwealth's affordable housing goals. Id. at 28, 32 (holding that plaintiffs lacked standing to challenge the issuance of the

comprehensive permit because their claim that the affordable housing project would diminish their property values was "not a concern that the G. L. c. 40B regulatory scheme is intended to protect," and therefore not an injury that could confer standing). Here, the interests furthered by the Act's Bond Language is aligned with Chapter 40B: the production of housing that Massachusetts residents can afford.

Although the Plaintiffs-Appellants portray a comprehensive permit as a form of relief that is detached and distinct from "a special permit, variance or site plan" approval, their argument mischaracterizes the meaning and function of a comprehensive permit, as well as how this Court has interpreted and applied Chapter 40B, § 21.

G.L. c. 40B, § 21, provides in relevant part, with emphasis added:

The board of appeals ... shall have the same power to issue permits or approvals as any local board or official who would otherwise act with respect to such application, including but not limited to the power to attach to said permit or approval conditions and requirements with respect to height, site plan, size or shape, or building materials.

In 135 Wells Ave., LLC v. Hous. Appeals Comm., 478 Mass. 346, 354-55 (2017), this Court made clear that

"special permit, variance or site plan" approvals are "permits and approvals" incorporated into Chapter 40B review. The Court observed, "there is little reason to turn to dictionary definitions in interpreting the statutory language here, as the language of G. L. c. 40B § 21, itself defines the term 'permits or approvals' in several respects. The statute first delineates the types of local agencies that may grant permits or approvals (i.e., 'local board[s] or official[s]'), and then enumerates the types of authorizations that fall within the statutory meaning of permits or approvals, (e.g., 'conditions and requirements with respect to height, site plan, size or shape, or building materials')." 135 Wells Ave., LLC, 478 Mass. at 354-55 (emphasis added). See also Zoning Bd. of Appeals v. Hous. Appeals Comm., 457 Mass. 748, 755 (2010) (in issuing a comprehensive permit the board of appeals assumes "the same scope of authority" to grant or condition relief as the local board it replaces); Zoning Bd. of Appeals v. Hous. Appeals Comm., 451 Mass. 35, 40 (2008) (broadly interpreting "permits and approvals"). The Legislature was aware that "permits and approvals" granted pursuant to Chapter 40B are equivalent to "a special

permit, variance or site plan" noted in the Bond Language. See Andover Sav. Bank v. Comm'r of Revenue, 387 Mass. 229, 241 (1982) ("The Legislature is presumed to be aware of any effects that a judicial decision may have on the operation of a statute").

In other words, the comprehensive permit is a mechanism by which a board of appeals can act as a "one stop shop" where an affordable housing developer may obtain all local permits and approvals. The components of relief (i.e., variances and special permits) are subsumed into the comprehensive permit. As evidenced by the Salisbury comprehensive permit in this case, site plan review as dictated by the Town Zoning Bylaw and variances (waivers) were incorporated into the zoning board's comprehensive review. Town of Salisbury, Zoning Bd. of Appeals, Comprehensive Permit Decision (August 26, 2021), Ex. A.

The connection between Chapter 40B and the Bond Language is further strengthened by the Legislature's reference to "site plan" review in the Bond Language. Before the Act was adopted, the term "site plan" was not used in Chapter 40A. In contrast, site plan review is specifically referenced as a board of appeal function in G.L. c. 40B, § 21.

In specifying that plaintiffs appealing a decision to approve a "site plan" could be required to post a bond, G.L. c. 40A, § 17, the Legislature thus plainly referenced the "site plan" review conducted in accordance with G.L. c. 40B, § 21. Accordingly, the "permits and approvals" granted pursuant to Chapter 40B are equivalent to "a special permit, variance or site plan" noted in the Bond Language.

II. The historic context and legislative history of the Act indicate that the Bond Language was meant to apply to Chapter 40B abutter appeals.

a. The Legislature was aware that abutter appeal reform, for projects permitted under Chapter 40B, is essential to increasing affordable housing production.

Data provided directly to the Legislature, as well as news reports documenting the struggle of affordable housing developers, support the conclusion that the Bond Language applies to appeals of comprehensive permits issued under Chapter 40B. The necessity of abutter appeal reform to affordable housing production was raised with the Legislature in 2014 when the Massachusetts Housing Partnership ("MHP") provided the "Unlocking the Commonwealth" report (the "MHP Report") to the General Court. The MHP Report was designed as a tool to develop new

housing growth policies in the Commonwealth.¹ The MHP Report identified Massachusetts' increasing housing prices, emphasized the need to grow housing supply, and predicted that the housing crisis would only worsen with time.²

The Report was right. Median sale price for individual units (single family homes and condos) in Massachusetts increased by 51% from 2014 to 2021 (growing from \$309K to \$468K), according to Warren Group data, sourced from registry of deeds records, and tabulated by the Metropolitan Area Planning Council. According to the American Community Survey, published by the United States Census Bureau, median contract rent in Massachusetts increased from \$972 in 2014 to \$1,201 in 2019, an increase of 23.5%.³

¹ Massachusetts Housing Partnership, *Unlocking the Commonwealth* (Nov. 5, 2014), <https://archives.lib.state.ma.us/bitstream/handle/2452/264116/ocn906039954.pdf?sequence=1&isAllowed=y>

² Id. at 4.

³ U.S. Census Bureau, Table B25058 - Median Contract Rent (Dollars); 2014: ACS 1-Year Estimates Detailed Tables. Retrieved from <https://data.census.gov/cedsci/table?q=median%20contract%20rent%20massachusetts&tid=ACSDT1Y2014.B25058>; U.S. Census Bureau, Table B25058 - Median Contract Rent (Dollars); 2019: ACS 1-Year Estimates Detailed Tables. Retrieved from <https://data.census.gov/cedsci/table?q=median%20contract%20rent%20massachusetts&tid=ACSDT1Y2019.B25058>.

One of the eight Legislative recommendations in the MHP Report was to “reduce or eliminate groundless land use appeals,” which delay the construction of much-needed housing. As the Report described:

Land use appeals without underlying merit are frequently used as a tactic to delay and obstruct housing development. These appeals have been taken all the way to the Massachusetts Supreme Judicial Court and in some cases have delayed worthwhile housing development projects for a decade or longer. In some cases developers have withdrawn permit applications because they cannot afford the cost and delay of fighting appeals. In other cases settlement of groundless abutter appeals has caused developers to needlessly downsize worthy, community-supported projects...⁴

Even a cursory review of Chapter 40B’s over 50-year history indicates that meritless lawsuits have significantly delayed dozens of worthwhile projects. “In communities west of Boston such as Brookline, Needham, Newton, and Waltham, conflicts between developers applying for permits under 40B, and town residents who wish to block them have become a trend.”⁵

⁴ MHP Report, at 15 (emphasis added).

⁵ Will Kauppila, The Pioneer Institute, Town Residents Clash with Developers over Chapter 40B Housing Law, <https://pioneerinstitute.org/blog/town-residents-clash-developers-chapter-40b-housing-law> (last visited September 9, 2022).

Despite the prevalence of such actions, abutter appeals are rarely successful on the merits.

Anderson v. Community Housing Resources Inc., Docket No. 21 PS 000324, Mass. Land Ct. (2021), is an excellent example of a housing project that was supported by state and local officials but was almost thwarted by a small group of residents. In the case, Judge Rubin granted the Defendants' request that the Bond Language be applied to plaintiffs appealing the grant of a Chapter 40B comprehensive permit. The project, known as the "Cloverleaf," is planned for a site along Route 6 in the Town of Truro, which was donated to the Town by the State Department of Transportation for the development of affordable housing.⁶ The project is also supported by the financial assistance of the Truro Affordable Housing Trust.⁷ After fifteen months of hearings before the Truro zoning board of appeals, the developer was

⁶ The Provincetown Independent, Long-Pending 'Cloverleaf' Plan Will Move Forward, Feb. 16, 2022, <https://provincetownindependent.org/news/2022/02/16/long-pending-cloverleaf-plan-will-move-forward>.

⁷ The Provincetown Independent, A Gift for the Cloverleaf, Aug. 31, 2022, <https://provincetownindependent.org/news/2022/08/31/a-gift-for-the-cloverleaf>.

granted a Chapter 40B approval. The developer and Town were then faced with well over a year of litigation, which was finally settled after Judge Rubin's bond order. Without the bond order, the case might have gone on for another year or more. Still, "[d]uring the years that the Cloverleaf plan was being contested, construction prices inflated from \$12 million to \$19 million."⁸

In cases like Anderson, opponents of affordable housing projects can occasion delay at the local level through threats of litigation until the project proponent can no longer sustain its efforts. This happened, for example, to Harborlight Community Partners ("Harborlight"), which proposed a Chapter 40B development project in Hamilton, Massachusetts. After three years of working with the community and political leaders, and attending approximately 275 local meetings regarding the project, Harborlight abandoned its' efforts because of the serious threat of an abutter appeal.⁹ In such appeals, a developer like Harborlight may incur to do loss of financing,

⁸ Id.

⁹ Affidavit of Andrew DeFranza in Support of Amicus Curiae ("DeFranza Aff."), ¶ 8.

rising interest rates and material costs, and attorneys' fees. The developer may, and indeed frequently does, run out of resources before the case is decided on the merits, resulting in another lost opportunity to build more affordable housing across the Commonwealth.

b. Zoning reform bills predating the Act included similar bond language and were intended to address meritless appeals of permits and approvals issued pursuant to Chapter 40B.

A number of bills that predate the Act were introduced to address affordable housing production by amending G.L. c. 40A, § 17 to deter meritless appeals. These bills did not mention Chapter 40B or "comprehensive permits" because it was not necessary— as prescribed by G.L. c. 40B, § 21, individual plaintiffs appealing a comprehensive permit must do so via G.L. c. 40A, § 17.

An Act Relative to Housing Reform, filed earlier in the 2019-2020 Legislative Session, included a bond provision that, like the Act, applied to "appeals of decisions approving special permits, variances and site plans."¹⁰ Expert testimony supporting the Act

¹⁰ S.775, 191st Gen. Ct. § 15 (Mass. 2019) and H.1288, 191st Gen. Ct. § 15 (Mass. 2019).

Relative to Housing Reform specifically addressed the real threat and consequences of groundless abutter challenges to Chapter 40B projects. In addition to the example regarding a project in Hamilton, referenced above, Harborlight's Executive Director also testified regarding a second Chapter 40B project that was delayed for over four years due to an abutter appeal. The abutter appeal forced Harborlight to spend well over \$300,000 in legal fees before the case was settled out of court.¹¹

Also in 2019, Representative Joseph McGonagle and Senator Julian Cyr filed the abutter appeal language as standalone pieces of legislation. The House and Senate bills both would have permitted a reviewing court to order a surety or cash bond "in appeals of decisions approving special permits, variances and site plans."¹²

Still earlier in 2017, Senator Harriette Chandler and Representatives Sarah Peake and Stephen Kulik filed comprehensive zoning reform bills—designed to increase affordable housing production—that included

¹¹ DeFranza Aff. ¶ 7.

¹² H.3397, 191st Gen. Ct. (Mass. 2019); S.903, 191st Gen. Ct. (Mass. 2019).

similar abutter appeal reform language.¹³ In the 2015-2016 Legislative Session, the Senate passed An Act promoting Housing and Sustainable Development. Like the bills that followed, the proposed abutter appeal reform language applied to plaintiffs challenging special permits, variances and site plans.¹⁴

None of the above bills specifically mentioned Chapter 40B appeals because it was not necessary. The plain language of G.L. c.40B, § 21, compels a prospective plaintiff to file an appeal “as provided in” G.L. c. 40A, § 17. G.L. c.40B, § 21. All of the above bills recognized that increased housing production could be best achieved by way of both zoning reform and meaningful limitations on frivolous lawsuits.

c. Sponsors of the Bond Language emphasized the need to address the Commonwealth’s affordable housing crisis through zoning reform.

The Bond Language was added to the Economic Development Bill by S.2842, 191st Gen. Ct. (Mass. 2020), Amendment 1, filed by Senator Brendan Crighton.

¹³ S.81, 190th Gen. Ct. § 24 (Mass. 2017); H.2420, 190th Gen. Ct. § 26 (Mass. 2017).

¹⁴ S.2327, 189th Gen. Ct. § 24 (Mass. 2016).

In his remarks supporting Amendment 1, Senator Crighton explained:

We are facing a housing crisis in Massachusetts. We produce half of the housing that was produced annually in the 1960s and 1970s. Rents have increased more than 75% since 2000. Single family home prices have increased more than any other state since 1980. 25% of tenants pay more than half of their income on rent... Our housing crisis was not created overnight, and it will not be solved by one piece of legislation. But this amendment is a start.

Hearing on S.2842 Before the Massachusetts Senate,
191st Gen. Ct., statement of State Senator Brendan Crighton, 07/29/2020 Full Formal Session. Senator Eric Lesser, who spoke in favor of Amendment 1, including the Bond Language, stated the purpose of the Amendment in simple terms: "Housing is too expensive in Massachusetts. People cannot afford to live here..."

Hearing on S.2842 Before the Massachusetts Senate,
191st Gen. Ct., statement of State Senator Eric Lesser, 07/29/2020 Full Formal Session.

Since the Bond Language was adopted, its proponents have weighed in on its meaning and scope. Senator Julian Cyr, who filed the 2019, standalone, abutter appeal reform language referenced above,¹⁵

¹⁵ S.903, 191st Gen. Ct. (Mass. 2019).

commented on the Order to Post Bond issued in Anderson v. Community Housing Resources Inc. Senator Cyr lauded the application of the Bond Language to the Chapter 40B action: “‘For me, this reiterates the value of the action the legislature took to limit frivolous lawsuits that only serve to advance Nimbyism.’ Senator Cyr continued, ‘For too long, people who had no good reason to oppose projects were able to needlessly delay them.’”¹⁶

The legislative intent of Chapter 40B is well established as an intent to “[minimize] lengthy and expensive delays occasioned by court battles commenced by those seeking to exclude affordable housing from their own neighborhoods.” Standerwick, 447 Mass. at 29. As noted previously, expensive delays and court battles still plague many Chapter 40B developments, even those with extensive community support. The intent of the Act, and the Bond Language in particular, is to address the undersupply of housing in Massachusetts through abutter appeal reform. Given

¹⁶ The Provincetown Independent, Long-Pending ‘Cloverleaf’ Plan Will Move Forward (Feb. 16, 2022), <https://provincetownindependent.org/news/2022/02/16/long-pending-cloverleaf-plan-will-move-forward/>.

Chapter 40B's essential role, in the past and future, in spurring housing production, it would frustrate the purpose of the Act were the Bond Language not applied to appeals of Chapter 40B decisions.

Chapter 40B has long been the driving force of affordable housing development in the Commonwealth. As one article explained, "For suburbanites, affordable housing is still something built in someone else's backyard. Chapter 40B is the only law on the books that can change that – and few laws are as likely to have as much of an effect among the apple orchards and culs-de-sac north, west, and south of Boston."¹⁷ Without the application of the Bond Language to cases seeking review of Chapter 40B permits, meritless appeals will continue to frustrate the policy promoted by the Act and the Legislature's goal of encouraging more affordable housing developments in Massachusetts.

CONCLUSION

Based on the plain language of the Act and Chapter 40B, the legislative intent of the Act's

¹⁷ Michael Blanding, Boston Magazine, Suburban Brawl, May 15, 2006, <https://www.bostonmagazine.com/2006/05/15/suburban-brawl>.

zoning reform provisions, and the role of Chapter 40B in meeting the Commonwealth's housing production goals, the Bond Language applies to appeals made pursuant to Chapter 40B. For the foregoing reasons, this Court should affirm the Superior Court's Order construing the Bond language to apply to Chapter 40B appeals.

Respectfully submitted,
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ASSOCIATION**
By its attorneys,

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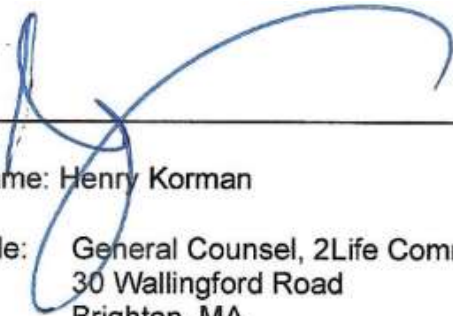
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Date: September 12, 2022

CAPSTONE COMMUNITIES LLC

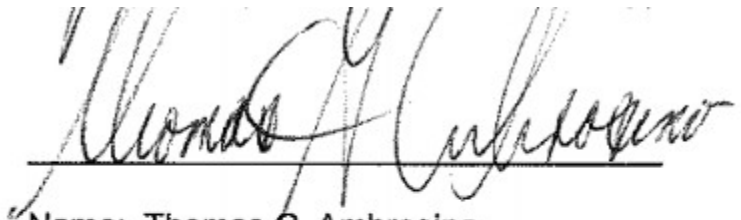


Name: Jason Korb

Title: managing member

Date: 9/10/2022

CITY OF CHELSEA, MASSACHUSETTS



Name: Thomas G. Ambrosino

Title: City Manager

Date: 9/10/22

ENGINE 6 NEWTON HOUSING ASSOCIATES

s/ Lynn Weissberg

Name: Lynn Weissberg

Title: Engine 6 Leadership Team

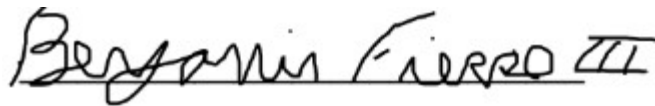
Date: Sept. 11, 2022

GREATER BOSTON REAL ESTATE BOARD



Gregory P. Vasil, Esq. (BBO 55222)
Greater Boston Real Estate Board
3 Center Plaza
Boston, MA 02108
Dated: September 12, 2022

**HOME BUILDERS AND REMODELERS
ASSOCIATION OF MASSACHUSETTS, INC.**



Benjamin Fierro III (BBO 164800)
Lynch & Fierro LLP
6 Beacon Street, Suite 700
Boston, MA 02108
Phone: 617-350-4088

MALONEY DEVELOPMENT, LLC

/s/ Felicia Jacques
Felicia Jacques
Managing Director/Development
Maloney Development, LLC
27 Mica Lane
Wellesley, MA 02481
Phone: 617-209-5404
Dated: September 12, 2022

METROPOLITAN AREA PLANNING COUNCIL



Name: Marc D. Draisen

Title: Executive Director

Date: September 12, 2022

**MASSACHUSETTS ASSOCIATION OF
COMMUNITY DEVELOPMENT CORPORATIONS**



Joseph Kriesberg
President & CEO
MACDC
44 School Street
Boston, MA 02108
Joek@macdc.org
617-426-0303
September 10, 2022

**MASSACHUSETTS ASSOCIATION OF
REALTORS**




Theresa Hatton
18 Washington Street
Foxborough, MA 02035
THatton@marealtor.com
781-839-5504
9/12/22

**MASSACHUSETTS CHAPTER OF THE
NATIONAL ASSOCIATION OF HOUSING
AND REDEVELOPMENT OFFICIALS**



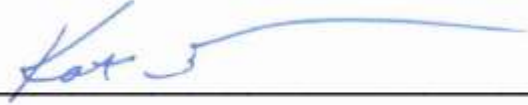
Donna Brown-Rego
Executive Director
National Association Of Housing &
Redevelopment Officials
Dated: September 12, 2022

MASSACHUSETTS HOUSING FINANCE AGENCY



Colin M. McNiece (BBO# 669467)
General Counsel
Massachusetts Housing Finance Agency
One Beacon Street
Boston, MA 02108
Tel: (617) 854-1273

**MASSACHUSETTS HOUSING INVESTMENT
CORPORATION**



Name: Kathleen McGilvray

Title: Director of Investment

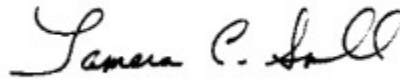
Date: September 12, 2022

**MASSACHUSETTS HOUSING PARTNERSHIP
FUND BOARD**



Danielle J. Kinkel, Esq.
General Counsel

**NAIOP MASSACHUSETTS, THE
COMMERCIAL REAL ESTATE DEVELOPMENT
ASSOCIATION**



Tamara C. Small
Chief Executive Officer
NAIOP Massachusetts, the
Commercial Real Estate Development
Association
144 Gould St., Suite 140
Needham, MA 02494

**PRESERVATION OF AFFORDABLE
HOUSING, INC.**

By: 

Name: Judith S. Jacobson

Title: Managing Director, General Counsel

Date: September 12, 2022

BBO# 546164

THE COMMUNITY BUILDERS, INC.

DocuSigned by:

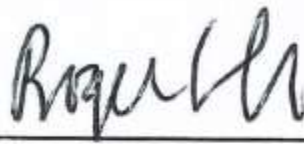
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By: _____
Name: Bartholomew J. Mitchell III
Title: President and CEO
Date: 9/12/2022

BEACON COMMUNITIES LLC

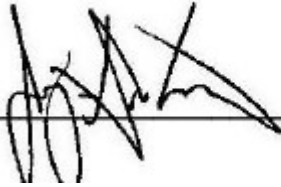
/s/ Dara Kovel
Dara Kovel
Chief Executive Officer
2 Center Plaza, Suite 700
Boston, MA 02108
Tel: 617-574-1100
Dated: September 12, 2022

COMMUNITY ECONOMIC DEVELOPMENT
ASSISTANCE CORP.



Name: Roger Herzog
Title: Executive Director
Date: 9/12/22

LOWER CAPE COD COMMUNITY
DEVELOPMENT CORPORATION
D/B/A THE COMMUNITY DEVELOPMENT
PARTNERSHIP



Jay HS Coburn
President & Chief Executive
Officer
Lower Cape Cod Community
Development Corporation
September 12, 2022

CERTIFICATION OF COMPLIANCE PURSUANT TO RULE 17(c)(9)
OF THE MASSACHUSETTS RULES OF APPELLATE PROCEDURE

In accordance with Massachusetts Rules of Appellate Procedure 17(c)(9), I, Karla L. Chaffee, hereby certify that the foregoing brief complies with the requirements of Massachusetts Rules of Appellate Procedure 17 and 20. Compliance with Rule 20(a)(3)(E) was ascertained by use of 12-point Courier New (monospaced) font, with 10 characters per inch, and the brief is less than 35 non-excluded pages.

/s/ Karla L. Chaffee
Karla L. Chaffee (BBO#675699)
kchaffee@nixonpeabody.com
Jeffrey Sacks (BBO# 437455)
NIXON PEABODY LLP
Exchange Place
53 State Street
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MASSACHUSETTS APPEALS COURT

John Adams Courthouse
One Pemberton Square, Suite 1200
Boston, MA 02108
(617) 725-8106

<http://www.mass.gov/courts/appeals/court/>

Docket Number SJC-13316

Terrence Marengi, Jr. and others

Appellant(s)

v.

6 Forest Road, LLC and others

Appellee(s)

CERTIFICATE OF SERVICE

Pursuant to Mass.R.A.P. 13(d), I hereby certify, under the penalties of perjury, that on this date of September 12, 2022 I have made service of a copy of the following document(s): _____

Brief of the Following Amici Curiae: Citizens's Housing and Planning Association, the Massachusetts Housing and Community Development, et al. in Support of Defendants - Appellees and in Favor of Affirmance

upon the attorney of record for each party, or if the party has no attorney then I made service directly to the self-represented party, by (i) first class mail

to the following person(s) and address(es). Attach a separate page if more space is necessary.

Dennis A. Murphy, Esq., 8 Beacon St., Boston, MA 02108
Daniel C. Hill, Esq., Kaitlyn C. Baptista, Esq., Hill Law, 6 Beacon St., Suite 600, Boston, MA 02108
Paul J. Haverty, Esq., Christopher J. Alphen, Esq., Jonathan M. Silverstein, Esq., Blatman, Bobrowski, Mead & Talerman, LLC
9 Damonmill Square, Suite 4A4, Concord, MA 01742
Melissa Robbins, Esq., 270 Littleton Road, Unit 32, Westford, MA 01886
Amy E. Kwesell, Esq., KP Law, P.C., 101 Arch St., 12th Fl., Boston, MA 02110

/s/ Karla L. Chaffee

Signature

Karla L. Chaffee (BBO#675699)

Printed Name and BBO# (if applicable)

Nixon Peabody LLP
Exchange Place
53 State St.
Boston, MA 02109-2835

Address

617-345-6146

Telephone

ADDENDUM

Page (s)

Affidavit of Andrew DeFranza.....1

Hearing on S.2842 Before the Massachusetts Senate,
191st Gen. Ct., Statement of State Senators,
07/29/2020 Full Formal Session
.....5

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

No. SJC-13316

TERRENCE MARENGI JR. & others,

Plaintiffs-Appellants

v.

6 FOREST ROAD, LLC & others,

Defendants-Appellees

ON INTERLOCUTORY APPEAL FROM AN
ORDER OF THE SUPERIOR COURT

**AFFIDAVIT OF ANDREW DEFRANZA IN SUPPORT OF AMICUS
CURIAE, CITIZENS' HOUSING AND PLANNING ASSOCIATION**

I, Andrew DeFranza, being first duly sworn,
depose and state that:

1. I am the Executive Director of Harborlight
Community Partners ("Harborlight"). I am also a Board
Member of the Citizens' Housing and Planning
Association ("CHAPA").

2. At Harborlight, we collaborate with
communities to cultivate just, equitable and
sustainable housing opportunities vital to the health

and strength of the individuals and communities of our entire region on the North Shore of Massachusetts.

3. I provided testimony before the Joint Committee on Housing on May 14, 2019 regarding H.1288/S.775, both known as "An Act Relative to Housing Reform" (the "Bill").

4. I testified that zoning reform was needed in Massachusetts to help reduce the local zoning barriers and opposition to housing production, and such reform was needed to help organizations like Harborlight create more affordable housing.

5. I testified that a key component of the Bill was to address abutter appeals.

6. In my testimony I stated that, in many communities, it is not possible to obtain necessary development approvals for an affordable housing project without Chapter 40B.

7. I testified about one Harborlight development project, permitted under Chapter 40B, where after obtaining all local approvals and necessary financing, the project was delayed for over four years due to an abutter appeal of the Chapter 40B comprehensive permit. Harborlight was forced to spend

well over \$300,000 in legal fees before the case was settled out of court.

8. I also testified about a proposed Chapter 40B development project in Hamilton, Massachusetts. After three years and attending approximately 275 local meetings regarding the project, Harborlight abandoned its' efforts because of the serious threat of an abutter appeal.

9. I have advocated since at least 2015 for abutter appeal reform legislation that would impose a bond requirement on plaintiffs challenging multifamily housing projects approved under Chapter 40B and Chapter 40A.

10. As a CHAPA Board Member, I know that CHAPA has similarly advocated for a plaintiff bond requirement that applies to both Chapter 40B and Chapter 40A appeals.

Signed under penalties of perjury this 8th day of
September, 2022.



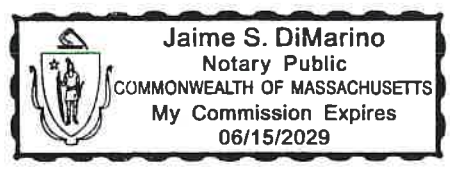
Andrew DeFranza

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

On this 8th day of September, 2022 before me,
the undersigned notary public, personally appeared
Andrew DeFranza, proved to me through satisfactory
evidence of identification, which was
Personally Known, to be the person whose name is
signed on the preceding document, and acknowledged to
me that he signed it voluntarily for its stated
purpose, as Executive Director of Harborlight
Community Partners.

Jaime S. DiMarino
Print Name:
Notary Public Jaime S. DiMarino
My Commission Expires: 6/15/2029



SB2842 - An Act enabling partnerships for growth

Note: this bill is from the 2019-2020 session

Sponsor: [Sen. Michael J. Rodrigues](#)
Progress:
Status: Filed in the Senate (FILE/S)
Last Action: 2020-07-31 - Printed-as-amended version - see [SB2874](#)
[View comparison to prior version](#)

History (74)
Text (4)
Amendments (361)
Comments (0)
Citations (437)
Reports (3)
Co-sponsors (0)
Categories (115)
News (9)
Press Releases (1)
Floor Votes (9)
Files (0)
Testimony (0)
Transcripts
Refiles (0)
Related Bills (2)
Floor Debate (54)

FLOOR DEBATE FOR SB2842

07/29/2020

[State Senator Eric Lesser \(D\)](#)
[07/29/2020 Full Formal Session](#)

The COVID-19 outbreak is far from over. Though our transmission rate is among the lowest in the country, we know a resurgence is likely. Alongside the public health crisis, we are facing an economic catastrophe unlike anything we have seen since the Great Depression. In June, 640,000 people in our Commonwealth were out of work. Our economy was put into a coma to stop the coronavirus. And we know who is bearing the greatest burden. While Main Street was asked to shut down, Home Depot and Lowe's posted record profits. Small business revenue plummeted 42% while Amazon's stock price rose by 60%. Many professionals can work from home, but so many in our gateway communities have lost their jobs, and those jobs may never return. This virus will be remembered for many things, but its longest lasting legacy will be hyper-charging the greatest concentration of wealth in American history. There were unfair trends in our economy before COVID-19, and the virus made them all the more clear. We need bold solutions to meet this moment and chart a path toward a better future.

I want to...

[GENERATE A REPORT](#)

[Change Bill Tracking](#)

1 Track [Hold Alerts](#)

[Change My Position](#)
No position selected.

[Change Bill Priority](#)
No priority selected.

[Assign a Task](#)
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[Collaborate: Whip Count](#)
Start a Whip Count on this bill.

[Collaborate: Bill Text](#)
Start a new collaboration on this bill.

[Compare Bill Text](#) NEW
Compare this bill to any other bill.

Summary for SB2842

Submits the Senate version of the Economic Development bill, allocating \$375 million in capital authorizations across housing, community development, manufacturing, entrepreneurship, tourism, broadband expansion, the nonprofit sector, neighborhood revitalization, climate resilience, vocational and career training, the restaurant industry, and more; requires state authorities to establish affirmative marketing programs to ensure the fair participation of minority-owned and women-owned businesses in capital facility projects; establishes a licensing system for student loan issuers, a student loan ombudsman within the Attorney General's office, as well as a student loan assistance trust fund; prohibits bad faith assertions of patent infringement; establishes a special commission to study the impact of automation, artificial intelligence, and global trade on the workforce, businesses and the economy.

For more information, please view our [section-by-section summary](#) and [line-item comparison](#).

We authorize grants for our community development financial institutions and ensure that federal PPP loans do not face state income tax. We make significant investments to close the

homework gap, including \$5 million for the broadband incentive fund. We authorize \$50 million for the Mass. Tech Collaborative to build out regional centers of excellence in several areas. We authorize \$20 million for microbusinesses, especially those from disproportionately affected groups. We also modernize our licensure laws, such as removing the requirement for hair braiders to have cosmetology licenses. We know it is not yet safe to encourage interstate travel, but we encourage safe, socially distant intrastate travel. We authorize \$10 million for a competitive grant program to encourage that tourism. We also authorize \$20 million in grants to the Mass. Cultural Council and \$10 million for climate resilient improvements and affordable housing projects.

[State Senator Brendan Crighton \(D\)](#)

[07/29/2020 Full Formal Session](#)

Amendment #1

We are facing a housing crisis in Massachusetts. We produce half of the housing that was produced annually in the 1960s and 1970s. Rents have increased more than 75% since 2000. Single family home prices have increased more than any other state since 1980. 25% of tenants pay more than half of their income on rent. Unfortunately, we handcuff our local elected officials by requiring a 2/3 majority vote for zoning changes, presenting an obstacle to affordable housing development. This amendment would allow those decisions to be made by a simple majority for affordable housing near public transit, accessory dwellings, and more. We must provide our municipalities with the tools they need to produce affordable housing. The amendment also creates a commission to keep track of our progress and provide recommendations to meet our goals. Our housing crisis was not created overnight, and it will not be solved by one piece of legislation. But this amendment is a start.

[State Senator Eric Lesser \(D\)](#)

[07/29/2020 Full Formal Session](#)

Amendment #1

Housing is too expensive in Massachusetts. People cannot afford to live here. This measure will reduce the price of housing by increasing the supply, and it will create thousands of construction jobs in the process. One of the contributing factors to the spread of COVID-19 is unsafe housing and crowded conditions. The history of zoning in our Commonwealth is linked to the struggle for social justice, and this amendment begins to shift the needle.

[State Senator Bruce E. Tarr \(R\)](#)

[07/29/2020 Full Formal Session](#)

Amendment #20

This amendment strikes at one of the many economic sectors of our Commonwealth that has been particularly hard-hit by the pandemic, and that is live theater performances. The performing arts are important to our quality of life and our economy. Theater performances create jobs and draw people to businesses in the immediate area of the performance. This amendment is analogous to the tax credit in our Commonwealth for the production of film.

[State Senator Joanne Comerford \(D\)](#)

[07/29/2020 Full Formal Session](#)

Amendment #17

This amendment creates a healthy soil program to support farmers who wish to use healthy soil farming practices. This issue is a priority of the Food Systems Caucus. Healthy soils sequester carbon dioxide from our atmosphere.

[State Senator Joseph Boncore \(D\)](#)

[07/29/2020 Full Formal Session](#)

Amendment #52

The New England Aquarium is a vital resource for science, research and advocacy for vibrant oceans. Its mission is focused primarily on the environment. The aquarium is a great place to visit to be inspired by and learn more about our oceans. It is home to the world's longest running whale research program. Its current facility is over 50 years old and has only seen incremental improvements since its creation in 1969. Yet it is one of the most visited cultural institutions in New England. It has lost out on a lot of revenue due to the pandemic. Boston is expected to see three feet of sea level rise by 2050. So this bond authorization will go a long way to protect this beautiful cultural institution for generations to come.

[State Senator Joseph Boncore \(D\)](#)

[07/29/2020 Full Formal Session](#)

Amendment #53

The Boch Center is still unable to open until Phase 4. As they prepare for reopening, they are facing significant hurdles in outfitting their facilities for social distancing. This funding will provide them the opportunity to make safety improvements in the interest of public health.

[State Senator Joseph Boncore \(D\)](#)

[07/29/2020 Full Formal Session](#)

Amendment #54

This amendment will provide additional support for municipal and regional planning authorities across the Commonwealth. As we work toward recovery, cities and towns will need further funding for planning through state and federal investments. With this amendment, we will ensure that our communities are set up for success. The vast majority of our municipalities do not have a planner on staff. This means that most communities cannot do the kind of planning work that is needed for housing, workforce development, and climate mitigation and adaptation.

[State Senator Bruce E. Tarr \(R\)](#)
[07/29/2020 Full Formal Session](#)

Amendment #58

This amendment includes seasonal restaurants in the list of entities to be prioritized for grants. I hope it will be adopted.

[State Senator Jason M. Lewis \(D\)](#)
[07/29/2020 Full Formal Session](#)

Amendment #63

This amendment relates to Zoo New England. The land and property, i.e. the animals, of our zoos are state property. So it is our responsibility to look out for the care and the future of these institutions. Franklin Park Zoo and the Stone Zoo are operated on behalf of the state by a nonprofit organization, Zoo New England. This amendment will provide \$5 million in capital funds for Zoo New England, and it will require a 1 to 1 match between public dollars and private dollars that Zoo New England will raise. Our zoos provide significant benefits to our communities. They are a significant summer employer for at-risk youth. Zoo New England has faced numerous challenges over the past 10 or 15 years, but with our help, they have risen to the challenge and gotten stronger.

[State Senator Rebecca Rausch \(D\)](#)
[07/29/2020 Full Formal Session](#)

Amendment #84

Discriminations based on weight are found at every step of the employment process. As we continue to dig deep to dismantle systemic injustice, we must look to our history in Massachusetts. We were first in the nation to enact broad spectrum public accommodation laws and to legalize same sex marriage. We have shown time and again that we strive to protect individuality. We must now be a leader again by enacting this law to prevent discrimination based on height and weight. This amendment adds height and weight to our current protected classes law. But I ask to withdraw this amendment.

[State Senator Walter F. Timilty \(D\)](#)
[07/29/2020 Full Formal Session](#)

Amendment #94

This amendment authorizes a \$3 million bond for restoration of the State Theater in Stoughton. This funding will contribute to the community by enriching the lives of residents and visitors.

[State Senator Joan B. Lovely \(D\)](#)
[07/29/2020 Full Formal Session](#)

Amendment #99

This amendment would bring the Commonwealth in line with the Federal Cider Act tax structure by changing the maximum allowable alcohol content for cider to 8.5% by volume. The DOR estimates that this change would cost the Commonwealth only \$300,000. I hope this amendment passes in the interest of fairness.

[State Senator Joan B. Lovely \(D\)](#)
[07/29/2020 Full Formal Session](#)

Amendment #100

We each represent areas with diverse tourism attractions. The hospitality industry has been devastated by the pandemic. Our regional tourism councils need to receive the funds we've appropriated by September 1 to implement marketing plans and keep their communities thriving. Making minor investments in this industry pays off in major ways.

[State Senator Eric Lesser \(D\)](#)
[07/29/2020 Full Formal Session](#)

Amendment #100

Our regional tourism councils do vital work to promote regions. The tourism economy is the third largest sector in our Commonwealth in terms of employment and it has been decimated.

[State Senator Marc R. Pacheco \(D\)](#)
[07/29/2020 Full Formal Session](#)

Amendment #139

This amendment would create thousands of clean energy technology jobs in the Commonwealth. We can lead New England in offshore wind jobs. Climate change is, in my opinion, the biggest issue that we face. We need to do everything we can to fix this situation, bringing greenhouse gas emissions down while saving jobs and creating new ones. I urge my colleagues to support this legislation.

[State Senator Adam G. Hinds \(D\)](#)
[07/29/2020 Full Formal Session](#)

Amendment #154

The rural growth fund is a strategic effort to attract capital to rural businesses in order to create new jobs and support rural economies. The imbalance of investments between cities and rural areas is symptomatic of inequities across the commonwealth. We have seen this passed twice now in the House, and I think it is time for us to take it up in the Senate. I hope we will follow this through the conference process. But I ask to withdraw this amendment.

[State Senator Adam G. Hinds \(D\)](#)
[07/29/2020 Full Formal Session](#)

Amendment #162

We have to make sure our economic recovery is spread across our Commonwealth. This is an

effort to double the amount we have put aside for rural and small town grants. I hope it is

adopted.

[State Senator Walter F. Timilty \(D\)](#)

[07/29/2020 Full Formal Session](#)

Amendment #232

This amendment establishes a special commission to evaluate and study the impact of telecommuting on our employees. Our frontline healthcare workers have put their lives on the line every day in order to save the lives of others. Here in this legislature, we have acted swiftly and efficiently as our offices and staff have adapted to working remotely. And we've held the first remote formal sessions in the history of this body. Across the world, we've seen a positive impact on our environment as people have stayed home. Studies have illustrated that telecommuting boosts employee morale and promotes a better work-life balance.

[State Senator Sal N. DiDomenico \(D\)](#)

[07/29/2020 Full Formal Session](#)

Amendment #182

This amendment will help organizations that run after school programs. Our public schools teach over 700,000 youths. School districts have been forced to reallocate funding for after school programs due to budget cuts, but 1/3 of the workforce requires childcare.

[State Senator Patrick O'Connor \(R\)](#)

[07/29/2020 Full Formal Session](#)

Amendment #85

Right now, only 21 states require students to take a course on finance education. Studies show that over 35% of our households would not be able to remain financially solvent for three months if their income was lost. The average age of first-time home buyers is rising across the country, and young people are being placed at a disadvantage in navigating the home buying market. This task force would bring together the brightest financial minds to examine our current financial literacy teaching methods and suggest improvements. Research has shown that as little as 6.9% of students in our country can be called financially literate.

[State Senator Patrick O'Connor \(R\)](#)

[07/29/2020 Full Formal Session](#)

Amendment #142

This is a pilot program that would create a grant program for new business ventures aiming to meet a marketplace need currently existing in the Commonwealth. We hope to give \$500,000 to ten recipients in the first round of grants. This is a unique way to invest in a modern, homegrown economy that harnesses the ingenuity of Massachusetts residents.

[State Senator Anne Gobi \(D\)](#)

[07/29/2020 Full Formal Session](#)

Amendment #64

What is pyrrhotite? It's a naturally occurring iron sulfite mineral, and according to a survey by the USGS, there is a vein of pyrrhotite that goes right through Massachusetts. What has happened is that pyrrhotite has seeped into the foundation of people's homes, where it reacts with water and air and creates a new material that expands and cracks the foundations, eventually making the house uninhabitable. The only way to fix the problem is to raise the house, remove the foundation and lay a new one. Homeowner's insurance does not cover this. So this amendment will create a fund so that people can get reimbursed for the testing required to determine if pyrrhotite is indeed entering their foundation.

[State Senator Eric Lesser \(D\)](#)

[07/29/2020 Full Formal Session](#)

Amendment #64

We have discussed this issue in this chamber in the past. Imagine you save and work for years, and you put your life savings into a house. And one day, you notice cracks in your foundation. You check the foundation and it turns out that the quarry where that concrete came from contained pyrrhotite. Now, you have to put the house on stilts, excavate the foundation, lay a new one, and lower the house again. At a minimum, this will cost \$250,000. But homeowner's insurance won't cover that process unless the house actually collapses.

[State Senator Anne Gobi \(D\)](#)

[07/29/2020 Full Formal Session](#)

Amendment #68

This amendment is a great collaboration between the Department of Veterans' Services and MDAR. MDAR will offer a grant program to veteran farmers and veterans interested in entering the agriculture industry.

[State Senator Harriette L. Chandler \(D\)](#)

[07/29/2020 Full Formal Session](#)

Amendment #36

This amendment would ensure that students in public institutions of higher education have access to their transcripts. It is now a common practice for universities to withhold transcripts from students due to an unpaid balance to the school. Students are often forced to drop out due to costs, leaving them with an outstanding debt to their former schools. Without a transcript, students can find it difficult to find an alternative means to complete their education at a different institution.

[State Senator James B. Eldridge \(D\)](#)

[07/29/2020 Full Formal Session](#)

Amendment #129

This amendment updates and strengthens existing consumer protections around debt collection. It limits wage garnishment to a reasonable amount and lowers the interest paid to debt collectors to six percent, bringing Massachusetts in line with other states. Debt buyers and collectors have filed hundreds of lawsuits since March 1st, even while the pandemic rages on. There are so many people who are now behind on their debts because they are out of work.

[State Senator Adam G. Hinds \(D\)](#)

[07/29/2020 Full Formal Session](#)

Amendment #167

This amendment is an effort to raise the cap on funding from \$10 to \$15 million for gateway city housing developments. Developers currently have to pay the same cost for construction prices in downtowns such as Pittsfield as they would in downtown Boston, but the rents they could collect from each location are much different.

[State Senator Cynthia Stone Creem \(D\)](#)

[07/29/2020 Full Formal Session](#)

Amendment #303

Our state has been a leader in technology. However, in our increasingly digital world, your personal data is ripe for businesses to harvest for their own interests. This amendment expands the scope of the commission to address these concerns.

[State Senator Bruce E. Tarr \(R\)](#)

[07/29/2020 Full Formal Session](#)

Amendment #3

This amendment calls a particular problem to our attention. During the pandemic, we have tried to ensure that no one is evicted through moratoriums. But we have only considered half of the equation, because we have not addressed the needs of those who own these properties and depend on income from rental payments to support themselves. This amendment seeks to call attention to that glaring omission and suggest that we must find a way to remember the plight of those who provide housing and are struggling without payment of rent. If we don't begin to address this soon, we will destabilize the housing stock in a way we may not fully understand. This amendment directs the Department of Housing and Economic Development to look at this problem and suggest a cause of action not later than November 1st of this year. We cannot see the collapse of affordable rental housing in our Commonwealth.

[State Senator Michael D. Brady \(D\)](#)

[07/29/2020 Full Formal Session](#)

Amendment #3

We need to protect the owners of these properties as well as the tenants who live in them. If tenants cannot afford to pay their rents, landlords are often not able to pay the mortgage to the banks. There are many concerned constituents in my district and across the Commonwealth who are worried about this very issue.

[State Senator Harriette L. Chandler \(D\)](#)

[07/29/2020 Full Formal Session](#)

Amendment #269

Apart from the pandemic, there is no issue in my district that comes close to the cost of housing. This amendment was intended to ensure that a housing choice program require 20% of housing in a new development be affordable to people at 60% of the area's median income. Our housing crisis is not in production of luxury housing. The crisis is in housing for working people. I am disappointed that the housing choice program is a false promise that will produce nothing for working people. The gentleman from Lynn's amendment makes some helpful changes, including lowering the threshold required to approve zoning changes. But we are facing an enormous crisis that requires solutions bolder than those we are offering. Fair and adequate pay is a big part of the housing affordability crisis. There are more progressive portions of this bill, but they are far from enough to solve the housing crisis.

[State Senator Bruce E. Tarr \(R\)](#)

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Amendment #16

I have been honored to lead the Senate Working Group on Supply Chain and Price Gouging Issues during the pandemic. The pandemic has revealed the dependence we have on agricultural products that come from other places. I am pleased to report that we have great opportunity to strengthen our own agricultural producers, particularly in meat and poultry processing. There are also significant opportunities for carbon sequestration through our soils and energy generation as a byproduct of our agriculture. The commission proposed by this amendment will help us identify the action steps necessary to begin taking advantage of these opportunities. I hope this amendment is adopted because it will set the state for tremendous growth in agriculture.

[State Senator Bruce E. Tarr \(R\)](#)

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Amendment #41

It is imperative that, when we see the level of economic damage being done by the pandemic, we explore every possible opportunity to mitigate that harm. One of the challenges facing small businesses is a constant: the cost of health insurance for employees. This amendment seeks to engage the Commonwealth Connector to develop a plan to provide premium assistance so that small businesses can continue to provide health insurance.

[State Senator Bruce E. Tarr \(R\)](#)

[State Senator Bruce E. Tarr \(R\)](#)
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Amendment #4

We have not discussed many opportunities to increase revenues in order to fulfill our spending priorities. This amendment would legalize sports wagering, which carries with it an estimate of approximately \$35 million in annual revenue for the Commonwealth. This is not a new issue. It has had the benefit of significant research and discussion. We must realize that it presents us with an opportunity to capture dollars that are being lost to other states and the illegal market. It is unfortunate that we have not yet been able to do so.

[State Senator Julian A. Cyr \(D\)](#)

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Amendment #57

The Cape and Islands are the most unaffordable regions in our Commonwealth. A number of people who own multiple homes in this district have come to the region to ride out the pandemic. The founder of Google and head coach of the Patriots are both on Nantucket. Many more are clamoring to buy a home in our region to escape the cities. We are, of course, fortunate to have these residents who drive economic engagement. But we are not doing enough to ask these seasonal residents, the ultra-rich, to pay a little bit more forward in order to maintain a year-round community. The median home price on Nantucket is \$2 million. Our region has become profoundly unaffordable, and that is because the market is primarily driven by second homes. Updating zoning without empowering communities like mine to raise revenue will simply lead to more luxury condos without housing for those who need it most. This gives communities the tool to fund affordable and workforce housing, and it leaves it up to them to decide what luxury fee to place on the most expensive homes, with a cap at 2%. The amendment only applies to home sales over \$2 million, so it targets only the most fortunate. The first \$2 million of that home would be exempt from the transfer fee, and municipalities would have the option to raise that threshold even higher. So I look forward to working on this in the weeks to come but I ask to withdraw this amendment.

[State Senator Bruce E. Tarr \(R\)](#)

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Amendment #14

We have heard many dire predictions about the predicament that restaurants currently face. For several years, we've recognized the importance of the sales tax holiday for retailers in our Commonwealth. This amendment applies the same method to restaurants with a meals tax holiday.

[State Senator Diana DiZoglio \(D\)](#)

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Amendment #213

Hundreds of thousands of restaurants have closed across the country. Delivery companies charge restaurants a minimum of 25-30% for their service. When delivery orders accounted for 5-10% of sales, delivery companies took about 2-3% of restaurant revenues. They are now taking close to 20% of restaurant revenues. This is not sustainable. Yet there is little choice for small restaurants that cannot provide their own delivery services given the current circumstances. This would cap the fee that delivery services can charge restaurants at 15% of an online order.

[State Senator Diana DiZoglio \(D\)](#)

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Amendment #228

I have engaged with small business owners for this entire session in order to generate proposals to truly assist them. During the pandemic, these proposals are even more important. The Supply Mass., Buy Mass. Program is one of the important tools we can use to help our small businesses. As we've witnessed with the shortages of PPE, having online accessibility to producers before need outpaced supply would have put us in a better position than we now find ourselves in.

[State Senator Diana DiZoglio \(D\)](#)

[07/29/2020 Full Formal Session](#)

Amendment #230

There are a number of Main Streets organizations operating independently throughout the Commonwealth. We need to find a way to maximize our resources. This amendment seeks to establish a statewide Main Streets office to maintain and revitalize our downtown commercial districts.

[State Senator Diana DiZoglio \(D\)](#)

[07/29/2020 Full Formal Session](#)

Amendment #231

This amendment provides for the proclamation by the Governor of the weekend after Thanksgiving as Small Business Saturday and Sunday. Small businesses need lower costs and higher sales. The convenience of online shopping has put our local stores at a serious disadvantage. A focused promotion to encourage shoppers to keep their dollars closer to home is a simple way to help our small businesses.

[State Senator Diana DiZoglio \(D\)](#)

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Amendment #234

We have been putting band aids on broken bones. Before the pandemic changed everything, I worked consistently with the Black Economic Council of Massachusetts on this proposal. This amendment would incorporate diversity, equity and inclusion provisions in the bill before us today. This amendment re-empowers the Supplier Diversity Office as its own agency.

[State Senator Bruce E. Tarr \(R\)](#)
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Amendment #241

Ensuring that price gouging does not occur during a pandemic is very important. This amendment reflects a bill that would provide statutory protections against price gouging. That bill has been reported favorably to the Committee on Ways and Means, so I ask to withdraw the amendment.

[State Senator Diana DiZoglio \(D\)](#)
[07/29/2020 Full Formal Session](#)

Amendment #265

Less than 40% of small businesses survive past 10 years. That's without a pandemic. Yet the law in Massachusetts only requires a review of laws pertaining to small businesses every 12 years. The average small business doesn't survive long enough to know whether the rules and regulations that apply to it contributed to its demise. Our small businesses have never been more vulnerable to overregulation and resulting additional costs than they are now.

[State Senator Diana DiZoglio \(D\)](#)
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Amendment #281

Restaurants are shuttering across the Commonwealth. 2/3 of Massachusetts restaurants are more than 50% off of their usual revenues. A mid-size restaurant can expect to pay \$7-10,000 per month in rent. I am grateful that this bill, there is \$20 million to provide relief to struggling restaurants. But when you look at these numbers, it is clear that \$20 million is not enough. This amendment increases that line item to \$50 million, which is a better start for our restaurants.

[State Senator Diana DiZoglio \(D\)](#)
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Amendment #316

Nondisclosure agreements were originally intended to protect intellectual properties or trade secrets. But they are now often used to silence the victims of sexual misconduct and abuse. We have all heard of the high-profile cases – Harvey Weinstein, Roger Ailes, and many more. NDAs allow these people to cover up their misdeeds and seek out new targets. When the Catholic Church covered up assaults on children, the tool they used was the nondisclosure agreement. These same agreements continue to be used in our state government, using taxpayer dollars. It is unacceptable that the Speaker and the Governor continue to use NDAs to purchase the silence of employees in this building who may have been harassed or abused based on sex, gender, skin color, sexual orientation or for any other reason. We associate NDAs with sexual harassment because it's easier to pigeonhole issues to a particular type of person. It allows us to distance ourselves from difficult issues. But that perspective leads to the problem we confront today. There is a glaring inequality in the balance of power in this building and across the nation. We need to shift the balance in the favor equity and fairness, and in order to do so, we must have transparency about what is actually going on. Banning the use of NDAs in all state agencies is a significant step forward.

[State Senator James B. Eldridge \(D\)](#)
[07/29/2020 Full Formal Session](#)

Amendment #316

This issue was before the Judiciary Committee, which sent a similar version of amendment to study. I will be voting no on this amendment, and I want to explain why. Section B prohibits NDAs from being a condition of employment at state agencies. But there are some cases where employees may request NDAs, and this language may prohibit such a situation.

[State Senator Diana DiZoglio \(D\)](#)
[07/29/2020 Full Formal Session](#)

Amendment #316

The provisions before us allow for the victim to have their name redacted from settlement agreements, providing for confidentiality. If you've never been in a situation where you've had to sign an NDA, let me explain what happens. Someone more powerful than you offers you a settlement. You want to move on. But they say you won't get the settlement until you sign away your right to ever speak about what happened. If you're broke, is that a real choice? It breaks my heart that my colleagues would oppose legislation like this that would help survivors. We cannot end the silence by perpetuating the silence. We cannot restrict victims' freedom of speech.

[State Senator Michael D. Brady \(D\)](#)
[07/29/2020 Full Formal Session](#)

Amendment #349

People are suffering, and they are looking to us to help them out. We need revenue in order to do that. This amendment is a small step to move things in the right direction. Sports betting can bring significant revenue to our Commonwealth and create thousands of jobs. Many people enjoy sports betting for recreation. Professional sports teams and leagues are looking to get involved with this.

[State Senator Michael J. Rodrigues \(D\)](#)
[07/29/2020 Full Formal Session](#)

Amendment #349

The time to tackle this issue is close, but it is not now. The regulation and control of gaming is something that we pride ourselves on. This is not the vehicle for online gaming and sports betting. I ask that this amendment is not adopted, but I ask my colleagues to work throughout

betting. I wish that this amendment is not adopted, but certainly colleagues to work throughout the remainder of this session to put together a bill that will benefit the citizens of our

Commonwealth.

[State Senator Bruce E. Tarr \(R\)](#)
[07/29/2020 Full Formal Session](#)

Amendment #349

I believe this is an economic opportunity that we cannot afford to forego. We certainly need to focus on that which is happening around us, and we cannot continue to miss the opportunity to capture dollars that are currently going elsewhere. It is my hope that we will continue to focus on this issue in order to find the best way to address this issue.

[State Senator Eric Lesser \(D\)](#)
[07/29/2020 Full Formal Session](#)

Amendment #349

We have been engaged in a robust review of the options before us relative to sports betting. We've received testimony from dozens of stakeholders, and we have every intention to continue our engagement on this topic. But this particular bill is not the proper vehicle.

[State Senator Michael D. Brady \(D\)](#)
[07/29/2020 Full Formal Session](#)

Amendment #349

There are some things to work out with this amendment. I appreciate the commitment to this issue that has been expressed by the other members of this body. Our lottery needs to be part of this equation as well. I will withdraw this amendment so we can continue this discussion.

[State Senator Joseph Boncore \(D\)](#)
[07/29/2020 Full Formal Session](#)

Amendment #47

We need to make our housing system more equitable. The pandemic is only exacerbating our housing crisis. For many Massachusetts residents, though, the conditions that made housing unattainable were present long before the onset of the pandemic. That's why, at the beginning of this session, I filed the HOMES act. An eviction leaves an indelible mark on one's record. We have heard about the dire effects a criminal record can have on one's ability to find a job. By sealing eviction records, we will provide new opportunities for housing for our most vulnerable residents. This amendment would allow minors to not be named on a summary process eviction complaint. Their names can be expunged and their records dismissed if they are

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