

The June 30, 2009 meeting of the Walpole Zoning Board of Appeals was held in the Main Meeting Room of Town Hall.

Chairman Susanne Murphy called the meeting to order at 7:00 P.M. with the following members present:

Susanne Murphy, Chairman  
Ted C. Case, Vice Chairman (absent)  
Daniel J. Cunningham, Jr., Clerk  
Craig Hiltz, Member  
James M. Stanton, Member

James S. Decelle, Associate Member

**7:00 p.m. – 5<sup>th</sup> Fairway Development, LLC – Case #18-08 – Deliberation (Murphy, Cunningham, Hiltz, Stanton, Decelle)**

Attorney Ilana Quirk sent the Board an email of the draft decision, which was discussed. The plan used should be the most recent plan as last revised.

Attorney Quirk will prepare the final version of the decision for the Board's review prior to its next meeting on July 8, 2009.

The votes were as follows:

**MOTION:** On June 30, 2009, Member Murphy moved and Member Cunningham seconded that the Board vote to find that the Applicant satisfied the jurisdictional prerequisites under 760 CMR 31. The Motion was approved 5-0.

**B. Consistency with Statutory and Regulatory Needs.**

Whether a board may approve a comprehensive permit with conditions without regard for whether the conditions would make the project uneconomic or may deny the permit is governed by whether the Town has met certain minimum statutory and regulatory thresholds for the development of low and moderate income housing as set forth in set forth in G.L. c. 40B, §20 and 760 CMR 31.04. If the Town has satisfied any of the following statutory and regulatory exemption thresholds, then the Board has the right to either deny the application or impose its local regulations on an approval and the resulting decision shall be considered consistent with local needs and satisfy the requirements of G.L. c.40B.

1. Ten Percent Affordable Housing Exemption:  
10% of the Town's total housing stock is part of the subsidized housing inventory. G.L. c. 40B, §20; 760 CMR 31.04(1). On June 30, 2009, the Board found that the Town had not achieved this statutory minimum.
2. Existing Development Exemption:

Affordable housing land exceeds 1½ % of total land area, excluding government-owned land.) G.L. c. 40B, §20; 760 CMR 31.04(2). On June 30, 2009, the Board found that the Town had not achieved this minimum.

3. New Construction Exemption: New affordable housing construction land area in the calendar year exceeds .3 of 1% of the total land area. G.L. c. 40B, §20; 760 CMR 31.04(3). On June 30, 2009, the Board found that the Town had not achieved this minimum.
4. Recent Progress: Affordable units created during the prior 12 months exceeds 2% of the Town's total housing stock. 760 CMR 31.07(1)(d). On June 30, 2009, the Board found that the Town had not achieved this minimum.
5. Large Scale Project: The Application is for more than a certain number of units, depending on the Town's affordable housing stock. 760 CMR 31.07(1)(g). On June 30, 2009, the Board found that the Town had not achieved this minimum.
6. Related Application: The Application is related to an application for zoning or subdivision approval on the same land made within the prior 12 months. 760 CMR 31.07(1)(h). On June 30, 2009, the Board found that there was not such a related application.
7. Planned Production: Certified progress on approved affordable housing production plan. 760 CMR 31.07(1)(i). On June 30, 2009, the Board found that the Town has an approved affordable housing production plan, but it is not certified.

**MOTION:** On June 30, 2009, Member Murphy moved and Member Cunningham seconded that the Board vote to find that the Town has not satisfied its low and moderate income housing needs under G.L c.40B. The Motion was approved 5-0.

### **III. FINDINGS OF FACT AND CONDITIONS OF APPROVAL**

Over the course of the public hearing, the Board heard testimony and received written comments from numerous Town boards and officials, the Applicant and its representatives and numerous abutters and members of the public. After the public hearing closed, the Board met during open session at a duly posted meeting and made the following findings of fact and the imposed the following conditions of approval:

1. **SEWER**. The Project shall be serviced by municipal sewer. Initially, the only waiver from local requirements for sewer connections made by the Applicant was from the "procedural requirements of Walpole General By-law Article XXV." (Application, Tab 7.) On June 9, 2009, however, the day before the public hearing closed, the Zoning Office received an extensive list of waivers (29 pages) from the Applicant. The waiver requests will be dealt with separately.

Prior to the issuance of any building permit for the Project, a certificate from the Town's Board of Sewer and Water Commission, certifying that sufficient sewer capacity exists

for the Project, shall be provided to the Building Commissioner and the Town Engineer, with a copy to the Board.

Prior to the issuance of any building permit for the Project, the final sewer design shall be reviewed by the Town Engineer and the Sewer and Water Commission and determined by them to be in full conformance with all local requirements not waived hereunder and they shall certify this determination to the Building Commissioner, with a copy to the Board.

Prior to the issuance of any occupancy permit, the Applicant shall repave any disturbed pavement in any public way by paving the disturbed areas from curb to curb and present a certification from the Town Engineer that this has properly occurred to the Building Commissioner, with a copy to the Board.

2. **WATER.** The Project shall be serviced by municipal water. On June 9, 2009, the Applicant requested a waiver from water connection fees and the restriction prohibiting installing mains from December 1 through April 1, except in emergencies. The waiver requests will be dealt with separately.

Prior to the issuance of any building permit for the Project, a water flow test and flushing and disinfecting, if this is required by the Town's Board of Sewer and Water Commission, shall be performed by the Applicant at its expense under direction and supervision of the Board, the Town Engineer and Director of the Town's Department of Public Works, with satisfactory results certified by the Director and the Engineer to the Building Commissioner. The procedure for flushing, disinfecting and pressure testing of the water mains shall be approved by the Town Engineer and Sewer and Water Commission.

Prior to the issuance of any building permit for the Project, the final water design shall be reviewed by the Town Engineer and the Sewer and Water Commission and determined by them to be in full conformance with all local requirements not waived hereunder and they shall certify this determination to the Building Commissioner, with a copy to the Board.

3. **WATER CONSERVATION.** The Applicant shall equip each unit with water saving plumbing fixtures in every bathroom, kitchen and laundry area, and any and all new underground water pipes that are installed shall be installed with water tight joints.
4. **ENERGY CONSERVATION.** The Applicant shall construct the Project in a manner that promotes energy conservation. All units shall be energy star certified.
5. **WETLANDS.** The Applicant requested a waiver from the Town Wetland Protection By-law, but stated that the Property is not within a wetland resource area and no wetlands are depicted on the Plans. The waiver request shall be dealt with separately; however, since no jurisdiction of the Conservation Commission under the local wetlands by-law has been established, the Board finds that no waiver from the by-law is required. If jurisdiction by the Conservation Commission is established in the future, the Applicant

may return to the Board for to request a waiver of applicable local by-law provisions after documenting the extent and source of the Commission’s jurisdiction.

6. **STORMWATER CAPACITY.** The October 16, 2008 application sought permission to connect to the Town’s “stormwater drainage system;” however, revisions to the Application and the Plans eliminated that proposed connection and proposed, instead, to control all stormwater on the Property. On June 9, 2009, just prior to the close of the public hearing, the Applicant submitted a 29 page waiver request, which included a statement that the Applicant requests approval of a connection to the “Town’s drainage system, a request that the Applicant did not discuss with the Board. The Applicant has not clarified how drainage from the Project would be controlled.

**A. Municipal Drainage Connection Request**

On June 9, 2009, the day before the close of the public hearing, the Applicant delivered a 29-paged waiver request to the Zoning Office that included a statement that: “The Applicant is requiring the approval of a connection to the town’s drainage system.” (June 9, 2009 Waiver Request, p. 13.) The revised Plans submitted by the Applicant do not depict a connection to a municipal drainage system and the Applicant did not discuss such a connection with the Board prior to the close of the public hearing and, on June 10, 2009, denied the Board’s repeated requests for an extension of the deadline to close the public hearing, so that the extensive waiver request submitted to the Zoning Office on June 9, 2009 could be properly reviewed and considered and discussed with the Applicant.

To the extent that the Applicant seeks permission to connect to “the town’s drainage system,” the Board hereby grants that permission, provided that the Applicant shall conform to the following requirements, before any building permit for the Project issues:

- i. The Applicant shall present a map to the Town Engineer that has been prepared and stamped by a professional engineer and a registered land surveyor that depicts the “town’s drainage system” as described in the Waiver Request (p.13)(the “Alleged System”) and that, at a minimum, documents the following for the Alleged System:
  - a. The location of all infrastructure (i.e., catch basins, pipes, outlets, drainage areas, drainage basins and other elements) contained within the Alleged System that the Applicant proposes to use for the Project;
  - b. The current maximum storage capacity of the Alleged System;
  - c. The current storage usage of the Alleged System;
  - d. The maximum amount of stormwater storage that the Project would add to the Alleged System during storm events; and
  - e. The book and page of the deed or deeds that document the Town’s right, title and interest as to each element of the Alleged System and the extent of the Town’s right to drain and store stormwater on land within the Alleged System.

- ii. Evidence of a vote by Town Meeting acknowledging and confirming the existence of the Alleged System and granting the Applicant a permanent easement and evidence of the recording of the permanent easement to allow the Project to drain into the Alleged System and evidence of the grant and recording of any other drainage easements from private parties that may be required to allow the Project to drain into the Alleged System.
- iii. Evidence of receipt by the Town, if required by the Town, of an indemnification and hold harmless agreement with adequate surety, from the Applicant to the Town, to compensate the Town for allowing the Project to drain as proposed into the Alleged System and to compensate the Town for any damages that may or could result from any taking of property claims against the Town if the Project is allowed to connect to the Alleged System, together with the cost of all legal fees and expenses incurred by the Town in defending or settling such claims.
- iv. A certificate from the Town Engineer to the Building Commissioner that the maximum potential stormwater from the Project shall not exceed the capacity of the Alleged System as documented in the materials provided.

#### **B. On-Site Drainage Control Request**

The June 10, 2009 peer review drainage report of the Board's drainage consultant (the "June 10, 2009 Chessia Report") indicated that, despite a redesign of the Project, serious deficiencies in the design of the on-site drainage proposed for the Project remained, including, but not limited to, that flooding onto Baker Street would occur, causing a dangerous condition for the occupants of the Project and for area residents, and that a number of dwellings within the Project would have basements subject to significant groundwater flooding, a dangerous and unhealthy condition for the residents of the Project.

Specifically, the June 10, 2009 Chessia Report stated that, based upon revised plans presented to the Board just prior to the close of the public hearing that:

**Based on my modeling the proposed South Swale Basin is undersized and would overtop in a 100-year storm event and would flood onto Baker Street, causing a potentially dangerous condition.**

*Under the latest design there is proposed to be less than an inch of freeboard in Basin #1 in the 100-year storm. Consideration of groundwater separation, side slopes overflow spillway and berm width requirements would reduce the storage such that the basin would overtop and flow into Baker Street in the 100-year storm. Basin #4 has less than 5 inches of freeboard with a very narrow (approximately one foot at the narrowest) berm between the basin and existing houses to the north.* (June 10, 2009 Chessia Report, p. 9.)

In addition, the June 10, 2009 Chessia Report stated that:

**The proposed locations for a majority of the 18 dwelling units would require excavation into the groundwater table to install the basements. The State**

**Building Code requires basements to be either above groundwater or installation of a system to prevent groundwater intrusion provided. 780 CMR 5116.**

*It is proposed to install a foundation drain around the perimeter of the buildings to lower the groundwater table. The disposition of the groundwater from the proposed foundation drains has not been determined. There does not appear to be a place for this water to discharge except to the proposed drainage system. I recommend that the board consider a requirement that basements be installed 12 inches above seasonal high groundwater to prevent issues with groundwater at the buildings.*

A copy of the June 10, 2009 Chessia Report is attached hereto as Exhibit A and incorporated into this decision by reference.

To the extent that the Applicant seeks approval of the Project with a final design that would control stormwater drainage through a drainage system that would be located entirely on the Property, the final design shall conform to the following requirement, before any building permit for the Project issues:

The Town Engineer, after obtaining peer consulting review from Engineer John Chessia or another peer review consultant approved by the Town Engineer and the Board, at the Applicant's expense, shall issue a certificate that the Plans, as finally revised, conform to all of the conditions, concerns and requirements set forth in the June 10, 2009 Chessia Report so that, among other things, there shall be no increase in off-site flooding, post-construction, and there shall be no flooding of basements and no new drainage issues or concerns shall be created by the revisions.

Any approval hereunder is expressly conditioned upon the requirement that any proposal to increase impervious surface conditions at the Property in the future shall be deemed a substantial modification and shall require a public hearing, with submission to the Board of drainage calculations prepared and stamped by a professional engineer that compare pre-existing and proposed post-construction stormwater runoff conditions and certify that there shall be no increase in rate or volume of runoff as a result of the addition of the proposed increase in impervious surfaces.

The storm water management system as finally designed and installed shall comply with Department of Environmental Protection Storm Water Management Policy, in particular Volume 2 Best Management Practices for treatment of stormwater and recharge of stormwater runoff to groundwater.

Following completion of the Project, an as-built survey of the completed on-site storm drainage system shall be certified by a Registered Professional Engineer as complying with said Storm Water Management Policy BMP Vol. 2 subject to review of the Director of the Town's Public Works Department or the Board's consulting engineer, at Applicant's expense and certify that, as constructed, the Project shall not increase the peak rate of runoff from the

2, 10, 25 and 100 year storm events post-construction when compared to pre-construction conditions. As part of the As-Built approval required herein, a Registered Professional Engineer shall submit an As-Built plan on the entire drainage system and include in the drainage calculations used for the certification all drainage areas contributing runoff to the site.

All catch basins and detention basins shall be cleaned at the end of construction. After backfilling and after the site is brought to sub grade, but prior to paving, all segments of the drainage system shall be video inspected and any sagged or deformed pipe sections shall be replaced. Thereafter, the Applicant and/or Applicant's successor shall be responsible for maintaining the site's storm-water management system in accordance with generally accepted practice, as the same may, from time to time, change.

Before any building permit issues, the Applicant shall provide a stormwater operations and maintenance plan for the Board's review and approval and the Applicant shall provide sufficient funds for peer review of the plan if the Board cannot obtain peer review from the Town Engineer.

7. **PARKING.** The Project shall provide the parking shown on the Plans.

The cul de sac shall be marked with fire lanes as required by the Fire Chief in his March 2, 2009 correspondence, to prevent any parking in this area.

The Condominium Trust shall provide for deeded parking and shall implement a plan that prevents unit owners from parking more cars than there are parking spaces at the Project.

All parking shall be provided within the boundary lines of the Property and not on any public way. No parking shall be allowed on any access way. "No Parking" signs shall be located along the access ways for the Property. Signs acceptable to the Department of Public Works shall also be placed in any areas where snow is to be placed by snow removal operations, indicating that no parking will be allowed in these designated areas during snowstorm events.

There shall be no parking or storage at the Property of trailers or boats or mobile homes or trucks with a gross vehicle weight that exceed that of 11,000 pounds or vehicles that are not registered with the Department of Motor Vehicles.

8. **INFRASTRUCTURE.** Before any building permit issues, all infrastructures (utilities, roads, drainage, etc.) shall be constructed as shown on the final Plans, with the exception that the roadways need only be completed to binder course prior to issuance of building permits. Notwithstanding the foregoing, to minimize the length of time heavy equipment is present and working on site, the Applicant may construct all foundations simultaneously with the construction of the above-referenced infrastructure. Interim as-built plans shall be provided as to the location of the access way and the foundations before any structure is erected or building permit for a structure issued, to make sure that way and the foundations are in the correct locations.

**Before any building permit issues,** the Applicant shall provide the Building Commissioner with a certificate from the Town Engineer that the final Plans do not include a design with garages that are too close to the access way to allow safe egress for a car pulling out onto the driveway for the Project.

**Before any building permit issues,** the Applicant shall provide the Building Commissioner with a certificate from the Town Engineer that a proper snow removal and storage plan has been provided and approved. The plan shall include a narrative description and snow storage locations, to confirm that proper parking and drainage requirements shall be satisfied during snow events. Road salt shall not be used for vehicular areas.

9. **SIDEWALKS:** The Project shall have no sidewalks; however, if the Plans are revised to include sidewalks, they shall be handicap accessible.
10. **MAXIMUM UNITS.** The total number of dwelling units that may be built and occupied at the Property shall not exceed 18 units in 6 triplexes with 2-bedrooms each, with a maximum of two-bedrooms for each unit for a total bedroom count that shall not exceed 36 or 16 units as previously proposed by the Applicant, with a maximum of 33 bedrooms. The maximum units and bedrooms may be achieved only if all of the conditions set forth hereunder are satisfied. Once the final number of units and bedrooms is determined, no future increase in density shall be permitted except as a substantial modification following a public hearing, with notice, and with full data to be provided by the Applicant to support the availability of water, sewer, parking, stormwater and recreational capacity and other required infrastructure to serve the proposed increase in density.

During the public hearing, the Applicant proposed a decrease in the number of units from 18 units (6 triplexes with 36 bedrooms) to 16 units (1 single-family condominium, 6duplexes and 1 triplex with 33 bedrooms), with the triplex to house three affordable units, but did not amend the Application.

The Board notes that it would greatly prefer 18 units with 6 triplexes - as this would provide more affordable housing and provide it in a manner that would not segregate the affordable units from the market rate units. If the Applicant can provide the necessary certifications set forth in this decision to establish that the 18 units can be safely built, the 18 units shall be allowed. If the Applicant provides certification that only 16 units can be safely built, then only 16 units shall be allowed, however, the affordable units within the revised project shall not be segregated into one building and shall be dispersed uniformly throughout the development.

11. **AFFORDABILITY.** Twenty-five percent of the units within the Project shall be low or moderate income as defined in M.G.L. c. 40B and the regulations promulgated thereunder (herein the “affordable” units)(i.e., as low or moderate income housing for sale to households earning no more than eighty (80%) percent of the Median Family Income, adjusted for household size, for the applicable jurisdictional area, as may be determined by income data compiled by the United States Department of Housing and

Urban Development (HUD) or the Massachusetts Department of Housing and Community Development (DHCD) or the successor agencies thereto. The sale price for such affordable units shall not exceed an amount that is deemed affordable to households earning no more than seventy (70%) percent of the Median Family Income, adjusted for household size, for the applicable jurisdictional area, as may be determined by reference to income data compiled by HUD or DHCD or the successor agencies thereto.)

The affordable units shall be permanently affordable or for the longest period allowed by law and, in any event, so long as the Project does not conform to local zoning requirements. The affordable units shall be permanently eligible for inclusion in the Town's SHI by DHCD, so long as the Project does not conform to applicable local requirements. The Applicant also shall be responsible to timely provide any confirmatory data to the Town, upon request, to support inclusion of all of the units in the Town's SHI.

The affordable units shall be designated by the Applicant by agreement with the Monitoring Agent and shall be dispersed evenly throughout the Project. The Affordable units shall be indistinguishable from the exterior from the market rate units. The affordable units shall be constructed on a schedule that provides substantially for the construction of affordable units and market-rate units on a proportionally equal basis.

The Deed Rider, known as MassHousing Uniform Instrument Form B-114 attached hereto as Exhibit B, shall serve as the affordable housing deed restriction, enforceable by the Town of Walpole, requiring that the affordable units remain affordable in perpetuity. The Deed Rider shall be recorded to protect the continued availability of and requirement for the affordable units. Applicant shall not receive a building permit until evidence of the recording of such Deed Rider has been provided to the Board. The Applicant shall not receive any building permit until the Applicant has executed and delivered and provided evidence of recording of a Regulatory Agreement and a Monitoring Agreement to the Board in a form fully compliant with the requirements of G.L.c .40B.

Prior to the issuance of any building permits for the Development Project, and prior to the Applicant's conveyance of any of the units in the Development Project, the Applicant shall execute a Regulatory Agreement in a form acceptable to the Board. The Regulatory Agreement shall provide among other things that:

- (a) The Affordable Units shall each be sold subject to a Deed Rider ensuring permanent affordability;
- (b) Development cost certifications shall be prepared in accordance with the procedures established by the Monitoring Agent and in accordance with the approved Regulatory Agreement, and the Applicant shall provide to the Board, upon completion of the Development Project and the sale of the last unit, a full certification of the total development costs and total revenues, on a federal income tax basis, prepared by a certified public accountant acceptable to the Monitoring Agent and to the Board, to enable the Board to make its own determination as to whether the Applicant has complied with the Regulatory

Agreement and the profit limitations applicable to it as a “Limited Dividend Organization.”

12. **LOCAL PREFERENCE.** The Applicant shall provide a preference category, with respect to at least 70% (or to the full extent allowed by law) for the affordable units to Walpole residents, their parents and children and for those persons who had resided in Walpole within two years immediately preceding their application for housing. These preferences shall be implemented by the Monitoring Agent, who shall also review the Applicant’s fair housing marketing plan. The costs associated with the marketing plan, including the advertising and processing for the affordable units shall be borne by the Applicant.
13. **AFFORDABILITY MONITORING.** MassHousing or its designee shall act as the Monitoring Agent for the Project with respect to affordability and limited dividend requirements. The Applicant shall provide the Town with all the monitoring documentation at the same time it is provided to Monitoring Agent. Prior to issuance of a Building Permit the Applicant shall enter into a Monitoring Services Agreement in a form approved by the Board. The Town shall have all of the rights provided for by law to enforce affordability and limited dividend requirements.

The services to be performed by the Monitoring Agent shall include but not be limited to:

- a. review and approval of the affordable unit sale prices and the architectural nuances and design to ensure similarity with the market-rate unit,
- b. review and approval of the affirmative marketing plan for the affordable units,
- c. review and approval of the selection process for buyers of the affordable units, and
- d. review and approval of annual compliance of affordable units with respect to the Regulatory Agreement.

If at any time the Applicant is in violation of the Regulatory Agreement, following a hearing of which the Applicant has been given prior notice, then the Board may pursue such enforcement rights as it may have under the Regulatory Agreement and/or the Deed Rider and/or applicable law.

Applicant agrees that the profit to the Applicant or to the partners, shareholders or other owners of the Applicants or of the Project shall not exceed twenty (20%) percent of the total development costs of the Project, exclusive of a developer’s fee (hereafter referred to as the “Allowable Profit”). The developer’s fee shall not be construed to include the payment of a construction manager in accordance with general practice and prices in the industry.

Prior to issuance of the final Certificate of Occupancy for all of the units in the Project, the Applicant shall deliver to the Auditor an itemized statement of the total development costs together with a statement of gross revenues from the Project received by the Applicant to date prepared by an independent Certified Public Account according to generally accepted accounting principals (GAAP), hereinafter referred to as the “Certified Cost and Income Statement”). The Auditor may have access to the Applicant’s books and records with respect to this Project during normal business hours

after reasonable notice to verify cost certification. All profits from the Project in excess of the Allowable Profit shall be paid by the Applicant to the Town for deposit in an affordable housing fund to be used for the purposes of encouraging, creating or subsidizing construction or rehabilitation of affordable housing in the Town of Walpole.

The Town may select an Auditor to audit the financial performance of the limited liability corporation, at the Town's expense. The Applicant shall deliver to the Auditor selected or approved by the Board, the financial records of the Project to allow the Auditor to determine whether the Applicant has conformed to the Limited Dividend definition found in this decision.

- a. A report shall be delivered to the Auditor at the sale of 75% of the units sold.
- b. The information will be provided in a form consistent with the 40B pro forma.
- c. The final audit will be completed and a report delivered to the Town on the earlier of 60 days after the sale of the final unit or 120 days of the issuance of the final occupancy certificate.

The Applicant shall provide a copy of the deed and HUD settlement statement for the sale of each unit of the Project to the Board and a certified cost and income statement for the entire project promptly upon the sale of the last unit and copies of any and all documents and statements provided by the Applicant to any designated monitoring agent for the project. The Board shall not be bound by the audit of any monitoring agent and shall be permitted to conduct its own independent audit of the Applicant's costs and revenues in order to determine the Applicant's compliance with its limited dividend obligations, to the fullest extent allowed by law. The Board shall be permitted to independently enforce the Applicant's limited dividend obligations, to the extent allowed by law.

In order to facilitate the Board's rights, the Applicant shall permit the Board, or its duly authorized representatives, to examine or audit the Applicant's records during normal business hours and shall, upon the Board's request, explain the methods of keeping the records. In determining whether the Applicant has conformed to the limited dividend requirement of this Comprehensive Permit Decision, the Auditor shall be required to certify that:

- a. The methodology used to calculate profit follows the requirements of Mass Housing and this decision;
- b. The total profit paid to the Applicant and to its parents, subsidiaries, affiliates, successors, and assigns, and their respective partners, limited partners, shareholders, managers, or other owners, and the relatives of the same (collectively the "Applicant") does not exceed 20% of total development costs in accordance with Mass Housing requirements
- c. The Applicant has not made unreasonable or excessive payments (i.e. payments in excess of reasonable industry standards applicable to an arm's length transaction) to the Applicant or to its parents, subsidiaries, affiliates, successors, and assigns, or to their respective partners, limited partners, shareholders, managers, or other owners, or to the relatives of the same in connection with work performed on the Project in order to artificially inflate the costs of development of the Project.

To the fullest extent allowed by law, the Auditor shall be provided access by the Applicant during regular business hours and upon reasonable notice to the Applicant to any reasonable financial information necessary to make these determinations and to verify whether the income and expenses of the Project, including without limitation land acquisition costs, construction costs, landscaping costs, and other expenses, represent fair market value for such items, with particular attention to those arrangements between parties with overlapping ownership to owners of the Applicant. Where ever possible the Auditor shall utilize the information provided to the subsidizing agency to conduct the review. In the event the information provided is not sufficient, the Applicant shall provide additional information requested by the Auditor, to the fullest extent allowed by law.

14. **LIMITATION ON PROFITS.** At all times required by law or hereunder, the Applicant shall be a non-profit or a limited dividend organization and comply with the limited dividend requirements of G.L. c. 40B, §20 and otherwise limit its profits as required under G.L. c.40B and any excess profits shall be paid into escrow by the Applicant and then distributed as required by law.

The Applicant's allowable profit to all partners, shareholders or other owners shall be limited to no more than twenty percent (20%) of total allowable development costs. This figure may or may not be used for other calculations made by the subsidizing agency or other entities for other purposes, but shall be used to calculate the profits of the limited dividend organization as defined in this comprehensive permit.

15. **FIRE SAFETY.** Prior to the issuance of any building permit for the Project, if and as required by the Fire Chief, fire hydrants and pull boxes shall be installed and the Applicant shall conduct a hydrant flow test to determine the water availability for fire flow to protect the Project, at the Fire Chief's direction and supervision. In the event that there is insufficient water pressure or volume for fire protection, the Plans shall be revised to include on-site improvements such as a fire pump or off-site improvements to the municipal water distribution system to maintain a residual pressure of 20 psi in the municipal water distribution system.

Prior to the issuance of any occupancy certificate for the Project, the Applicant shall provide the Fire Chief with any required lock boxes.

The Applicant shall comply with the Fire Chief's Memorandum of March 2, 2009 by providing evidence that the Fire Department will be able to maneuver around the cul-de-sac or the Applicant shall modify the Plans; and by relocating the fire hydrant as required and by marking the "Fire Lanes" as directed; and by confirming that the appropriate fire rated walls will be used to separate the units and that the walls will extend from basement to roof line. The project shall comply with all applicable requirements as to sprinklers.

16. **PLAN REVISIONS.** Any and all plan revisions required by this decision shall be incorporated into the record set of Plans which shall be submitted for endorsement by the Board within 120 days of the date any approval granted shall become final, with all

appeals periods having expired without any appeal having been taken or any appeals taken having been finally decided upholding any approval granted hereby. The time allowed to make the revisions may be extended by a vote of the Board. Such extension shall not be unreasonably withheld. The Plans must then be certified as required hereunder prior to issuance of any building permit.

17. **PLAN ENDORSEMENT**. The final revised plans shall be incorporated into any approval hereunder by reference and made a part hereof and shall be voted and signed by the Board (the “Endorsed Plans”) before any building permit issues. Prior to endorsement, the Applicant shall provide a letter from a qualified consultant certifying that the Endorsed Plans and the Project comply with Architectural Access Board (AAB) Regulations. Prior to endorsement, the Plans shall be signed and sealed by a Massachusetts Professional Engineer and a Massachusetts Registered Landscape Architect. The Site Plans contained within the Endorsed Plans shall be recorded and evidence of such recording at the Registry of Deeds shall be provided to the Board and the Building Commissioner before any building permit for the Project issues. The Plans as endorsed are incorporated into the approval by reference and made part hereof.
18. **FUTURE MAINTENANCE**. Prior to issuance of a building permit for the Project, the Applicant shall provide satisfactory evidence of the following to the Board:
  - A. A contract for plowing, deicing, snow removal and trash removal;
  - B. A contract for retaining a service provider for site maintenance and establishing a regular schedule for site maintenance, including the structures, parking areas, access areas, control and management of use of chemicals; and
  - C. An Operations and Maintenance Plan that provides a satisfactory schedule for repairing and maintaining all ways, structures, drainage infrastructure, parking, lighting, landscaping and utilities and regular sweeping of access ways.
19. **SURETY**. With respect to the work to be done by the Applicant within a public way, on Town property or in any Town easement, a form of surety mutually agreed upon in an amount to be determined by the Board in consultation with Town boards and officials and other consultants shall be given to the Town prior to starting any activity authorized by this approval, to ensure the proper and timely completion of all such work that shall be held by the Town Treasurer until he is notified by the Board to release the surety. Requests to reduce the surety may be submitted to and approved by the Board as work progresses and shall include the amount of requested reduction, a list of work outstanding and a cost estimate of the same. The surety retained shall be based on the work remaining and may be increased if work completed fails or increased costs occur.

With respect to the work to be done by the Applicant within the Site, a bond or other form of surety mutually agreed upon in the amount to be determined by the Board in consultation with the Town’s Department of Public Works shall be given to the Town’s Treasurer in an amount sufficient to ensure the completion of incomplete roads or site drainage work and all other required infrastructure, including landscaping and lighting, within the Premises prior to

issuance of the first building permit. Reductions and increases in the surety may occur using the same procedure set forth in the previous paragraph.

No certificate of occupancy shall be issued by the Town until the Applicant has fully completed all site drainage and utility work and has installed a binder course of pavement on driveways and parking areas within the Premises.

20. **AUTHORIZATION TO ENTER**. The Board or its agent shall have authority to enter the Premises during construction of the Project (subject to safety standard compliance, including hard hat, boots and safety glasses, as required) and until as-built plans are approved to determine conformance with this Decision.
21. **DESIGN**. The Project shall be constructed in substantial conformance with the Plans of record, as detailed hereunder and as revised and certified as required hereunder, and the Project shall be developed, constructed, completed and managed in conformance with the representations contained in the Application and with the conditions set forth herein, including both the interior and exterior of the building and the units proposed.
22. **LANDSCAPING**. The landscaping shall be installed as shown on the Plans of record, which shall be stamped by a registered Landscape Architect. The landscaping plan shall include a vegetative buffer, so as to mitigate the visual impact of the Project on the abutting parcels.

A fence that is 4 feet high and see-through shall be placed around any drainage basin that is capable of holding 4 feet of water.

The fence shown on the Plans along the northeast boundary shall be required to be in place and shall be properly maintained in the future.

Fertilizer, pesticide and herbicide use shall be minimized to the extent consistent with good landscape maintenance practice. Storage or dumping of landscape debris including leaves, grass clippings and brush at the Property for more than 48 hours is prohibited, but excluding composting in proper containers.

The Applicant shall consider installation of a water efficient irrigation system and shall use drought resistant grass and other plantings. For at least the first full year after landscaping is fully installed, the Applicant, at a minimum, shall hand water the landscaping and shall replace any landscaping that does not survive a full two years. No invasive species or species listed on the Department of Agricultural Resources' Massachusetts Prohibited Plant List dated January 1, 2006 shall be used.

23. **PLAYGROUND**. There shall be space reserved at the Property for a playground and it shall have, at a minimum, the following equipment: 3 picnic tables, 2 benches, a wooden swing set to accommodate at least six children.
24. **FEES**. Building permit and connection fees are not waived. The reasonable review fees, including legal fees of \$5,000.00, incurred by the Board prior to the date of this decision shall

be paid by the Applicant before any building permit issues. Thereafter, as and if directed by the Board, the Applicant shall maintain an escrow account with the Town that shall be sufficient to pay for any anticipated consulting fees to inspect and monitor the Project for compliance with this decision and any applicable requirements not waived hereunder. Consistent with Town practice, the Town Engineer will be used for this purpose where applicable, or, if the Town Engineer determines that a peer review consultant is required, such a consultant shall be used. No occupancy permits shall be issued if there is a deficiency in the escrow account.

25. **MAIL**. Prior to issuance of the first certificate of occupancy, the Applicant shall obtain approval from the U.S. Postmaster of a centralized location or series of locations for mail boxes and parcel areas.
26. **LIGHTING**. Before any occupancy permit issues, lighting for the Project shall be installed and maintained in such a way that lights shall be shielded and directed so as to point downward only and to eliminate direct emission of light onto nearby residential properties exceeding 0.5 foot candles at the property line and to eliminate any unshielded point sources of light visible from public ways or adjacent properties. All lighting shall be contained on sight in accordance with dark sky protocols. A lighting plan shall be submitted to the Board for its administrative approval (i.e., without a public hearing) prior to issuance of any building permit. As an exception to the foregoing, however, there shall be a street light at the entrance if required by the police chief for safety purposes. There shall be a certificate stamped by a professional engineer that the lighting was installed in accordance with the plan and it shall be received with the final as-built plans
27. **PRECONSTRUCTION MEETING**. Prior to any activity authorized under this Permit, the Applicant and its general contractor shall hold a preconstruction meeting with the Building Commissioner and any other interested Town Officials after providing all departments with 48 hours notice, and any peer inspector appointed by the Board to provide inspections. Prior to the preconstruction meeting and any authorized activity, the Applicant shall provide to the Building Commissioner and the Board:
  - A. The company affiliation, name, address and business telephone number of the construction superintendent who shall have overall responsibility for construction activities on site and this information shall be provided to the Fire and Police Departments and shall be updated as necessary with regard to any changes;
  - B. A copy of a municipal lien certificate indicating that all taxes, assessments and charges due on the Premises have been paid;
  - C. Certification that all required federal, state and local licenses and permits have been obtained;

- D. Proof that "Dig-Safe" has been notified at least 72 hours prior to the start of any site work involving excavation; and
  - E. Proof that Property signage is in place to ensure that emergency personnel can locate the Project to provide emergency services to protect and secure the site and construction personnel and that the Fire Department and Police Department have been provided notice of the installation of the signage.
28. **CESSATION OF CONSTRUCTION**: If construction activity ceases for longer than one month, then written notice shall be provided by the Applicant to the Building Commissioner at least 48 hours before restarting work. The Commissioner may require that any foundation left open for an extended period of time shall be secured as necessary in his opinion.
29. **NUISANCE**. Construction of the Project shall be performed in accordance with all applicable laws and regulations regarding noise, vibration, dust and sedimentation control.
30. **CONSTRUCTION ACTIVITY**. There shall be no construction activity on the Premises before 7:00 a.m., except fueling of vehicles which may begin at 6:30 a.m., or after 7:00 p.m., Monday through Friday and before 8:00 a.m. or after 5:00 p.m. on Saturday. There shall be no construction on the Premises on Sundays or the following legal holidays: New Years Day, Memorial Day, July Fourth, Labor Day, Thanksgiving, and Christmas.
31. **EROSION AND SEDIMENTATION CONTROL**. Prior to the start of any activity that may be authorized hereunder ("Authorized Activity") and any building permit, an erosion and sedimentation control plan, to be implemented by the Applicant, shall be submitted to the Town Engineer for approval and the required measures shall be installed to the satisfaction of any peer inspector appointed by the Board. Said measures shall be maintained throughout construction of the Project and until all disturbed areas have been permanently stabilized with either an adequate vegetative or asphalt cover in accordance with the Plans. The Board's inspector shall monitor and enforce this condition, at the Applicant's expense. Before any Authorized Activity, the Applicant shall provide the Town Engineer and Building Commissioner with a copy of a NPDES permit for the Project.
32. **CONSTRUCTION DEBRIS**. Prior to any Authorized Activity, the Applicant shall designate areas at the Property for stockpiling any and all construction material, debris, fill and excavated material, after consulting with the Board. There shall be no stockpiling of material on land that is unstable and materials shall be stabilized and secured, so as to prevent erosion and to control dust (for stockpiled earth and similar materials) and vandalism (for construction materials).

Upon completion of all Authorized Activity prior to As-Built approval, all debris and construction materials shall be removed and disposed of in accordance with state laws and regulations and the Board shall be notified in writing of the final disposition of the materials. At no time shall any debris, stumps or other material be buried or disposed of

within a Resource Area as defined by G.L. c. 131 §40. No stumps or construction debris shall be buried or disposed of on-site.

33. **UTILITIES.** The Applicant shall locate all new utilities underground. Applicant shall install the proposed water, sewer, and drainage system pursuant to the Plans as revised, endorsed and certified. All utility work shall be performed and conducted in conformance with the regulations of the Town, if any, unless expressly waived hereunder and in conformance with all other applicable requirements that have not been expressly waived. Contractors shall be duly licensed as required by the Town. All such work shall be performed in accordance with current engineering and construction standards. If any work is performed on Town land, the Applicant shall indemnify and hold the Town harmless for all work performed and post a suitable surety and shall place the Town's property in the same condition as before the work took place and, in the case, of disturbed pavement, the repaving shall be curb to curb, unless otherwise agreed to by the Town, in writing.

All utility work shall be performed and conducted in conformance with the regulations and procedures of the Town, if any, unless waived hereunder. All such work shall be performed in accordance with current engineering and construction standards. All construction shall be done to best management practices.

34. **RETAINING WALLS.** If applicable, the Applicant shall obtain building permits for any and all retaining walls at the Site which are 4 feet in height or higher. Retaining wall segments adjacent to vehicular areas shall have guardrails or parapet walls sufficient to confine vehicles in accordance with Section 1825.5 of the Massachusetts State Building Code. Retaining wall segments having an exposed face greater than 4 feet shall have pedestrian railings, also in accordance with Section 1825.5 of the Massachusetts State Building Code. Guardrails and pedestrian railings may be installed either on or directly behind the retaining wall that surrounds much of the Project. A Massachusetts Professional Engineer shall determine the bearing capacity of the soil supporting the retaining wall and the wall design may not require later on-site determination of soil conditions.
35. **CONSTRUCTION FILL.** The Applicant shall use only clean, indigenous fill and shall adhere to all applicable loading and compaction specifications required by industry standards. A trucking plan shall be provided to and approved by the Town Engineer prior to the start of any Authorized Activity, which shall include the number, size and maximum loads for trucks that will be used, the access routes that will be used and the frequency of trips and hours of operation proposed.
36. **ACCESS WAYS.** The access ways at the Project shall remain private in perpetuity, with the Applicant to bear the cost of maintenance, repairs, replacement, deicing, snow plowing and snow removal. The access ways are **not** approved hereunder as frontage. A separate restriction shall be prepared and recorded against the Property before any building permits issue, so that prospective owners will have record notice of the requirement that the access ways have not been designed and constructed in accordance with Town standards for public way acceptance.

37. **RESPONSIBILITIES:** The Applicant shall be responsible for the following at the Project until a condominium association is created and duly recorded and in effect at the Property and then the association shall become responsible for:
- (a) all plowing, sanding, and snow removal. In the event that snow accumulation at the Project exceeds the capacity of the designated Snow Storage Locations shown on the Snow Storage Plan included in the Plans, the Applicant shall cause such excess snow to be transported from the Project to an off-site location for the legal disposal thereof;
  - (b) all site maintenance and establishing a regular schedule for site maintenance;
  - (c) repairing and maintaining all on-site roadways, including drainage structures and utilities therein;
  - (d) conducting annual inspection, maintenance and cleaning of all elements of the drainage system, including but not limited to catch basins, drain manholes, detention basins, swales and pipelines;
  - (e) maintaining all easements shown on the Plans; and
  - (f) site lighting.
38. **FINAL PLANS.** Prior to issuance of any building permits, the Applicant shall provide Building Commissioner with a certificate that the Town Engineer or an independent peer review consultant (paid for by the Applicant) has reviewed and approved all revisions to the plans as conforming to all local requirements that have not been waived hereunder and that the following elements have been reviewed and certified as required hereunder:
- a. A snow storage and management plan, including a narrative description and snow storage locations shown on the plans, in order to meet the “no untreated runoff discharging to wetlands standard” of the Massachusetts Stormwater Management Policy.
  - b. A plan with procedures outlining the specific operation and maintenance measures for all stormwater/drainage facilities, including any temporary facilities that shall be employed to minimize or eliminate the threat of transmission of mosquito born diseases to the residents of the project and nearby residents of Walpole. The plan shall detail requirements for inspection, maintenance and potential repairs, including the specific activities needed to conduct the routine and less frequent maintenance required. The Applicant should consider the fiscal resources required to repair or replace a system.
  - c. An erosion and sediment control plan that illustrates, at a minimum, locations of measures such as hay bales, silt fencing, sedimentation basins, and all other erosion controls on the plans, and provides detailed construction sequencing and methods to protect the infiltration capacity of each infiltration system.
  - d.

- f. Documentation showing that all of the Massachusetts DEP stormwater management standards have been met, including but not limited to, water quality volume requirements, recharge requirements, and total suspended solids (TSS) removal.
  - g. Road right-of-way design data (width, radii, paving sections, etc.) for the proposed roadways.
  - h. Roadway profiles including all utilities.
  - i. Details, including but not limited to, all proposed drainage and stormwater elements, proposed retaining walls and proposed pavement, water supply, wastewater and all other applicable design elements, and a schedule of elevations for all sewer and drainage facilities and outlets.
  - j. All rim and invert elevations for all drainage and sewer structures shall be provided. Clear labeling of which catch basins will be double catch basins, and clear labeling of types of grates to be used, shall be provided.
39. **INSPECTIONS.** The construction shall be inspected by the Town Engineer or, if not available, by a peer review consultant at the Applicant's expense. The Applicant shall pay all reasonable fees imposed for the purpose of inspecting and monitoring the compliance of the Project's construction with the terms of this permit, local bylaw requirements not waived by this permit, and other permits and approvals issued with respect to this Project for which the Town has monitoring responsibility. As noted, consistent with Town practice, the Town Engineer will be used for this purpose where applicable, or, if the Town engineer determines that a consulting engineer is required, such a consulting engineer shall be used.
40. **AS BUILT PLANS.** Interim as-built plans for the access way and foundations shall be provided before any building permit issues for structures, to confirm the locations of the access ways and foundations. Within ninety days of completion of the activities authorized hereunder, the Applicant shall submit to the Town Engineer (or a peer review consultant paid for by the Applicant if the Town Engineer is not available) a written request for approval of As-Built Plans, together with two sets of As-Built Plans depicting all infrastructure improvements and, if applicable, proof of compliance with this Comprehensive Permit and any other permits required for the construction of the improvements contemplated by this Comprehensive Permit. The Applicant's Registered Professional Engineer shall provide a written description of any material deviations from the Building Permit plans. As part of the As-Built approval required hereunder, the Applicant's Professional Engineer shall submit an As-Built plan on the entire drainage system and shall certify in writing that there is no increase in the peak rate or volume of runoff from the Property under the 2, 10, 25 and 100 year storm events. The certification shall be signed and stamped. The area to be included in the drainage calculations used for this certification shall be the whole drainage area contributing runoff to the Property. As-Built approval shall not be considered complete until the As-Built approval has obtained and all surviving conditions have been recorded at the Norfolk Registry of Deeds. Proof of the filing of As-Built approval shall be provided to the Board.

41. **CONDOMINIUM DOCUMENTS:** Before any occupancy permit issues, the Applicant shall provide the Condominium Master Deed and Condominium Trust documents for review and approval by the Board, which shall require review by Town Counsel, at the Applicant's expense. The Condominium Association shall be in existence for all units prior to occupancy permits. The condominium documents shall incorporate all of the conditions required under this permit, including, but not limited to the following:
- a. contracting for plowing, sanding, and snow removal and trash removal;
  - b. retaining a service provider for site maintenance and establishing a regular schedule for site maintenance;
  - c. operating, repairing and maintaining all roadways, including drainage structures and utilities therein;
  - d. conducting yearly inspection, maintenance and cleaning of all elements of the drainage system, including but not limited to catch basins, drain manholes, detention basins, swales and pipelines; except that stormwater interceptors will be inspected not less than quarterly by a qualified independent professional;
  - e. filing an annual report with the Building Inspector, not later than April 30, that the annual drainage system inspection has been completed and all deficiencies corrected;
  - f. maintaining any and all easements shown on the Plans;
  - g. street lights;
  - h. development and implementation of a vegetation management plan; and
  - i. control of the use of chemicals on site.
42. **EASEMENTS:** The Condominium Association shall be responsible to remove any vegetation or other obstacle on the Property that impairs the required sight distances at the entrance to the Project. Before any occupancy permit issues, the Applicant shall provide a satisfactory sight distance easement to the Town, which shall be reviewed by the Board in consultation with Town Counsel, at the Applicant's expense, to allow the Town, the right but not the obligation, to remove vegetation that blocks the required sight distance and impose a lien upon the Condominium Association for the cost of doing so, if the Association neglects this responsibility.
43. **PERMIT EFFECTIVE DATE.** The decision shall be deemed to have become final upon the date the decision is filed with the Town Clerk if no appeal is filed or, in the event of an appeal, then the date the last appeal is decided or otherwise terminated.
44. **PERMIT TRANSFER.** Any permit approved hereunder shall issue to the Applicant and shall not be transferable, except in accordance with the provisions of M.G.L. c. 40B, §§20-23. Any conditions imposed as to any comprehensive permit granted hereunder shall be binding upon the successors and assigns of the Applicant, and the obligations hereunder shall run with the land. In the event that the Applicant sells, transfers, or assigns any of its interest in the Project, any permit granted shall be binding upon the purchaser, transferee or assignee, and any such sale, transfer or assignment shall be subject to the prior approval of the Zoning Board of Appeals, which approval shall not be unreasonably withheld or delayed.

45. **PERMIT LAPSE.** Any comprehensive permit issued hereunder shall lapse as to any unit for which a building permit has not issued within three years of the date on which the permit becomes final, except for good cause or unless extended before lapse occurs. Any comprehensive permit issued hereunder shall lapse as to any unit for which an occupancy permit has not issued within four years of the date on which the permit becomes final or within one year of any building permit being issued for a unit, except for good cause or unless extended before lapse occurs.
46. **PERMIT MODIFICATION.** Substantial changes to the Project as permitted and conditioned by this Permit shall be governed by 760 CMR 56:05(11) and 760 CMR 56:07(4) or any successor regulation thereto and shall require the recording of the revisions of the Permit at the Norfolk Registry of Deeds in order for any such change to take effect.
47. **ENFORCEMENT.** The Board shall have continuing jurisdiction over the Project to ensure compliance with the terms and conditions of this Decision.

#### **IV. WAIVERS:**

As to any comprehensive permit granted hereunder, the Applicant shall comply with all State laws and the Town's current regulations, by-laws and rules and other requirements, except as expressly provided in the schedule of waivers attached to this permit as Exhibit C. No other waivers are granted, except as specifically and expressly provided hereunder, and all local by-laws and regulations not waived shall be enforced in their entirety.

#### **V. VALIDITY OF ANY APPROVAL OR MODIFICATION**

Any comprehensive permit granted hereunder shall not be valid until recorded with the Norfolk Registry of Deeds and evidence of such recording is provided to the Board. Any modification of any approval granted hereunder shall be subject to the provisions of 760 CMR 56.05(11) or any successor regulation thereto.

#### **VI. MOTIONS.**

**MOTION:** Member Stanton moved and Member Hiltz seconded that the Board vote to adopt the Findings and Conditions set forth above. The Motion was approved 4-1 (Cunningham dissenting).

**MOTION:** Member Murphy moved and Member Cunningham seconded that the Board vote to find that the potential impacts that the Project would cause, if subjected to the conditions required hereunder, would not endanger the health and safety of the occupants or the public and would be consistent with local needs. The Motion was approved 4-1 (Cunningham dissenting).

**MOTION:** Member Murphy moved and Member Cunningham seconded that the Board vote to find that the Project as conditioned and with the waivers set forth above meets the requirements for a comprehensive permit under G.L.

c. 40B. The Motion was approved 4-1 (Cunningham dissenting).

**MOTION:** Member Murphy moved and Member Cunningham seconded that the Board vote to grant as conditioned and waived above the requested comprehensive permit, but only in full compliance with all of the conditions set forth herein.  
The Board approved the motion 4-1 (Cunningham dissenting).

**VII. APPEALS**

Any person aggrieved by this decision may appeal to a court of competent jurisdiction within 20 days as provided for under state law.

There being no further business, the meeting was closed at 10:30 p.m.

Daniel J. Cunningham, Jr.  
Clerk

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Minutes were approved on September 9, 2009.