



OFFICE OF
BOARD OF APPEALS

TOWN OF NORWELL

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TOWN OF NORWELL

MAY 19 2008

TOWN CLERK
PATRICIA M. ANDERSON

DECISION
White Barn Lane, LLC
FOR A COMPREHENSIVE PERMIT UNDER
MASSACHUSETTS GENERAL LAWS CHAPTER 40B, s.20-23
ZBA FILE NO. 07-17

The Norwell Zoning Board of Appeals (the "ZBA") hereby submits this decision approving, with conditions, the application of White Barn Lane, LLC ("the "Applicant") for a Comprehensive Permit under G.L. c. 40B and its implementing regulations, 760 CMR 56.00 et seq., the ZBA's own rules for a Comprehensive Permit, and the town's current zoning bylaw and subdivision rules and regulations. As set forth in more detail in this decision, under this approval, the Applicant is permitted to build a 40 unit condominium community (the "Project") on approximately 9.5 acres of land located off White Barn Lane, Forest Street and Circuit Street in Norwell, Massachusetts (the "Site").

I. PROCEDURAL HISTORY

The application was submitted to the ZBA on June 18, 2007. The Applicant sought to build a 44 unit condominium development under G.L. c. 40B on property located off of Forest and Circuits Streets in Norwell, Massachusetts, shown on Assessor's Map 20A, Block 56, Lots 5, 34 & 47. The Applicant specifically declined to submit a *pro forma* for the Project. Further, it refused to present an application to the Norwell Conservation Commission for proper wetlands delineation of the property.

Hearings were held on 7/11/07 (hearing opened but no evidence was presented as the ZBA lacked a quorum), 8/29/07, 9/05/07, 10/10/07, 11/14/07, 12/19/07, 1/23/08, 2/13/08 (continued), 2/27/08, 3/19/08, and the public portion of the hearing was closed on 4/30/08. During the course of hearings, the Board received additional documentary and testimonial evidence from the Applicant and abutters. A complete list of the record before the Board is attached as Exhibit A and is incorporated as if set forth fully herein. The following plans submitted by the Applicant are hereby designated as the "Development Plans" for the Project.

- 1) Plan Set, entitled "Comprehensive Permit Plans, White Barn Village," consisting of 15 sheets, with the most recent revision date of 12/13/07 except as noted below, prepared by McKenzie Engineering Group, Inc., 150 Longwater Drive, Suite 101, Norwell MA 02061, stamped and signed by Bradley C. McKenzie, P.E., but not stamped or signed by a Registered Land Surveyor, consisting of the following sheets:
 1. Cover Sheet, including Index Plan with Locus and Drawing List, Scale 1"=80'
 2. General Notes, Legend & Abbreviations, including

- a. Locus Owner
 - b. Deed Book Reference
 - c. Wetland Resource Areas delineated by Wetland Strategies. NOTE: Wetland delineation lines shown have not been approved in accordance with state and federal laws and regulations
 - d. General Utility Notes
3. Existing Conditions, Scale 1"=40', rev. 01/17/08
4. Site Layout Plan, Scale 1"=40', revised per review and Fire Chief comments, to include:
 - a. Unit Size Breakdown and Type, showing forty (40) residential condominium units
 - b. Building Size Breakdown
 - c. Building Summary
 - d. Centerline Curve Table
5. Grading and Utility Plan, Scale 1"=40', revised 02/14/08 per review comments, including
 - a. Schedule: Storm Drain Structures
 - b. Note affixed to the plan referring to plans entitled "Roadway Improvements, White Barn Lane in Norwell, Massachusetts, dated 11/7/07"
6. Roadway Plan & Profile/Road A Station 0+00 to 10+60.15 (Note: Begins at the edge of the existing cul-de-sac at White Barn Lane and ends at Forest Street)
7. Roadway Plan & Profile/Road B Station 0+00 to 4+63.25 includes General Utility Notes. (Note: Proposed Road B begins at the Forest Street side of the proposed Road C and ends at the White Barn Lane cul-de-sac end of the proposed Road A.)
8. Roadway Plan & Profile/Road C Station 0+00 to 3+92.42 (Note: Proposed Road C begins at the Forest Street end of Road A, connects to Road B, and then dead ends.)
Editorial Comment: There is no Roadway Plan & Profile for Road D in this plan set.
9. Landscaping Plan, showing a Tree Planting Legend.
10. Construction Details I, showing:
 - a. Standard Catch Basin Detail
 - b. Typical Trench Detail
 - c. Wood Guardrail
 - d. Typical Drywell Detail
 - e. Double Grate Catch Basin Detail
 - f. Stormceptor SC-450 Detail
 - g. Preformed Flexible Manhole Detail
 - h. STC 900 Precast Concrete Stormceptor (900 U.S. Gallon Capacity)
11. Construction Details 2, showing:
 - a. Proposed Stormwater Detention Basin #3 & #4 Section
 - b. Proposed Stormwater Detention Basin #1 Section
 - c. Detention Basin Outlet Control Structure
 - d. Typical Sediment Trap Detail
12. Construction Details III, showing:
 - a. Proposed Stormwater Infiltration Basin (DB-2) Plan
 - b. Stormtank Stormwater Storage System Details
 - c. Proposed Stormwater Infiltration Basin (DB-2) Detail
 - d. Proposed Stormwater Infiltration Basin (DB-2) Section
 - e. Proposed Area Drain Detail (ADS or Equal)
13. Construction Details IV, showing:
 - a. Typical Water Main Plug
 - b. Typical Water Main Bend Thrust Block Details
 - c. Typical Water Main Thrust Block Section Details
 - d. Service Connection
 - e. Hydrant Detail
 - f. Water Gate Detail
 - g. Requirements of the Town of Norwell Water Department Material Specifications Water Mains and Appurtenances

14. Construction Details V, showing:
 - a. Seeding Specifications
 - b. Seeding Rates
 - c. Seeded or Sodded Lawn Detail
 - d. Bituminous Concrete Berm Detail (Cape Cod Berm)
 - e. Stabilized Construction Entrance Detail
 - f. Typical Roadway Cross Section
 - g. Versa-Lok Retaining Wall
 - h. Typical Electric/Telephone/Cable Conduit (US-Utility Service)
 15. Erosion Control Plan, detailing:
 - a. Construction Sequence
 - b. Erosion and Sedimentation Control
 - c. Temporary Erosion Control schemes
 - i. Embedding Detail
 - ii. Staked Hay Bale
 - iii. Siltation Fence
 - iv. Siltsack Sediment Trap
 - v. Haybale & Silt Fence
- 2) Two-Sheet Plan Set, prepared by McKenzie Engineering Group, Inc. of 150 Longwater Drive, Suite 101, Norwell MA 02061, dated 11/7/2007, and stamped and signed by Bradley C. McKenzie, P.E., consisting of the following sheets:
1. *White Barn Lane/Existing Conditions*, Scale 1"=20'
 2. *Roadway Improvement Plan*, Scale 1"=20', including street profile, connection roadways, and adjacent appurtenances to the proposed project
- 3) A set of 4 sheets, all entitled "White Barn Condominiums", dated 12-06-05, showing "Front Elevation, Right Elevation, Rear Elevation, Left Elevation, First Floor Plan Unit A, B, C, Second Floor Plan Unit A, B, C," all by The MZO Group, and stamped and signed by Andrew Zalewski, Registered Architect.

During the course of hearings on the project, the Applicant voluntarily reduced the number of proposed condominium units to 40, ten units of which, or 25% of the total number of dwelling units for this Project, shall be affordable to qualified purchasers, in perpetuity. The Applicant stated on the record that engineering, drainage and other information submitted to the ZBA is based on a 40 unit project.

II. PROJECT DESCRIPTION

- A. The Project is a 40 unit townhouse style condominium development, ten of which will be affordable. The number of bedrooms shall not exceed ninety (90). The Project will be developed with financing from MassHousing or the New England Fund. A Comprehensive Permit is necessary for this Project because the current zoning bylaws of Norwell do not allow for developments of the density proposed by the Applicant nor do the local bylaws and planning rules and regulations allow for multifamily use at this Site.
- B. As submitted by the Applicant, the proposed project is located in Residential District A and Zone II of the Aquifer Protection District, on approximately 9.5 acres off of Circuit and Forest Streets, consisting of three parcels as shown on Assessor's Map

20A & B, Block 56, Lots 47, 34 and 5, and recorded at Registry of Deeds Book 12804, pg 261 (Lot 34) and Book 28875, pg 349 (Lot 5). The parcel includes an approved subdivision of land from which abutting lots owned by others not associated with this project, obtain legal frontage and/or access from an unimproved subdivision road known as White Barn Lane, previously approved by the Norwell Planning Board for residential use by the two existing residences with a recorded Covenant that does not allow further building on the parcel.

III. GOVERNING LAW

The law governing this Application is The Low and Moderate Income Housing Act, Massachusetts General Laws, Chapter 40B, §§ 20-23 (the "Act"), and the regulations promulgated by the Department of Housing and Community Development ("DHCD") Housing Appeals Committee, 760 CMR 56.00 et seq. (the "Regulations").

The purported purposes of the Act are satisfied if (a) a town has low or moderate income housing in excess of 10% of the housing units reported in the latest decennial census or which is on sites comprising 1.5% or more of the town's total land area zoned for residential, commercial, or industrial use, or (b) if the application results in the commencement of low and moderate income housing construction on sites comprising more than 0.3% of such total area or 10 acres, whichever is larger, in one year or any of the thresholds contained in 760 CMR 56.00 are met.

Norwell does not presently meet these criteria. Therefore, the Norwell Board of Appeals within the scope of its authority and based upon the evidence presented in the course of the public hearing may at its discretion waive such sections of the Norwell Zoning Bylaw and other local bylaws and regulations that ordinarily govern development in the Town to make the construction of low or moderate income housing financially feasible. Board of Appeals of Hanover v. Housing Appeals Committee 363 Mass 339 (1973). Under the Act and the Regulations, in deciding this application, the ZBA must balance the regional need for low and moderate income housing against any local concerns relating to the proposed plan. Id. If a comprehensive permit is granted with conditions, those conditions may not render the project uneconomic.

Notwithstanding the foregoing, the ZBA may not compromise federal or state environmental requirements, such as under the Massachusetts Wetlands Protection Act and the regulations promulgated thereunder, or safety and health requirements, including but not limited to those governing wastewater treatment, water quality, and water supply issues and, correlatively, the ZBA may include conditions that protect the environment and assure protection of the water supply.

The ZBA is mindful of the fact that if a comprehensive permit is granted with conditions, the conditions must not render the project uneconomic. The applicant failed to submit a *pro forma* for the project despite repeated requests by the Board to do so. As a consequence, the Board's ability to gauge the extent to which the conditions imposed might render the project uneconomic has been hindered by the applicant's deliberate conduct. The Board has informally projected project costs and expenses in order to assess the reasonableness of conditions

consistent with Housing Appeals Committee precedent on the issue.

IV. JURISDICTIONAL REQUIREMENTS

Pursuant to the Act and the Regulations, an applicant for a comprehensive permit must fulfill three initial jurisdictional requirements:

1. The applicant must be a public agency, a non-profit organization, or a limited dividend organization;
2. The project must be fundable by a subsidizing agency under a low and moderate income housing subsidy program; and
3. The applicant must “control the site.”

The ZBA finds that the Applicant has provided sufficient information to establish that it is or will become a limited dividend organization, the proposed project is fundable under a low and moderate income housing subsidy program (under the Massachusetts Housing Finance Authority’s Housing Starts program or under the Federal Home Loan Bank of Boston’s New England Fund), and that it has the legal right to acquire title to the Site. Notwithstanding this conclusion, this Permit is subject to revocation if, at any time hereinafter, the Applicant fails to maintain conformity with any of the three jurisdictional elements noted above.

V. SUMMARY OF THE DECISION

A quorum of the Board of Appeals (Board), consisting of Lois S. Barbour, Philip Y. Brown, and Michael E. Kiernan, all being members of the Board of Appeals designated to hear and act upon this application, **VOTED** at a public hearing duly held on April 30, 2008, upon a motion made and seconded, to **GRANT** the application of White Barn Lane, LLC, for a Comprehensive Permit to construct forty (40) residential condominium units, subject to and upon the Conditions set forth herein, based upon the evidence submitted within the written record and testimony received during the public hearing.

A. TOWN BOARDS AND DEPARTMENTS: Included within the written record are comments of other Town Boards and Departments solicited by the Board and received in accordance with DHCD Guidelines. It is the Board’s policy to follow recommendations it receives to the greatest extent possible. The concerns and recommendations of each are included below:

1. CONSERVATION COMMISSION: The Conservation Commission has submitted three comment letters to the Board of Appeals, pertaining to wetlands concerns, in addition to one relating specifically to the outstanding Enforcement Order issued in December 2006, on this property. Its recommendations include submission of the required Notice of Intent in order to establish at a minimum, approval of wetlands delineation lines.

Despite the condition in MassHousing's Project Eligibility Letter that the Board of Appeals "fully explore in its public hearing process," the Applicant's "compliance with all statutory and regulatory restrictions and conditions relating to protection of drainage, wetlands, vernal pools and wildlife habitats and nearby conservation areas," the Board has been unable to make a determination of the project's impact to the environment. The Applicant has refused to make application to the Conservation Commission even to obtain threshold approval of wetlands delineation lines. Further, the enforcement order against the current owner of the Site for potential violations of the Wetlands Protection Act remains outstanding with a complete lack of cooperation by the owner/applicant with the Conservation Commission up to this point, necessitating the undertaking of costly legal action by the Town, despite the indication from MassHousing in its project eligibility letter that the Applicant address such issues during the hearing process. resolve the issue.

2. RESTRICTIVE CONVENANTS OF THE PLANNING BOARD: Early in the hearing process, the Board of Appeals requested that the Applicant provide information regarding the fee ownership of White Barn Lane, which to date it has received no clarifying information. As indicated in its comment letter of October 1, 2007, to the Board of Appeals, the Planning Board's subdivision approvals, were based upon development of the original subdivision parcel(s) being limited to the two existing residences with the remaining third lot not to be developable. One of the existing residential lots obtains its frontage from that subdivision road, known as White Barn Lane, while the other has its access by easement over the "non-buildable" lot now proposed to be a major portion of the development contemplated under this Comprehensive Permit.

3. SMARTGROWTH CRITERIA: Although the Board expressed concern regarding the density of the proposed development, the Applicant did not work with the Town to preserve "as much useable open space as possible." Although the Applicant of its own volition did reduce the number of units by four (4) to the current total of forty (40), it did not consider the significant concerns of the neighbors about the proximity of the development to property lines, high groundwater, localized flooding, or addressed the appropriateness of the project design and density to the character of the Town and the neighborhood.

The location of the proposed development does not meet Smart Growth standards of development in: "(1) areas near transit stations, including rapid transit, commuter rail, and bus and ferry terminals, (2) areas of concentrated development, including town and city centers, other existing commercial districts in cities and towns, and existing rural village districts, or (3) areas that by virtue of their infrastructure, transportation access, existing underutilized facilities, and/or location make highly suitable locations for residential or mixed use smart growth zoning districts,"¹

¹ MAPC Report on *SUMMARY OF M.G.L. CHAPTER 40R – SMART GROWTH ZONING DISTRICTS*. Retrieved on 05/16/08 from <http://www.mapc.org/whats_new/PDFs/Final_MAPC_40R_Report.pdf>

4. FIRE DEPARTMENT: In addition to the comments of residents, the Norwell Fire Chief has expressed concern about the density of the proposed development from a fire safety and emergency vehicle access perspective, although the Applicant has agreed to *sprinklering of parts of the proposed buildings.*

5. STORMWATER MANAGEMENT: The Planning Board has expressed repeatedly, its concerns relative to stormwater management. Although the Board's peer review engineer has stated conceptually the project design can work, he has also stated that any change in the Applicant's claimed wetlands lines could significantly impact the drainage calculations and the overall project design. As the Board did not have the benefit of the requested wetlands delineation during the public hearing, the issue cannot be definitively resolved. Unless and until the environmental issues are addressed, this remains a concern.

A. Stormwater Management

There was considerable testimony and discussion regarding the adequacy of the Applicant's stormwater management system design. The ZBA notes that although the Development Plans with respect to the Applicant's drainage design appear to mitigate current drainage problems on abutting lots, compliance with DEP Stormwater Management Policy and DEP Guidelines has not been demonstrated. Further, it is not able to rely solely upon the representations by the Applicant's engineer that future design will comply. The Applicant is required by state and federal law to comply with the standards of the DEP Stormwater Management Policy and DEP Guidelines. The existing drainage pipe underneath Forest Street is damaged or inadequate for the project and it is uncertain whether the Applicant has any legal right to drain into it.

6. Wastewater Treatment Facilities

The Applicant is required by State law to meet current regulations for wastewater disposal in an onsite septic system that will be built and maintained in compliance with Title V regulations to be reflected in the final approved project plans.

7. TRAFFIC

Although the Applicant claims to have sight distance at Forest Street meeting AASHTO standards, the view of the roadway is currently obstructed in both directions by trees and vegetation. This creates a safety hazard for current and future residents.

In its memorandum of 12/14/07, Vanasse & Associates, the Applicant's traffic engineer, has stated that sight distance is at issue for the White Barn Lane intersection with Circuit Street due to dense vegetation, obstructing the sightline. Further, no plan has been submitted, stamped by a registered land surveyor to establish property lines along that way. As indicated by MassHousing in its Project Eligibility Letter of April 30, 2007, this matter may well "need to be resolved by legal action outside the public hearing."

A. Traffic/Access

The Project, as originally submitted, includes two points of access, being:

1. The existing "White Barn Lane" intersection with Circuit Street; and
2. A new intersection to be created with Forest Street.

Both of these access points were to be two-way, i.e., allowing traffic to both enter and exit.

During the Public Hearing process, the Applicant's Traffic Engineer, Vanasse & Associates, Inc., submitted in a memorandum dated 12/14/07, Sight Distance measurements at the two access points. The Applicant's Traffic Engineer determined that there was inadequate sight distance under generally accepted federal traffic safety standards at the Circuit Street intersection to allow the traffic generated by the proposed development to safely exit the site due to vegetation obstructing site lines. The Board's peer review consultant concurred with applicant's traffic engineering conclusions stated in the aforementioned memorandum. In response to this lack of sight distance, the Applicant proposed at the Public Hearing that the Site Plan be modified so that the White Barn Lane access point would be one-way in only. Under the revised plan, all exiting traffic would have to use the proposed Forest Street intersection. The Board's peer review consultant stated during the Public Hearing that by having White Barn Lane two-way for some residents; but one-way for the new development would create confusion and an unsafe condition at the Circuit Street intersection. The Board's peer review consultant asked the Applicant on behalf of the Board if it would submit a plan showing how to safely resolve this unsafe condition. The Applicant did not further address this condition and no plan was submitted explaining mitigation for this situation. The Applicant's consultant stated there was no mechanism to enforce a one-way scheme.

VI. GENERAL CONDITIONS OF APPROVAL

If any of the hereinafter stated conditions of this Decision requires submission of plans or documents or materials by the Applicant to the Board or any other Town board, department, agency, officer, or employee and/or to any consultants or attorneys retained by any of the foregoing, for review or approval, as the case may be, such submissions shall be not be deemed to be accepted and approved without written notice to the Applicant by the Board or its designee.

1. Prior to the commencement of any construction activities or any site development or clearing, the Applicant shall submit to the Building Inspector and the ZBA's designated peer review engineer, counsel and other designated individuals or firms, final comprehensive permit site plans and final engineering calculations consistent with this Decision and the Development Plans identified above, and including but not limited to earth work and stormwater disposal and related best management practices, plans for wastewater disposal system(s), plans for potable drinking water and fire fighting purposes and all other plans and calculations

needed for review for consistency with and conformity to this Decision. Upon such review and approval, the plans and engineering calculations shall be considered the "Approved Plans". In the event there is a finding that such consistency is absent, the Applicant may submit the matter in question to the ZBA for its review for consistency.

2. Prior to seeking Endorsement, the Plan shall be revised to reflect all conditions of approval, set forth hereunder and in the Findings of Fact Section. The Plan shall also be revised to reflect a final revision date for endorsement.
3. This Decision shall be specifically referenced on the Approved Plans and both this Decision and the Approved Site Plans shall be recorded at the Plymouth County Registry of Deeds. Proof of recording shall be forwarded to the Building Inspector prior to issuance of a building permit.
4. The Applicant shall comply with all local bylaws, rules, and regulations of the Town of Norwell and its boards and commissions in effect as of the date this Project was first submitted to the Board of Appeals unless expressly waived herein or as otherwise addressed in these conditions.
5. The Applicant shall pay all fees of the Town of Norwell imposed generally with respect to construction projects and for the purposes of monitoring compliance of the construction and occupancy of the Project in accordance with this Comprehensive Permit unless otherwise waived in this Decision.
6. The Applicant shall copy the ZBA on all material submissions made by or on behalf of the Applicant for permits or approvals from any federal, state, county, or Town official, board or commission that concerns the design and/or conditions set forth in this Decision, including but not limited to all testing results, official filings and other permits issued for the Project.
7. The Applicant shall comply with the State Building Code and any local published regulations or published schedule of fees of the Building Inspector. The Applicant shall pay all required fees for all such building permits including any fees customarily charged for inspections and permits unless otherwise waived in this Decision.
8. The Applicant shall maintain a copy of the Approved Plans and this Decision at the Site during construction.
9. Each condition in this Decision shall run with the land and shall, in accordance with its terms, be applicable to and binding on the Applicant and the Applicant's successors and assigns; and reference to this Decision shall be incorporated in the condominium Master Deed and in each Unit Deed recorded for the Project and for any dwelling unit in the Project.

10. This Decision permits the construction, use, and occupancy of not more than forty (40) housing units on the Site. The construction and use of the Site shall be in conformity with the Plans as modified by the Approved Plans, and there shall be no creation of additional housing units or any other structures or infrastructure except that which is shown on the Approved Plan, without further written approval of the ZBA.
11. Prior to the commencement of any clearing of the Site or any construction on the Site whatsoever, the Applicant shall have obtained all necessary permits (federal, state and local (except as expressly waived) and approvals (federal, state and local (except as expressly waived) for the construction of entire project approved herein.
12. Prior to the commencement of any clearing of the Site or any construction on the Site whatsoever, the Applicant shall make a deposit of \$30,000 for peer review approval and construction monitoring to ZBA's consultant escrow account to fund the Consulting Engineer's review of the Applicant's additional submissions set forth in this Decision and provide for construction monitoring. Any amounts not expended from the escrow account shall be returned to the Applicant.

VII. AFFORDABLE HOUSING

1. Ten dwelling units, being no less than twenty-five (25%) percent of the total number of dwelling units approved for this Project, shall be affordable to qualified purchasers. The affordable units shall be located as depicted on the Affordable Units Location Plan. The Affordable Units shall remain affordable pursuant to the terms and conditions of this Decision, in perpetuity.
2. Phasing-in of Affordable Units: No more than three building permits shall be issued by the Building Inspector for units designated for sale at fair market prices (the "Market Rate Units") until at least one building permit is issued for an Affordable Unit. The proportion of Market Rate Unit building permits issued to Affordable Unit building permits issued shall at no time exceed 3:1. This condition shall also be applicable to Certificates of Occupancy.
3. Sales Prices of Affordable Units
 - a) The affordable units shall be sold to qualified households whose gross annual income is no greater than eighty percent (80%) of the median family income for Plymouth County, as published annually by the U.S. Department of Housing and Urban Development, adjusted for household size, and whose assets do not exceed the then current DHCD guidelines.
 - b) The maximum sale price for the affordable units shall be the maximum purchase price affordable for a household with an income that does not exceed seventy percent (70%) of the median family income for the Plymouth County, as

published annually by the U.S. Department of Housing and Urban Development, assuming a 3 person household for a 2 bedroom unit and a 4 person household for a 3 bedroom unit. In determining this amount, no more than thirty percent (30%) of the household's income may be allocated to housing costs (mortgage principal and interest, real estate taxes, unit insurance, flood insurance, private mortgage insurance, and condominium association fees), applying current interest rates offered for 30-year zero point fixed rate loans with down payments of five percent (5%) of total costs.

4. Each conveyance of an affordable unit shall include a Deed Rider or Affordable Housing Restriction, in the form approved by the subsidizing agency, which shall contain a restriction requiring that the unit remain affordable (either to an eligible buyer or to an eligible renter, as applicable) in perpetuity. The Deed Rider shall be recorded senior to any liens on the Premises to protect the continued availability of and requirement for the affordable units in the event of any foreclosure, bankruptcy, refinancing or sale. Prior to the sale of any unit, the unit owner his/her agent shall submit to the Norwell Housing Authority (NHA) for its approval written rules for the selection of buyers of affordable units (the Buyer Selection Rules). The Buyer Selection Rules shall provide that all affordable units are to be sold through a lottery or buyer selection process, subject to the review and approval by the NHPC or its designee. Notwithstanding the foregoing, the restrictions and Buyer Selection Rules shall conform to the requirements of the subsidizing agency. The Applicant shall be responsible for all fees and expenses necessary to implement the buyer selection process, including all marketing and advertising costs.
5. The Norwell Housing Authority (NHA) or its designee shall monitor all sales and re-sales of affordable units in accordance with a Monitoring Agreement in the form required by MassHousing. The Monitoring Agreement shall be fully executed prior to the issuance of a building permit for any of the dwelling units permitted by this Decision.

The Monitoring Agreement shall require that the applicant provide the monitor with copies of all marketing material (ads, mailing lists, etc.), timetables, and all documentation concerning eligibility of applicants, verification of sales prices and rents to be charged, reports on the lottery process and its outcome, deeds, deed riders, leases, and other documentation that may be required by the Monitoring Agent or its designee, in order to assure compliance with the conditions of this Comprehensive Permit, the Regulatory Agreement, the Monitoring Agreement, and the Deed Rider. The Monitoring Agreement shall further provide that if the monitoring agent determines that there has been noncompliance, or that there will be non-compliance if action is not taken, the monitoring agent shall report the matter to the Building Inspector and Town Counsel for appropriate action to correct the situation and enforce compliance. The Monitoring Agreement shall require the applicant to pay to the monitor the entire cost of monitoring the initial sales of all units owned by the Applicant. The seller or landlord shall pay for the cost of monitoring re-sales and rentals. In addition to the foregoing, the requirements of this

condition shall conform to the requirements of the Subsidizing Agency.

6. **Re-sales and Refinancing:** Whenever an affordable unit is to be resold, the owner of such unit shall notify the Norwell Housing Authority (NHA) or its designee, in accordance with the Regulatory Agreement and Deed Rider, and shall enter into a Monitoring Agreement, as approved by the ZBA, with either the NHA or its designee, to monitor the re-sale to assure the continuous affordability of the unit and the purchase of the unit by an eligible buyer. The sale price shall be determined in the same manner as Section 3 above. The Monitoring Agreement shall require that the seller pay the cost of monitoring re-sales.

Whenever an affordable unit is to be refinanced, the owner shall notify the Norwell Housing Authority (NHA) or its designee, in accordance with the Regulatory Agreement and the Deed Rider, which shall state that the amount of all mortgages, home equity loans, and other loans secured by the affordable unit shall not exceed the maximum sales price calculated in accordance with section 3.b) above.

In addition to the foregoing, resale and refinancing arrangements shall conform to the requirements of the subsidizing agency.

7. All affordable units shall be indistinguishable from the exterior from the market rate units. The construction specifications for the affordable units shall be identical to the construction specifications of the market rate units.

VIII. MARKETING/LOTTERY AFFORDABLE UNITS

The following conditions are imposed with respect to the issues of marketing, minority outreach, lottery, resale formula and perpetual affordability. The NHA may direct the applicant to take additional steps to carry out the purposes of these conditions.

The selection of purchasers for the Affordable Units, including the administration of the Lottery, shall be administered by a consultant retained by the Applicant, subject to the Subsidizing Agency's approval. The Lottery shall be implemented pursuant to a Lottery Plan developed by the lottery consultant and approved by the Subsidizing Agency. If acceptable to the Subsidizing Agency, disputes concerning income or other qualification shall be resolved in the first instance by the Monitoring Agent and a party aggrieved by qualification-related decision of the Monitoring Agent may appeal the decision to the ZBA for a final determination.

The provisions of this section are intended to complement and not to override or supersede any applicable requirements of the Subsidizing Agency, fair marketing regulations of the Department of Housing and Community Development, the Massachusetts Commission Against Discrimination, MassHousing, or any authority with jurisdiction and like purpose, to provide low and/or moderate income housing.

1. Marketing Plan:

A lottery will be held to locate buyers for each Phase of Development. Advertisements will be run in local area papers announcing the availability of homes, income guidelines, and contact information for obtaining applications. Mailings shall be sent to, and shall include but not be limited to, the Local Housing Partnership, the Norwell Town Hall, DHCD, local public libraries, local places of worship, and housing assistance organizations, as well as applicants for prior phases of previously approved comprehensive permit projects that were not chosen in the previous lotteries. Each group will receive a copy of the advertisement as well as some blank applications.

2. Outreach to Minorities:

In addition to the local community papers, advertisements shall be sent for publication to minority-publications such as the Bay State Banner; El Mundo, etc., and mailings will be sent to local/regional organizations, social service agencies that have connections to minority communities, such as the NAACP. Prior to each lottery, the marketing agent will contact DHCD for an updated list of suggested publications.

The outreach/marketing program shall be for a period of at least sixty (60) days prior to the selection of buyers.

3. Lottery Process for Affordable Units:

Applications received from the outreach program will be reviewed and pre-screened for qualifications. Follow-up information will be requested as necessary to ensure that all applications include information as to Down Payment availability, mortgage pre-approval, assets, and first time buyer status. Upon review and receipt of all information, lottery applications will be placed into a pool based upon family size for the one and two bedrooms homes in each phase. A random drawing will then be conducted to select the designated number of candidates for each phase.

All Applicants will be notified after the lottery of their status. Notifications will include information as to whether or not they were included in the lottery. If not, an explanation will be provided. All Applicants that were included in the lottery will be notified as to whether or not they were chosen. Those that were chosen during the drawing will be notified of a tentative delivery date for their home and will be contacted for an individual appointment to process their purchase. Those that were not chosen will be notified and advised that they will be notified of and included in subsequent drawings in future phases if-they so choose.

4. To the extent permissible by law, the lottery system shall provide for residential preference of the Town Percentage (hereinafter defined) of the affordable units, so

that only "Town residents" and minority applicants shall be included in the pool for each lottery for up to 70% of the affordable units sold to an eligible household. Thereafter, the lottery pool shall include all applicants, including but not limited to "Town residents." A "Town resident" is defined to include an applicant who lives or has lived in Norwell, currently works in Norwell, or who has immediate family (grandparents, parents, children, or siblings) who live in Norwell.

5. Minority applicants, if any, shall be included in all lottery pools.
6. In each of the above scenarios the one bedroom units will be reserved for one to two people, and the two bedroom units will be reserved for one to four people, all of whom must be first time homebuyers (defined as not having owned a home within three (3) years prior to the purchase, or a family that has been displaced by a divorce, etc.) and agree to occupy the unit as a primary residence.
7. Eligibility shall be determined prior to each lottery by using the current year HUD Median Income figures for Plymouth County non-metro area. In all cases total household income and current assets for the family will be used to determine eligibility.
8. The re-sale of all affordable units shall be governed by the Deed Rider and/or Affordable Housing Restriction prepared by the Subsidizing Agency and shall be considered incorporated within this Decision.
9. All homeownership affordable units shall be owner occupied.
10. The above conditions concerning eligibility, pricing, affordability in perpetuity, monitoring, and owner occupancy shall be set forth in a Deed Rider attached to all affordable units. The Deed Rider shall be recorded immediately following the Deed and shall be senior to any liens on the Premises to protect the continued availability of and requirement for the affordable units in the event of any foreclosure, bankruptcy, refinancing or sale.

IX. CONSTRUCTION AND SUBMISSION REQUIREMENTS

1. Pre-Construction Submissions: Before the Applicant commences any construction activities or clearing on the Site, the Applicant shall have:
 - a. Obtained a written confirmation from the ZBA's peer review engineer and/or other peer review consultants and counsel of the Applicant's fully-engineered stormwater management system, its landscaping plan, architectural floor plans, and the Approved Plan's conformity with the conditions of this Decision and that the Applicant has obtained all other required local, state and federal approvals to construct the project;

- b. Obtained any approvals from the Norwell Board of Health and the DEP any and all permits and approvals regarding disposal of wastewater generated by the Project that are required by applicable laws prior to such commencement;
- c. Obtained any approvals from the Norwell Conservation Commission, other municipal agencies and/or the DEP regarding management and control of stormwater generated by the Project that are required by applicable law prior to such commencement;
- c. Remedied the outstanding enforcement order from the Conservation Commission and obtained any approvals from the Norwell Conservation Commission or the DEP which may be required under any statute, code, or rule and regulation under its jurisdiction not otherwise preempted by G.L. c. 40B, s.20-23, to the extent not otherwise expressly covered by this Decision, including a final Order of Conditions or Superseding Order of Conditions under the Wetlands Protection Act as to any portion of the Site subject to the Wetlands Protection Act that are required by applicable law prior to such commencement;
- e. Obtained a National Pollutant Discharge Elimination System (“NPDES”) stormwater permit issued for the Project;
- f. Obtained a Certificate of the Secretary of Environmental Affairs of compliance pursuant to 301 CMR 11.08(8)(a);
- g. Delivered to the ZBA final architectural drawings for the buildings/Units to be constructed as shown in the Architectural Plans, providing a scaled depiction of the front, rear and side elevations, signed by a registered architect;
- h. Delivered to the ZBA with copies to the Building Inspector, Planning Board, Board of Health, Conservation Commission, Highway Department Surveyor/Director, Fire Chief, and Police Chief, a complete Construction Management Plan (CMP), which shall address the following topics and items:
 - i. Construction Administration
 - Hours of construction
 - Hours of construction delivery
 - Truck routes
 - Trash and debris removal
 - ii. Construction Phasing and Schedule (critical path)
 - timing and phasing of construction;

site clearing; construction of roadways and utilities;
buildings, etc.

iii. Communications

iv. Noise and Dust Control

Tree removal (chipping, etc.)
Public street cleaning and repair
Dust
Noise
Rock crushing

v. Blasting

Blasting Plan
Identification of petitioner's blasting consultant
Selection of independent blasting consultant
Selection of blasting contractor
Pre- and post-blast survey (scope and content)
Insurance coverage
Blasting limits
Notification to abutters of blasting schedule
Road closures (if necessary)
School bus conflicts (limits on hours)

vi. Erosion Control

Silt sacks, hay bales, silt fences, etc.
Tree protection plan
Drainage infrastructure

vii. Identification of existing underground utilities

viii. Construction Staging

Staging areas
Site office trailers
Storage trailers/containers
Open storage areas
Delivery truck holding areas
Re-fueling areas.

ix. Traffic and Parking (during construction)

On-site locations
Off-site locations
Snow removal
Police details
Warning signs

- x. Fire and Emergency
Temporary emergency access driveway
- xi. Construction Specifications

The scope of the ZBA's review of the CMP shall be for completeness and for consistency with generally-accepted construction practices and for compliance with all the conditions of this Decision. The ZBA shall issue its decision on the CMP within 30 days after a complete submission from the Applicant.

IX. SITE DEVELOPMENT CONSTRUCTION CONDITIONS

1. Prior to the commencement of any construction activities or any site development or clearing, the Applicant shall meet with the Building Department, Police Chief or his representative, Fire Chief or his representative, the ZBA's Consulting Engineer, and the Chair of the ZBA or his representative at a mutually convenient time and place during normal business hours to review the CMP, and to coordinate the Building Department's periodic inspections of the Project (the "Pre-Construction Meeting"). This meeting shall be open to the public.
2. At least two weeks prior to the commencement of any construction activities or site development or clearing, the Applicant shall submit to the ZBA, with a copy to the Police Chief, the Fire Chief, and the Building Inspector a Construction Schedule, indicating the anticipated start and end points for each significant phase of development (site grubbing, clearing, and fill; construction of roadways and related infrastructure, excavation and blasting for foundations, framing and interior construction, etc.). The Construction Schedule shall also include the anticipated daily vehicle trips per phase, and the anticipated hours of the day during which heavy equipment and construction vehicles are expected to enter and exit the Site.
3. The Applicant shall ensure safe and convenient vehicular access to the Site during the entire duration of the Project. Municipal representatives shall be permitted access to the Site to observe and inspect the Site and construction progress until such time as the Project has been completed.
4. The Applicant shall submit to the ZBA a construction and permitting schedule, prior to the commencement of any construction activities or any site development or clearing, and semi-annually thereafter to assist in project status update and review.
5. The Building Inspector or appointed agents may conduct periodic inspections during the construction of the Project, to ensure compliance with the terms of this Decision and the state building code, and for consistency with generally-accepted construction and engineering practices for the installation of roadways, stormwater management facilities, utilities, and other common development

infrastructure. Inspections during the construction phase shall be conducted at the expense of the Applicant.

6. The Applicant shall forward final architectural plans to the Building Inspector at the time of applying for building permits. All construction shall be inspected by the Building Inspector and shall be in compliance with all Massachusetts State Building Code requirements.
7. The Applicant shall be responsible to ensure that nuisance conditions do not exist in and around the Site during the construction operations. The Applicant shall at all times use all reasonable means to minimize inconvenience to residents in the general area.
- 7A The Applicant shall be responsible to provide a plan to the Norwell Highway Surveyor prior to the commencement of construction, detailing measures to clean and/or sweep streets affected by construction debris tracked from vehicles exiting or entering the site.
- 7B Construction equipment shall not be parked or stored adjacent to any drainage areas or the wetland buffer area. Maintenance of construction equipment involving transfer of fluids and fuels shall be conducted in areas away from drainage and wetland areas. **No parking of vehicles or storage of equipment or off-loading of equipment shall occur on White Barn Lane or its right of way.**
8. Dust - Methods of controlling dust shall meet all air pollutant standards as set forth by Federal and State regulatory agencies.
9. Noise - The Applicant shall implement measures to ensure that noise from project construction activities does not exceed acceptable levels, as set forth by Federal and State regulatory agencies.
10. Traffic - The Applicant shall implement necessary traffic safety controls to ensure a safe and convenient vehicular access in and around the Site. Any traffic problems that occur as a result of site operations and construction shall be mitigated immediately, at the expense of the Applicant.
11. Roads – The Applicant is responsible for the sweeping, removal of snow, and sanding of the internal roadways and driveways permitting access to residents, emergency vehicles, and others during construction and until the Condominium Associations have been legally established. The final coat of pavement on the internal roadways shall be installed after the base course has endured a full winter season. The Applicant shall promptly clean any debris or dirt deposited on Norwell or state controlled streets and roads.
12. The Applicant and his successors in interest and then the owners and owners' association shall be jointly and severally liable and responsible for the operation and maintenance of the stormwater drainage systems for the approved project in a

good and orderly manner after construction of the drainage facilities in accordance with the requirements of the Town of Norwell and as set forth in an "Operation and Maintenance Plan," including, but not limited to the sweeping of the roadway twice a year and more often as necessary, especially during construction.

A. Catch Basins.

During construction, the Applicant shall clean the catch basins shown on the approved plan at least four times per year, including in late Fall and early Spring. During construction, the catch basins shall be fitted with a sediment trap of siltation fabric under the catch basin rim plus hay bales around the rim to prevent sediment from entering the drainage system. During construction, the catch basins shall be inspected every 7 days and within 24 hours of any storm with more than ½ inch of precipitation and cleaned of all accumulated sediment and debris. After construction, catch basins shall be inspected at least twice per year and cleaned of all accumulated sediment and debris twice per year, during the fall and again in early spring.

B. Drainage System.

During construction, the Applicant shall inspect the drainage stormceptor(s) shown on the approved plan at least four times per year and within 24 hours after each ½ inch storm event. After construction is completed, the Applicant or the owners' association shall have the drainage system inspected four times during the first year, to determine the rate at which the unit reaches 15% capacity. After the first year, a maintenance schedule shall be developed, based upon the determination previously reached regarding the point at which the unit reaches 15% capacity, with a minimum of two inspections per year. Accumulated sediment and debris shall be removed at least twice per year, once in the fall and once in the spring. Removal of sediment and hydrocarbons shall be completed using a vacuum truck. Disposal of accumulated sediment and hydrocarbons shall be performed in accordance with all applicable local, state, and federal guidelines and regulations.

C. Drainage Basin.

The Basins shown on the approved Plan shall be inspected at least twice a year to ensure that the Basins are operating as designed. If accumulated sediment or debris is observed within basin galleys, such shall be removed forthwith.

Prior to issuance of a building permit, the Applicant shall grant an easement to the Town, approved as to form by the Board's legal counsel, permitting the Town to perform emergency and routine drainage maintenance where the Applicant fails to conform to this condition, and the Applicant and its successors in interest shall agree as a condition of approval to reimburse the Town the full cost of same.

13. Burial of any stumps or solid debris onsite is expressly prohibited. Localized burial of stones and/or boulders is prohibited to prevent the creation of voids from soil settlement over time.
14. Soil material to be used as backfill for pipes, roads, and/or structures (i.e. detention basins) shall be tested at the expense of the Applicant or its designee, by a firm reasonably acceptable to the Board's consulting engineer at least 72 hours prior to its arrival.
15. Utilities, including but not necessarily limited to electric, cable, and telephone shall be located underground. A final utility plan approved by the applicable public utilities shall be submitted to the Building Inspector and the ZBA's Consulting Engineer prior to the issuance of any building permits.
16. Stabilization Requirements - No disturbed areas shall be left in an open, unstabilized condition longer than thirty (30) days or as may be governed by the NPDES permit. Temporary stabilization shall be accomplished by hay bales, hay coverings or matting. Final stabilization shall be accomplished by loaming and seeding exposed areas in accordance with the landscaping plans reviewed during the course of the public hearing by the ZBA's Consulting Engineer.
17. Blasting - Any rock blasting shall be performed by a licensed blasting professional, who shall first obtain all required permits from the Norwell Fire Department. All blasting and removal of debris shall be performed in accordance with state regulations and local fire department requirements and shall provide evidence thereof to the Fire Chief.
 - a. Selection of the Blasting Contractor. A blasting contractor, acceptable to both the Applicant and the Norwell Fire Department, shall be selected after review of the qualifications of such contractor by a qualified independent geotechnical-blasting consultant who shall also be acceptable to both the Applicant and the Norwell Fire Department.
 - b. Independent Blasting Consultant. An independent geotechnical-blasting consultant shall be selected and paid for by the Applicant, subject to the approval of the Norwell Fire Department. The consultant shall review the qualifications of the blasting contractor, and review the final blasting plan prepared by the blasting contractor, check the calibration of the seismograph monitors, approve the location and installation of the seismograph monitors, and, if required by the Norwell Fire Department, shall determine the blast limits throughout the blast period and shall consult with the Norwell Fire Department on an as-needed basis throughout the blasting period.

- c. Pre-blast Survey. Before any blasting on the Site, the Applicant shall conduct a pre-blasting survey that shall include video-recording of the foundations of all direct abutters to the Revised Project, and shall provide a copy of that survey to the ZBA and Fire Chief.
- d. Insurance Coverage. The blasting contractor shall carry comprehensive public liability insurance in the amount of not less than \$1,000,000 for property damage in respect of any one occurrence and \$2,000,000 aggregate. A certificate shall be submitted to the Norwell Fire Department by the contractor documenting that the required coverage will be in force for the duration of the blasting at the Site. If there is a general contractor or developer associated with the blasting, each shall carry a minimum of \$1 million of comprehensive liability insurance.
- e. Blasting Limits. The Commonwealth of Massachusetts blasting limits shall be observed. However, if, based upon the recommendation of the independent blasting consultant, the Norwell Fire Department believes that a lower limit is necessary to protect the Site and the abutting property, that lower limit shall be in effect.
- f. Notification. Not less than one week prior to the commencement of any period of blasting, the Applicant shall notify the immediate abutters within 200 feet of the blast area, stating when the blasting period shall begin. Notification under this provision and under any other provision in the Comprehensive Permit shall be by the following three methods: (1) phone or in person; (2) by email; and (3) by letter. No perchlorate shall be used during blasting. Such notification shall include an explanation of the warning procedures for blasting including soundings. The Applicant shall send another letter notifying the same abutters that the blasting period has been completed. In addition, the Applicant shall notify the Fire Department 30 minutes prior to each blast, and a Fire Department detail is required for every blast, who shall be certified by the Fire Academy on the requirements of the state blasting regulation.
- g. Post-blasting Survey. After the completion of all blasting, the Applicant shall conduct a post-blasting survey that shall include video-recording of the foundations of all direct abutters to the Project, and shall provide a copy of that survey to the ZBA, Fire Chief, and each abutter, respectively, upon request.

18. INTERIM AS-BUILT PLANS:

- a. Under G.L.c.41, §81Y, ¶2, no building permit for any structure shown on

the approved plan shall be issued until after an interim as-built plan for the roadway has been provided to the Board and confirmed by the Board, through peer review, to be located as shown on the approved plan. The interim as-built plan for the roadway shall be certified and signed by a Professional Land Surveyor and be accompanied by a separate affidavit signed by the PLS certifying under oath that the roadway has been properly surveyed and confirmed to be in the proper location.

- b. Under G.L.c.41, 81Y, ¶2, no building permit for any structure shown on the approved plan shall be issued until after an interim as-built plan for the drainage basin has been provided. The interim as-built plan for the basin shall be certified and signed by a Professional Land Surveyor and be accompanied by a separate affidavit signed by the PLS certifying under oath that the drainage basin has been properly surveyed and confirmed to have been constructed in the proper location and in accordance with the design specifications shown on the approved plan.
19. As Built Plans: Prior to the occupancy or use of the final dwelling unit constituting a part of the Project, the Applicant shall submit to the ZBA an "As Built Plan" in paper and CAD format, showing all pavement, buildings, stormwater management structures, and other infrastructure as they exist on the Site, above and below grade, including appropriate grades and elevations. The plans shall be signed by a registered land surveyor and civil engineer, certifying that the Project as built conforms and complies with the conditions of this Comprehensive Permit.
 20. Trees - Prior to the commencement of any construction activities or any site development or clearing, the Applicant shall erect a physical barrier such as a plastic fence to ensure that any trees to be preserved within forty feet of the property line on all sides shall not be touched during construction and to ensure that there is a protective radius within the drip line around such trees. Within the aforesaid area, if any trees having a caliper of four inches or greater at four feet from the ground are destroyed or injured as a result of construction, the Applicant shall plant new trees in their place of a comparable species with a minimum height of nine feet at a ratio of 2 new trees for each destroyed tree. Such replanting shall be done by a qualified landscape professional.
 21. With respect to drainage and erosion control, the Building Inspector and the Highway Surveyor shall review the plans to determine that they are substantially consistent with the preliminary plans and in substantial compliance with the conditions of this permit; and the applicant shall comply with the EPA's National Pollutant Discharge Elimination System II (NPDES II). Said drainage shall be designed using Best Management Practices (BMP's) and shall conform to the Massachusetts Stormwater Management Guidelines. This will include, but not be limited to, the use of pre-cast concentric concrete catch basins including oil/grit separators to remove sediments and hydrocarbons from the stormwater runoff. The groundwater elevation shall be

verified, and a minimum separation of two feet from the bottom of the drainage system and seasonal high groundwater shall be maintained. During construction, the access road entrance shall be stabilized with stone and gravel to a depth of six inches and a length of twenty feet for removal of sediment from construction vehicle tires when leaving the site. Prior to issuance of any certificates of occupancy, the plans for storm water drainage system serving the land and buildings in which such certificates of occupancy are being sought shall be subject to inspection by Town Highway Surveyor and the Town Building Inspector. Erosion control shall follow Best Management Practices and shall be maintained throughout the duration of the project. The applicant shall establish a maintenance plan for the stormwater system, which shall include but not be limited to scheduled inspections, thresholds for removal of sediments, and an educational program for residents for the continuing maintenance and protection of the stormwater system. The maintenance plan shall be reviewed for compliance with BMPs and approved by the Highway Surveyor and the Building department prior to construction. The applicant shall pay for the cost of an independent engineering review of the proposed stormwater management plan, if requested by the Town. No sands or gravels or other materials may be removed from the site except those required to be removed to accomplish the conditions shown on the final site plan to be approved by the Board.

Prior to the commencement of construction the Building Inspector shall confirm that he has reviewed the plans as required herein for compliance with the conditions of this permit. The Building Inspector shall do so within 30 days of submission of final plans by the Applicant to the Board.

22. During construction, the Applicant and his agents and employees shall conform to all local, state and federal laws regarding noise, vibration, dust and use of Town roads and utilities. The Applicant shall at all times use all reasonable means to minimize inconvenience to residents in the general area. Construction shall not commence on any day Monday through Friday before 7:30AM or on Saturday before 8:30 AM. All exterior construction activities shall cease by 6:00 PM on all days. No construction or activity whatsoever shall take place on Sundays or legal holidays except for the limited purpose of providing emergency health or safety measures. All construction shall follow Best Management Practices for erosion and sediment control.
23. Construction of all dwelling units; utilities, roads, drainage structures, and all related appurtenances shall be in accordance with all applicable zoning bylaws and all other local, state and federal regulations except as waived by this Decision. All dwelling units shall contain an automatic fire suppression system, which shall be constructed in accordance with the State Building Code.
24. The Project shall comply with all rules, regulations and permit requirements of the DEP with respect to stormwater management, stormwater disposal, wastewater disposal, best management practices and any and all regulations, if applicable, of the

Norwell Board of Health that are not herein specifically waived herein.

25. All utilities within the Project boundaries shall be underground.
26. All area and roadway lighting shall be shielded or refracted as necessary in such a manner as to minimize light spill over to neighboring properties.
27. All on-site storage of hazardous materials and hazardous wastes shall be on an impervious surface, with containment and access control, and all on-site vehicle fueling shall be conducted with industry recognized containment and access control.
28. Prior to digging on any public land, the applicant shall deliver written notice to the Chief of Police at least 48 hours prior to digging, and, if requested by the Chief, shall arrange for a police detail; and shall comply with any and all other reasonable safety-related requests made by the Chief, subject to appeal the Board. In addition, at least 48 hours prior to digging on any public land, the applicant shall deliver written notice to the Norwell Board of Selectmen, Norwell Board of Water Commissioners, the Norwell Highway Department, the gas company, and the electric company, and comply with all "dig safe" requirements.
29. Surety & Covenants: As security for the completion of the infrastructure related to the Project as shown on the Approved Plan, including, but not limited to, the binder coat of the roadway, sidewalks, parking areas and common areas, recreational areas, sewage disposal system, drainage facilities, utilities, landscaping, and any other specific infrastructure shown on the plan (the "Infrastructure"), the release of occupancy permits for all housing units and the sale of all housing units in the Project shall be subject to the following restrictions:
 - a. No occupancy permit for a unit in any building shall be issued, and no sale of any unit shall be permitted, until: (1) the base and binder course for the driveway and parking areas shown on the Approved Plan associated with said building has been installed; and (2) all Infrastructure described herein and as shown on the Plan has been constructed or installed so as to adequately serve said building.
 - b. No occupancy permit for a unit in any building shall be issued, and no sale of any unit shall be permitted, until the Approved Plan has been recorded with the Registry of Deeds. This Comprehensive Permit shall be referenced on the Approved Plan prior to recording.

The Applicant and its successors and assigns shall comply with the regulatory/affordable housing restrictions, deed rider, monitoring agreements, and all other conditions applicable to the project approved by this Decision. This comprehensive permit shall not be transferred or assigned without prior, written approval of the ZBA, which shall not be unreasonably withheld.

X. ADDITIONAL CONDITIONS

- 1) If construction authorized by this Comprehensive Permit has not begun within two years of the date on which the permit becomes final pursuant to 760 CMR 56.05, the permit shall lapse unless extended by the ZBA. The permit shall become final on the date that the written decision is filed in the office of the town clerk if no appeal is filed. Otherwise, it shall become final on the date the last appeal is decided or otherwise disposed of. The Project shall be completed expeditiously and, in any event, within three (3) years of the date of the first building permit issued.
- 2) The Applicant must demonstrate evidence in the final approved project plans for White Barn Village that it complies with DEP Stormwater Management Policy, DEP Guidelines, and best management practice. Further, an Operations and Maintenance Plan shall be provided with at minimum, information required in Planning Board Regulation, Section C.2.12.
- 3) The final site investigation requirements for the onsite septic system will be determined by the Norwell Board of Health, as the local approving authority under Title V for which the Applicant shall submit final detailed plans for the onsite septic system, subject to Board of Health approval.
- 4) With respect to traffic and access, both access points (i.e., the access points from Circuit Street to White Barn Lane and the access point on Forest Street) must be two-way (as originally proposed), and the improvements needed to improve sight distance to comply with minimum American Association of State Highway and Transportation Officials (AASHTO) site distance standards for both access points shall be incorporated into the plan.
- 5) If, between the date this Decision is filed in the office of the Norwell Town Clerk and the completion of the Project, the Applicant desires to change in a material way and/or to a significant degree the proposed Project as reflected in and approved by this Decision, such changes shall be governed by the Code of Massachusetts Regulations then in effect and the conditions of this Decision.
- 6) No structure constructed under this Comprehensive Permit shall be altered, reconstructed, extended, or changed unless authorized by the ZBA by a special permit pursuant to the Zoning Bylaws, as may be amended. Upon such an application for special permit, the Board shall determine, in the first instance, whether such alteration, reconstruction, extension, or change is "substantial" or "insubstantial." For all special permit applications for such insubstantial changes, the ZBA shall employ the standards of review set forth under the Zoning Bylaw pertaining to changes to pre-existing, nonconforming structures, as may be amended. Requests for substantial changes shall be treated as requests to amend this Comprehensive Permit. Notwithstanding the foregoing, this Paragraph shall not apply to the original construction of structures

developed by the Applicant, but shall only apply to subsequent alterations, extensions, and changes to such structures.

- 7) The terms alteration, reconstruction, extension, and change, shall have the same meaning under the Massachusetts Zoning Act, G.L. c. 40A, §6, as applied under the Norwell Zoning Bylaws.
- 8) Where these conditions specify the submission of a plan, study, obtaining of a permit or approval or other related analysis, these conditions shall be considered a condition precedent to the requirement that, no grading, land disturbance, issuance of any building permit or construction of any structure or infrastructure shall commence until said plans, study or analysis have been reviewed and have received a final acknowledgment by the Board or the Building Inspector that the plans, study or analysis are consistent with this Decision.
- 9) The Applicant acknowledges that prior to the start of construction, the Applicant must obtain all approvals from any and all other governmental agencies, departments or commissions, including the Norwell Conservation Commission acting as the local approving authority under the Norwell Wetlands Bylaw and/or Gen. L. c. 131, §40, whose approvals are necessary for this Project and such approvals must be consistent with this Decision.
- 10) In the event that the applicant elects to make changes to any dwelling unit that differ from the plans that form the basis for the issuance of the governing building permit, prior to making such changes the applicant shall submit plans to the Board for approval of the proposed changes. If the Board determines that such changes constitute changes that may not be in conformance with this decision, the Board shall direct the applicant, in writing, to apply for a further hearing and to submit the proposed changes to the Board for its approval, approval with conditions, or rejection.
- 11) The Applicant shall prepare Condominium Trust and Condominium Association documents. The Condominium Trust shall be responsible for the ownership, maintenance, and repair of the roadways, storm water management systems, the wastewater treatment facility, the retention ponds, the open space parcels, and other common amenities and services. The Condominium Trust and Condominium Association documents shall contain provisions for "limited" or "exclusive" common areas associated with the town homes with the effect each unit owner shall be responsible for maintaining the open space area immediately adjacent to his or her units so that the cost of maintaining the same shall not be a common expense assessed against the affordable units or any market unit. The Condominium Trust and Condominium Association documents shall be subject to review and approval by Town Counsel to insure compliance with the terms of this Comprehensive Permit decision. Said documents shall contain restrictions on all two bedroom units preventing any increase in the number of bedrooms. The number of bedrooms in any unit shall be determined in accordance with the Town of Norwell Board of Health regulations. Prior

to the sale of any unit, the Condominium Trust and Condominium Association documents shall be filed with Plymouth County Registry of Deeds.

- 12) The calculation of the percent of common interest of each condominium unit shall be determined for each unit by dividing the fair value of each unit, measured as of the date of the Master Deed, by the total of the fair value of all of the units, measured as of the date of the Master Deed. The resulting fraction shall be the share of the total condominium expenses to be paid by each of the units. For the purposes of this Condition, the term "fair value" shall mean the projected sales price of each unit and of all units as of the date of the Master Deed.
- 13) Any increase or decrease in the monthly or annual fees of the affordable units shall be in the same proportion as the initial resulting fraction, and this limitation on the increase in monthly or annual Condominium Association fees charged to the affordable units shall be contained in the Condominium Association documents, and may not be changed by the Condominium Association or by the Trustees of the Condominium Trust.
- 14) The final landscaping plan and architectural plans are subject to approval by the ZBA for consistency with this Decision. No building permit shall issue prior to such approval. The final landscaping and planting plan shall provide landscaping as a buffer to the Circuit Street abutters and shall be designed by a Massachusetts Certified Landscape Professional.
- 15) The final site plan is to be recorded at the Plymouth County Registry of Deeds and shall be recorded together with this Decision.
- 16) The Board requires that a note be placed on said final site plan stating that the Plan is the subject of a comprehensive permit under Mass. Gen. L. ch.40B, sections 20-23.
- 17) The Town of Norwell shall be free of any liability arising out of the Board's approval of the site layout plan, and for any act, omission, or negligence caused by the Applicant, its employees, agents, subcontractors, beneficiaries, or trustees with relation to this Project.
- 18) Profit Cap and Regulatory Agreement: To conform to the intent of G.L.c. 40B, s.20-23 that profits from the Project be reasonable and limited, the Applicant shall be limited to an overall profit cap of twenty percent (20%) of total development costs of the Project, in accordance with the calculations of the Subsidizing Agency (the "Profit Cap"). The ZBA may elect to review, for accuracy, the Subsidizing Agency's own audit of the Project. Said review shall use the same standards as the Project Administrator, and may utilize the services of an independent auditor selected by the ZBA and paid for by the Applicant. Prior to the issuance of any building permits for the Project, the Applicant shall deposit \$10,000 into the ZBA's G.L. c. 44, §53G consultant escrow account to cover the ZBA's review expenses. If the ZBA does not exercise its option to review the Revised Project, the deposit shall be returned to the Applicant. Evidence of the

recording of the approved Regulatory Agreement shall be provided to the Board prior to the issuance of any building permit. In addition to the foregoing, the Regulatory Agreement shall conform to the requirements of the Subsidizing Agency.

- 19) The applicant shall comply with all of the conditions stated in the Project Eligibility (Site Approval) letter from MassHousing dated April 30, 2007. In the course of the public hearing the Board of Appeals specifically raised on more than one occasion, each of the Project Eligibility requirements imposed by MassHousing. The Applicant has consistently maintained in making that request the Board was acting outside of the scope of its authority. Specifically, the Board requested the Applicant to file with the local conservation commission, acting as the agent for the state, to obtain approved Wetlands Delineation of the property. In fact, the Project Eligibility Letter states on page 3 of that document that, “[the Applicant has] committed that during the planning phase of the Project resource areas will be carefully delineated and the Project will be built accordingly.” This decision cites elsewhere the concerns about the roadway access known as White Barn Lane noted in the MassHousing letter in both paragraphs 3 and 4. This decision also notes elsewhere in its decision, the Board’s SmartGrowth concerns.
- 20) In accordance with MassHousing’s final approval process, the Applicant shall submit to MassHousing for review and final acknowledgement of consistency with this Decision, final and detailed site development plans prepared by a Professional Engineer registered in the Commonwealth of Massachusetts.
- 21) The development shall be limited to forty (40) dwelling units. Of these dwelling units ten (10) shall be reserved for ownership by households earning at or below seventy (70%) percent of the area median household income pursuant to the requirements of the subsidizing agency. The affordable units shall be evenly dispersed throughout the development and shall not be situated so as to segregate the affordable units from the market rate units. The affordable units shall remain affordable in perpetuity by deed riders in form and substance acceptable to the subsidizing agency for the project. The affordable units shall be indistinguishable from the exterior from the market rate units in the project.
- 22) Prior to land disturbance, the Applicant shall receive final approval from MassHousing pursuant to 760 CMR § 56.04(7) and shall obtain a Disposal System Construction Work Permit and an Order of Conditions pursuant to applicable state regulations as described in 760 CMR 56.05(8)(c).
- 23) Prior to the issuance of the first Building Permit for any affordable dwelling unit, the Applicant shall have entered into a regulatory agreement with MassHousing. The Applicant shall be eligible to receive occupancy permits upon completion of infrastructure and utilities sufficient to adequately service the needs of the units for which an application for certificate of occupancy has been made, subject to standard inspections in the ordinary course. Final as-built plans shall be certified by the Applicant’s engineer and submitted to the Building Inspector and the Town Engineering Department prior to issuance of the final occupancy permit for the project.

- 24) The total number of bedrooms shall not exceed ninety (90). The type and style of the affordable dwelling units shall be the same percentagewise as the market rate units in both type and style.
- 25) All dwelling units shall be connected to the public water system through an onsite water main and have a common private septic system as further herein provided. Prior to the issuance of any building permit, the Applicant shall provide certification from the Water Department to the Building Inspector that proposed utility connection Engineering Plans have been approved.
- 26) The Applicant has proposed, and the Board of Appeals hereby requires, that the following aspects of the development shall be and shall remain forever private, and that the Town of Norwell shall not have, now or ever, any legal responsibility for operation or maintenance of same;
 - 1) All roadways and parking areas,
 - 2) Stormwater management facilities (except with respect to Town easement to swale and culver as described herein),
 - 3) Snow plowing,
 - 4) Landscaping,
 - 5) Subsurface sewerage disposal system, including all pumping, piping and leaching systems,
 - 6) Trash removal,
 - 7) Street lighting.

In this regard, the existing roadway known as White Barn Lane and all proposed roadways within the development shall not be dedicated or accepted by the Town of Norwell.

- 27) The Applicant shall designate areas for snow disposal on the final site plans.
- 28) The Applicant shall be responsible for managing the installation, operation, and maintenance of all aspects of the development until all dwelling units have been conveyed. At such time, the operation and maintenance of common facilities within the development shall be the responsibility of an owners' association.
- 29) All exterior lighting, including deck lighting, shall be designed to minimize the spillover of light onto adjacent properties.

- 30) The buildings shall be traditional Nantucket style wood frame architecture, with pre-finished cedar wood shingles and architectural grade asphalt roof shingles consistent with the approved architectural drawings.
- 31) In addition to obtaining approval of such structures under the State Wetlands Protection Act in the ordinary course, the Applicant shall submit to MassHousing, for review and final acknowledgement of consistency with this Decision, final and detailed stormwater management plans and improvements in accordance with the Commonwealth's Department of Environmental Management Stormwater Management standards to the detail required for use as on-site construction drawings. MassHousing shall review and provide a written response as to whether said plan(s) are consistent with this Decision within thirty (30) days of its receipt of said plans pursuant to 760 CMR 56.04(7).
- 32) The Applicant proposes to establish an owners' association to maintain and repair all common areas, including the stormwater management system, sewerage disposal systems, landscaping, and other improvements within the subject property. The owners' association shall adopt rules and regulations consistent with this Decision and a copy shall be provided to the Board of Appeals.
- 33) Monitoring of the Applicant's compliance with the affordability requirements, local preferences, affordable unit marketing and limited dividend requirements shall be the responsibility of the Norwell Housing Authority in conjunction with MassHousing.
- 34) Routine inspections during the construction phase shall be conducted, at the expense of the Applicant, to ensure that construction proceeds consistent with this Decision.
- 35) The term "Applicant" as set forth herein shall mean the Applicant, its heirs, successors, and assigns. This definition shall in no way be deemed approval of transfer to such heirs, successors, or assigns without the expressed approval of the Board of Appeals in writing, which shall not be unreasonably withheld.
- 36) This Decision with its conditions shall be recorded with the Plymouth County Registry of Deeds. The Decision shall run with the land and be binding on the Applicant and/or its successors or assigns and shall be recorded senior to any other liens.

XI. MISCELLANEOUS LEGAL REQUIREMENTS

1. Any sale or transfer of rights or interest in all or any part of the Site shall include a condition that successors are bound to the terms and conditions of this Decision. This Decision may not be transferred to a person other than the Applicant, or to an entity of which the Applicant controls less than 50%, without the written approval of the ZBA and the execution of any reasonable instruments or documents that may be required for the perpetual enforcement of this Comprehensive Permit pursuant to Town Counsel's review and approval by the Subsidizing Agency.

2. The Applicant and/or subsequent Owner(s) shall be bound by all conditions and requirements set forth in this Comprehensive Permit.
3. In setting the percentages of beneficial interest in the condominium common areas in the Condominium Master Deeds, the Applicant shall ensure that the percentages assigned to the Affordable Units reflect the fair market value of the Affordable Units, taking into account the affordable housing restrictions that encumber said Units or as otherwise required by the Subsidizing Agency.
4. The driveways, utilities, drainage systems, water supply and distribution infrastructure, wastewater disposal system, and all other infrastructure shown on the Approved Plans as serving the Project, shall remain private and the Town of Norwell shall not have, now or ever, any legal responsibility for the operation or maintenance of the roadways, driveways and infrastructure, including but not limited to snow removal, the stormwater management system, the wastewater disposal system, and landscape maintenance.

XII. APPLICANT'S REQUESTED WAIVERS

The Applicant has requested waivers from the By-Laws of the Town of Norwell, the Town of Norwell Zoning Bylaws and other local rules and regulations. The Applicant's requested waivers are set forth in its Application and as supplemented through the public hearing process. The ZBA's grant of waivers shall be subject to the terms and conditions imposed by this Decision, and to the extent that any waiver is inconsistent with a term or condition set forth elsewhere in this Decision, such term or condition shall govern. No grant of any waiver shall be deemed to waive compliance with any condition of approval of this Decision. Any waiver granted below shall be construed as a waiver only to the extent necessary to construct the Development Plans. Any waiver not granted below or otherwise included within this Decision shall be deemed denied.

The ZBA is specifically not waiving any requirements under the local Wetlands Bylaw or Rules and Regulations. The applicant has refused despite repeated request to obtain approval from the Norwell Conservation Commission, acting in its capacity as the local approving authority for the DEP or under the local Wetlands Bylaw and regulations, relating to the wetlands line. There is evidence in the record that indicates that the extent of wetland resource areas is not as represented in the plans and credible evidence of filling activities. Moreover, the applicant's wetland consultant specifically stated that she had not walked the entire site in conjunction with the identification of wetland resource areas and buffer zones. Because the ZBA is unable to evaluate the extent of the wetland resource areas and buffer zones without a Conservation Commission delineation of the wetlands, the final plans for this proposed project must comply in all respects with the Wetlands Protection Act and any implementing regulations promulgated by the DEP.

The Applicant has also refused from the first submission of the application, and without justification, to provide the ZBA with a pro forma. As such, the ZBA is unable to evaluate

whether granting or denying certain requested waivers from the local bylaws will make the project uneconomic.

Because the ZBA is charged with considering the health and safety of the Town, the ZBA is specifically not waiving any requirements under the Norwell Board of Health Rules and Regulations, or its policy to consider the Town to be nitrogen-sensitive.

The ZBA's decision with respect to each the remaining waiver requests is as follows:

1. Relief from Local Zoning Bylaws

- 1.1. Article II.2311(a): waive requirement of one-family single dwelling on a lot. Project proposes forty condominium units within a single lot under the M.G.L. c. 40B §§ 20-23.
- 1.2. Article II.2316: waive any requirement that requires that the project be subject to Special Permit procedures. Project is submitted under the M.G.L. c. 40B §§ 20-23, requesting a Comprehensive Permit and procedures for appeals shall follow all applicable guidelines in these sections. However, any post-decision modifications to the approved plans are subject to review and approval by the Board of Appeals.
- 1.3. Article II.2410: waive requirement that all buildings in any district meet the minimum requirements set forth in Section 2400. Project is submitted under the M.G.L. c. 40B §§ 20-23, requesting a Comprehensive Permit.
- 1.4. Article II.2423: waive requirement that no part of a lot which contains any element of a stormwater management system shall be used to calculate minimum lot area.
- 1.5. Article II.2432: waive requirement of minimum lot width measured at required setback line shall be 150 feet.
- 1.6. Article II.2441: waive requirement that all structures meet the minimum yard setback requirements to the front property line and the way center line.
- 1.7. Article II.2442: waive requirement that all structures meet the minimum yard setback requirements to the side and rear yards.
- 1.8. Article II.2450: waive all requirements relating to lot shape, including the requirement that no dwelling may be erected or placed within a circle of 150 feet diameter within the lot lines.
- 1.9. Article II.3130: waive requirement of road width of 24 feet.

2. Exceptions from Subdivision Rules and Regulations

White Barn Village is not proposed as a subdivision, however upon review of the Norwell Rules and Regulations Governing the Subdivision of land, the following waivers shall be granted:

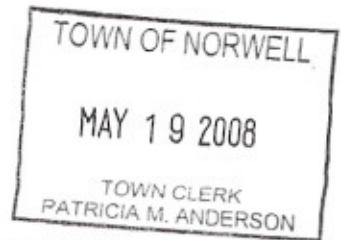
- 2.1. Section 1.5: Waive the definition of a street as it would apply to this project. The Applicant defines the access roadways to the site as private driveways. However, this waiver shall not apply to the pre-existing approved subdivision roadway known as White Barn Lane from which two existing residences derive frontage and/or direct access to the property.
- 2.2. Section 1.5: Waive the definition of a minor street as it would apply to this project. The Applicant defines the access roadways to the site as private driveways. However, this waiver shall not apply to the pre-existing approved subdivision roadway known as White Barn Lane from which two existing residences derive frontage and/or direct access to the property.
- 2.3. Section 1.5: Waive the definition of number of dwellings per lot as it would apply to this project.
- 2.4. Section 1.5: Waive the definition of a way as it would apply to this project. The Applicant defines the access roadways to the site as private driveways. However, this waiver shall not apply to the pre-existing approved subdivision roadway known as White Barn Lane from which two existing residences derive frontage and/or direct access to the property.
- 2.5. Section 1.14: Waive all fees required within the Subdivision Rules and Regulations.
- 2.6. Section 4.3: Waive section on Areas to be Preserved from Development in its entirety.
- 2.7. Section 4.4: Waive the requirement that developer shall not destroy or remove or trim roadside plantings without special permission of the Planning Board and that all scars on trees be painted. Project is submitted under the M.G.L. c. 40B §§ 20-23, requesting a Comprehensive Permit and is not under the purview of the Planning Board. However, this waiver shall not apply to the pre-existing approved subdivision roadway known as White Barn Lane from which two existing residences derive frontage and/or direct access to the property nor shall this waiver be construed in any way to apply to the rights-of-way of land owned by the Town or private property of others.
- 2.8. Section 4.5: Waive the requirement that developer not dispose tree stumps, limbs and brush without approval of the Planning Board. Project is submitted under the M.G.L. c. 40B §§ 20-23, requesting a Comprehensive Permit and is not under the purview of the Planning Board.
- 2.9. Section 4.6: Waive the section on Location of Streets in its entirety. The Applicant defines the access roadways to the site as private driveways and as a result will not be

petitioned for town acceptance. However, this waiver shall not apply to the pre-existing approved subdivision roadway known as White Barn Lane from which two existing residences derive frontage and/or direct access to the property.

- 2.10. Section 4.7: Waive width, alignment, and grade requirements for streets. The Applicant defines the access roadway to the site to be defined as a private driveway and is not subject to local street dimensional requirements. However, this waiver shall not apply to the pre-existing approved subdivision roadway known as White Barn Lane from which two existing residences derive frontage and/or direct access to the property.
- 2.11. Section 4.8: waive requirements of Dead End Streets in its entirety. The Applicant defines the access roadway to the site as a private driveway and is not subject to local street dimensional requirements.
- 2.12. Section 4.10: waive requirement that the Planning Board shall approve the type and dimensions of retaining walls, slopes and fences and all work conform to the Standard Specifications of the Town of Norwell. As the authority for such under a Comprehensive Permit falls within the purview of the Board of Appeals, this waiver is granted as a transfer of such approval to the Board of Appeals or its designee.
- 2.13. Section 4.11: waive requirements that driveways conform to the Construction of Roadway section as defined in the regulations. The Applicant defines the access roadways to the site as private driveways and is not subject to local roadway construction requirements. However, this waiver shall not apply to the pre-existing approved subdivision roadway known as White Barn Lane from which two existing residences derive frontage and/or direct access to the property.
- 2.14. Section 4.12: waive requirement that deviation from shoulder improvements be approved by the Planning Board. Project is submitted under the M.G.L. c. 40B §§ 20-23, requesting a Comprehensive Permit and is not under the purview of the Planning Board.
- 2.15. Section 4.13: waive requirements of granite curving.
- 2.16. Section 4.16: waive requirement of proper staking as defined in this section. Project is submitted under the M.G.L. c. 40B §§ 20-23, requesting a Comprehensive Permit and is not under the purview of the Planning Board.
- 2.17. Section 4.17: waive requirement that Planning Board Supervisor have the authority to inspect or reject any portion of the work. Project is submitted under the M.G.L. c. 40B §§ 20-23, requesting a Comprehensive Permit and is not under the purview of the Planning Board. However, this waiver shall not apply to the pre-existing approved subdivision roadway known as White Barn Lane from which two existing residences derive frontage and/or direct access to the property.

- 2.18. Section 4.22: waive requirement that all items regarding underground utilities defined in this section be subject to approval of the Planning Board. Project is submitted under the M.G.L. c. 40B §§ 20-23, requesting a Comprehensive Permit and is not under the purview of the Planning Board. As the authority for such under a Comprehensive Permit falls within the purview of the Board of Appeals, this waiver is granted as a transfer of such approval to the Board of Appeals or its designee.
- 2.19. Section 4.23: waive requirement that all items regarding street lights defined in this section be subject to approval of the Planning Board. Project is submitted under the M.G.L. c. 40B §§ 20-23, requesting a Comprehensive Permit and is not under the purview of the Planning Board. As the authority for such under a Comprehensive Permit falls within the purview of the Board of Appeals, this waiver is granted as a transfer of such approval to the Board of Appeals or its designee.
- 2.20. Section 4.24.3: waive requirement that the Planning Board be provided with easements for walkways. Site is to remain private property. As the authority for such under a Comprehensive Permit falls within the purview of the Board of Appeals, this waiver is granted as a transfer of such approval to the Board of Appeals or its designee.
- 2.21. Section 4.25: waive requirement that dust and debris control be subject to approval of the Planning Board. As the authority for such under a Comprehensive Permit falls within the purview of the Board of Appeals, this waiver is granted as a transfer of such approval to the Board of Appeals or its designee.
- 2.22. Section 4.26: waive requirements of Open Spaces section in its entirety. As the authority for such under a Comprehensive Permit falls within the purview of the Board of Appeals, this waiver is granted as a transfer of such approval to the Board of Appeals or its designee.
- 2.23. Section 4.29: waive requirements of Street signs in its entirety. The Applicant defines the access roadways to the site as private driveways. As the authority for such under a Comprehensive Permit falls within the purview of the Board of Appeals, this waiver is granted as a transfer of such approval to the Board of Appeals or its designee.
- 2.24. Section 4.30: waive that the Planning Board direct the construction of the sidewalks. The Applicant defines the access roadways to the site as private driveways. Project is submitted under the M.G.L. c. 40B §§ 20-23, requesting a Comprehensive Permit and is not under the purview of the Planning Board. As the authority for such under a Comprehensive Permit falls within the purview of the Board of Appeals, this waiver is granted as a transfer of such approval to the Board of Appeals or its designee.

APPENDIX A: File Inventory for the Comprehensive Permit Decision
White Barn Lane, LLC k/a White Barn Village,
Located off Circuit and Forest Streets, Norwell MA



NORWELL BOARD OF APPEALS
INVENTORY of DOCUMENTS SUBMITTED
During the course of the public hearing of the proposed
Comprehensive Permit Application for the project k/a White Barn Village

ORIGINAL APPLICATION:

06/18/07 Application Binder, entitled "White Barn Village Comprehensive Permit Application," with sixteen (16) itemized exhibits, date-stamped by the Norwell Board of Appeals on June 18, 2007

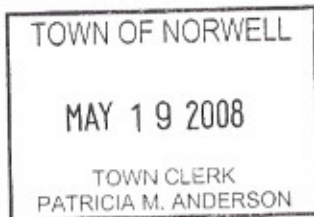
PLANS, DOCUMENTS, and REPORTS

06/18/07 *Plan Set*, entitled *Comprehensive Permit Plans/White Barn Village/(Tax Map 20A, Block 56, Lot 34 & Map 20B, Block 56, Lot 5)/ in/Norwell, Massachusetts*, dated June 12, 2007, prepared by McKenzie Engineering Group, Inc., Inc., 150 Longwater Drive, Suite 101, Norwell MA 02061, stamped and signed by Bradley C. McKenzie, P.E., but not stamped or signed by a Registered Land Surveyor, consisting of the following sheets:

1. Cover Sheet, including Index Plan with Locus and Drawing List, Scale 1"=80'
2. General Notes, Legend & Abbreviations, including
 - a. Locus Owner
 - b. Deed Book Reference
 - c. Wetland Resource Areas delineated by Wetland Strategies.
NOTE: Wetland delineation lines shown have not been approved in accordance with state and federal laws and regulations
 - d. General Utility Notes
3. Existing Conditions, Scale 1"=40'
4. Preliminary Layout Plan, Scale 1"=40', including
 - a. Unit Size Breakdown and type with total of forty-four (44) residential condominium units
 - b. Building Size Breakdown
 - c. Building Summary
5. Preliminary Grading and Utility Plan, Scale 1"=40'

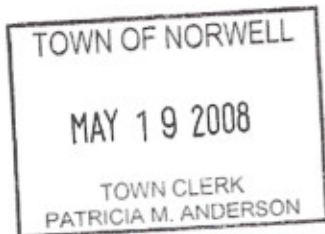
12/17/07 *Engineering Plan Set*, entitled *Comprehensive Permit Plans/White Barn Village/(Tax Map 20A, Block 56, Lot 34 & Map 20B, Block 56, Lot 5)/ in/Norwell, Massachusetts*, dated June 12, 2007, revised 12/13/07, prepared by McKenzie Engineering Group, Inc., Inc., 150 Longwater Drive, Suite 101, Norwell MA 02061, stamped and signed by Bradley C. McKenzie, P.E., but not stamped or signed by a Registered Land Surveyor, consisting of the following sheets:

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1. Cover Sheet, including Index Plan with Locus and Drawing List, Scale 1"=80'
2. General Notes, Legend & Abbreviations, including
 - a. Locus Owner
 - b. Deed Book Reference
 - c. Wetland Resource Areas delineated by Wetland Strategies.
NOTE: Wetland delineation lines shown have not been approved in accordance with state and federal laws and regulations
 - d. General Utility Notes
3. Existing Conditions, Scale 1"=40'
4. Site Layout Plan, Scale 1"=40', revised per review and Fire Chief comments, to include:
 - a. Unit Size Breakdown and Type, showing forty (40) residential condominium units
 - b. Building Size Breakdown
 - c. Building Summary
 - d. Centerline Curve Table
5. Grading and Utility Plan, Scale 1"=40', revised per review comments, including
 - a. Schedule: Storm Drain Structures
 - b. Note affixed to the plan referring to plans entitled "Roadway Improvements, White Barn Lane in Norwell, Massachusetts, dated 11/7/07"
6. Roadway Plan & Profile/**Road A** Station 0+00 to 10+60.15 (Note: Begins at the edge of the existing cul-de-sac at White Barn Lane and ends at Forest Street)
7. Roadway Plan & Profile/**Road B** Station 0+00 to 4+63.25 includes General Utility Notes. (Note: Proposed Road B begins at the Forest Street side of the proposed Road C and ends at the White Barn Lane cul-de-sac end of the proposed Road A.)
8. Roadway Plan & Profile/**Road C** Station 0+00 to 3+92.42 (Note: Proposed Road C begins at the Forest Street end of Road A, connects to Road B, and then dead ends.) Editorial Comment: There is no Roadway Plan & Profile for **Road D** in this plan set.
9. Landscaping Plan, showing a Tree Planting Legend.
10. Construction Details 1, showing:
 - a. Standard Catch Basin Detail
 - b. Typical Trench Detail
 - c. Wood Guardrail
 - d. Typical Drywell Detail
 - e. Double Grate Catch Basin Detail
 - f. Stormceptor SC-450 Detail
 - g. Preformed Flexible Manhole Detail

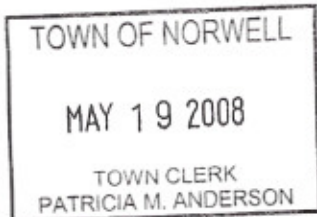
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- h. STC 900 Precast Concrete Stormceptor (900 U.S. Gallon Capacity)
- 11. Construction Details 2, showing:
 - a. Proposed Stormwater Detention Basin #3 & #4 Section
 - b. Proposed Stormwater Detention Basin #1 Section
 - c. Detention Basin Outlet Control Structure
 - d. Typical Sediment Trap Detail
- 12. Construction Details III, showing:
 - a. Proposed Stormwater Infiltration Basin (DB-2) Plan
 - b. Stormtank Stormwater Storage System Details
 - c. Proposed Stormwater Infiltration Basin (DB-2) Detail
 - d. Proposed Stormwater Infiltration Basin (DB-2) Section
 - e. Proposed Area Drain Detail (ADS or Equal)
- 13. Construction Details IV, showing:
 - a. Typical Water Main Plug
 - b. Typical Water Main Bend Thrust Block Details
 - c. Typical Water Main Thrust Block Section Details
 - d. Service Connection
 - e. Hydrant Detail
 - f. Water Gate Detail
 - g. Requirements of the Town of Norwell Water Department Material Specifications Water Mains and Appurtenances
- 14. Construction Details V, showing:
 - a. Seeding Specifications
 - b. Seeding Rates
 - c. Seeded or Sodded Lawn Detail
 - d. Bituminous Concrete Berm Detail (Cape Cod Berm)
 - e. Stabilized Construction Entrance Detail
 - f. Typical Roadway Cross Section
 - g. Versa-Lok Retaining Wall
 - h. Typical Electric/Telephone/Cable Conduit (US-Utility Service)
- 15. Erosion Control Plan, detailing:
 - a. Construction Sequence
 - b. Erosion and Sedimentation Control
 - c. Temporary Erosion Control schemes
 - i. Embedding Detail
 - ii. Staked Hay Bale
 - iii. Siltation Fence
 - iv. Siltsack Sediment Trap
 - v. Haybale & Silt Fence

12/19/07 Two-Sheet Plan Set, prepared by McKenzie Engineering Group, Inc. of

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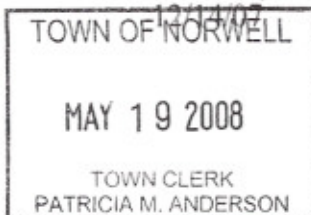


150 Longwater Drive, Suite 101, Norwell MA 02061, dated 11/7/2007, and stamped and signed by Bradley C. McKenzie, P.E., consisting of the following sheets:

1. **White Barn Lane/Existing Conditions**, Scale 1"=20'
2. **Roadway Improvement Plan**, Scale 1"=20', including street profile, connection roadways, and adjacent appurtenances to the proposed project

- 01/24/08 Sketch-1 Drawing, entitled *Subcatchment 3a & 3b/White Barn Lane/Norwell, Massachusetts*, prepared by McKenzie Engineering Group, Inc., 150 Longwater Drive, Suite 101, Norwell, Massachusetts 02061 (NOTE: not dated, stamped or signed.)
- 01/24/08 **Existing Conditions Plan**, dated June 12, 2007, **rev. 01/17/08**, to add test pits per review comments, prepared by McKenzie Engineering Group, Inc., Inc., 150 Longwater Drive, Suite 101, Norwell MA 02061, stamped and signed by Bradley C. McKenzie, P.E., but not stamped or signed by a Registered Land Surveyor
- 01/24/08 **Grading and Utility Plan**, dated June 12, 2007, **rev. 01/17/08**, per review comments, prepared by McKenzie Engineering Group, Inc., 150 Longwater Drive, Suite 101, Norwell MA 02061, stamped and signed by Bradley C. McKenzie, P.E., but not stamped or signed by a Registered Land Surveyor
- 02/20/08 **Grading and Utility Plan** with Storm Drain Structures Schedule, dated June 12, 2007, **rev. 02/14/08**, per review comments, prepared by McKenzie Engineering Group, Inc., 150 Longwater Drive, Suite 101, Norwell MA 02061, stamped and signed by Bradley C. McKenzie, P.E., but not stamped or signed by a Registered Land Surveyor
- 02/21/08 **Sight Distance Plan – White Barn Lane**, prepared by Vanasse & Associates, Inc. of 10 New England Business Center Drive, Andover, Massachusetts 01810. (Note: Not stamped or signed.)
- 02/21/08 **Sight Distance Plan – Forest Street**, prepared by Vanasse & Associates, Inc. of 10 New England Business Center Drive, Andover, Massachusetts 01810. (Note: Not stamped or signed.)
- 02/20/08 Architectural Plan set, entitled *White Barn Lane Condominiums/Norwell, MA 12-06-05*, consisting of four (4) sheets, prepared by The MZO Group of 92 Montvale Avenue, Suite 2400, Stoneham, Massachusetts 02180-3628, signed and stamped by Andrew T. Zalewski, showing:
1. Front and Right Elevations
 2. Rear and Left Elevations
 3. First Floor Plans for Unit Types "A," "B," and "C"
 4. Second Floor Plans for Unit Types "A," "B," and "C"
- 10/26/07 Preliminary Drainage Calculations & Stormwater Mgmt. Plan, prepared

**APPENDIX A: File Inventory for the Comprehensive Permit Decision
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by McKenzie Engineering Group, Inc., dated 10/27/07, with plan entitled *Comprehensive Permit Plans, White Barn Village, Pre-Development. Drainage Calculations and Stormwater Management Plan for White Barn Village, White Barn Lane, Norwell, Massachusetts*, dated 12/13/2007, prepared by McKenzie Engineering Group, Inc., stamped and signed by Bradley C. McKenzie, P.E. NOTE: The report includes two plans, entitled *Pre-Development Subcatchment Plan* and *Proposed Drainage Subcatchment Plan*, neither of which is signed.

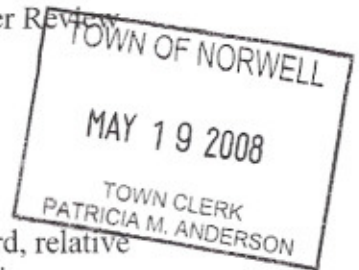
- 12/19/07 Traffic Memorandum of 12/14/07, prepared by Vanasse & Associates, Inc., of 10 New England Business Center Drive, Suite 314, Andover, MA 01810, reviewing the sight distance requirements for the White Barn Lane and Forest Street access points to the proposed project. The report was initialed by F. Giles Ham, P.E.
- 01/15/08 Letter of 1/15/08 from Vanasse & Associates, Inc., of 10 New England Business Center Drive, Suite 314, Andover, MA 01810-0166, responding to sight distance comments by the Board's peer review engineer
- 03/04/08 Copy of letter of 12/12/07, from Wetland Strategies, Inc., to McKenzie Engineering Group, Inc., relating to a site inspection on 12/2/05.

ENGINEERING AND TECHNICAL REVIEW

- 10/02/07 Initial peer review by Westcott Site Services, dated 10/2/07
- 10/26/07 Letter of 10/26/07 from McKenzie Engineering regarding "White Barn Village, Preliminary Drainage Analysis"
- 11/08/07 Review of Preliminary Drainage Calculations by Westcott Site Services
- 11/30/07 Westcott Site Services notes for engineering meeting of 11/27/07 with Applicant
- 12/19/07 Copy of Memorandum of 12/14/07 from Vanasse & Associates, Inc., to White Barn Lane, LLC., relating to sight distance requirements at Forest Street and Circuit Street access points
- 01/09/08 1/8/08 Review of drawings (Drainage Calculations & Sight Distance Requirements) by Westcott Site Services
- 01/24/08 McKenzie Engineering, Response to Westcott Site Services Review Letter of 1/8/08
- 2/11/08 Westcott Site Services response to McKenzie Engineering Group comments of 1/24/08 with comments regarding Waiver List
- 01/24/08 Letter of 1/15/08 from Vanasse & Associates, Inc., to White Barn Lane, LLC responding to Westcott Site Services letter of 1/5/08
- 02/21/08 McKenzie Engineering response letter of 2/20/08 to Westcott Site Services Report of 2/11/08
- 03/10/08 Peer Review report of 3/10/08 by Westcott Site Services relating to drainage calculations, Sight Distance Memorandum, and Exemptions and

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03/14/08 Waivers
 McKenzie Engineering response letter of 3/14/08 to 3/10/08 Peer Review Report

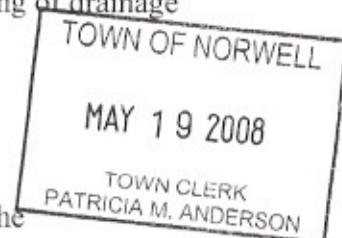


TOWN BOARD AND DEPARTMENT COMMENTS

- 07/05/07 Memorandum of 7/2/07 from the Norwell Fire Dept. to the Board, relative to concerns regarding distance of structures to one another, parking, roadway widths and turnaround concerns, relating to emergency vehicle access and public safety
- 12/13/07 Letter of 12/13/07 from the Norwell Fire Dept. to the Board, relating to on-going concerns of roadway width, turnaround, sprinklering, hydrant spacing, and snow and vehicle impacts on emergency vehicle access
- 07/10/07 Memorandum of 7/7/07 from the Norwell Water Dept. relative to concerns relating to the proposed high density development
- 07/23/07 Letter of 7/23/07 from the Norwell Conservation Commission to the Board, relative to jurisdictional wetlands, wetlands delineation, water table concerns, and an outstanding Enforcement Order
- 12/07/07 Copy of letter of 12/7/07 from the Norwell Conservation Commission to the Applicant and its engineer, relative to an outstanding Enforcement Order issued on 12/8/06, under the Massachusetts Wetlands Protection Act G.L. c. 131 § 40 and the local Bylaw, Article XVI-a (as amended).
- 12/21/08 Letter of 12/21/07 from the Norwell Conservation Commission to the Board, relative to recently received drainage and stormwater calculations, dated 12/13/07
- 03/25/08 Copy of letter to the Town Administrator from the Conservation Agent, relative to an outstanding enforcement order issued to the property owner
- 10/01/07 Letter of 10/1/07 from the Norwell Planning Board to the Board of Appeals relative to concerns about White Barn Lane access, road improvements, existing subdivision covenants and conditions, roadway improvements, site control, Forest Street access, safety of the Town water supplies, stormwater and drainage, smart growth standards, overall density, and project impact on the character of the Town and the neighborhood. Enclosures:
 - 1. Covenant & Certificate of Vote
 - 2. Lot Layout Sheet, Grading Sheet and Plan & Profile Sheet
 - 3. Road Construction Parameters
- 02/13/08 Letter of 2/13/08 from the Norwell Planning Board to the Board of

APPENDIX A: File Inventory for the Comprehensive Permit Decision
White Barn Lane, LLC k/a White Barn Village,
Located off Circuit and Forest Streets, Norwell MA

Appeals, relative to concerns about current engineering status, drainage analysis, site distance, and possible conflicts in the positioning of drainage structures and utilities



CORRESPONDENCE

- 07/11/07 Letter from R. E. Galvin, Board's Counsel, to attorneys for the Application, relative to quorum and public hearing continuance
- 08/29/07 Letter of 8/29/07 from John J. Sullivan of Woodland Development to the Board of Appeals, relative to Peer Review Escrow
- 08/29/07 Letter of 8/29/07 from Westcott Site Services, relative to escrow deposit
- 09/12/07 Letter of 9/12/07 from John J. Sullivan of Woodland Development to the Board of Appeals, relative to a proposed engineering meeting on 9/18/07 at McKenzie Engineering
- 09/12/07 Letter of 9/10/07 from R. W. Galvin, Board's Counsel, to attorneys for the Applicant, relative to Peer Review and Miscellaneous Matters
- 09/14/07 Letter of Peer Review & Miscellaneous Matters
- 12/10/07 McKenzie Engineering Group, Inc. to Norwell Fire Chief
- 12/13/07 Letter of 12/13/07 from the Norwell Fire Chief in response to McKenzie Engineering
- 03/05/08 Letter of 3/5/08 from Board to the Applicant's attorney, requesting additional information relating to wetlands and pro forma requirements
- 03/13/08 Letter of 3/13/08 from Baker, Braverman & Barbadoro, attorneys for the Applicant, relative to wetlands delineation and close of the public hearing
- 04/09/08 Letter from Baker, Braverman & Barbadoro, attorneys for the Applicant, relative to Site Control, providing a copy of the Purchase & Sale Agreement Extension
- 04/18/08 Letter of 4/18/08 from the Board's Counsel to attorneys for the Applicant, relative to continuance of the public hearing and soliciting a draft decision
- 04/23/08 Letter of 4/23/08 from the Applicant's attorney to the Board, forwarding a draft decision, and restating its position relative to wetlands and the pro forma question

ABUTTERS and RESIDENTS

- 09/27/07 Letter of September 2007 from Robert Blake of 436 Main St. to the Board, relative to his objections to the proposed project
- 12/03/07 Letter of 12/3/08 from the MacDonalds of 21 White Barn Lane and the Schlueters of 29 White Barn Lane, expressing concern regarding backhoe work in the area of an outstanding Conservation Commission Enforcement Order
- 01/15/08 Email from Mary Cole of 221 Forest Street

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02/13/08 Weather Conditions report submitted
02/14/08 John O'Connell and Mary Cole of 221 Forest Street submitted photos
04/23/08 Memorandum of 4/20/08 from Stephen and Barbara Gilmartin of 43
Circuit Street, expressing concerns about seasonal flooding and other
drainage issues.
04/23/08 Letter of 4/19/08 from Bob and Mary Achorn of 49 Circuit Street,
expressing concerns about flooding and stormwater, density of the
proposed project, the amount of fill that will be required, and the project's
overall impact on the neighborhood
04/23/08 Memorandum of 4/23/08 from Mary Cole of 221 Forest Street to the
Board, including a draft decision model, expressing concern about the
Applicant's repeated refusal to provide Board-requested information,
project land valuation, "illegal" dumping on site, the information provided
by the Applicant's wetland consultant, the Applicant's refusal to work
with the Conservation Commission, the drainage culvert on Forest Street,
traffic and sightline, and various other concerns.
04/23/08 Letter of 4/16/08 from Marie Metivier of 230 Forest Street, expressing
concerns relating to her private well, the character of the neighborhood,
and the potential for stalled construction and delayed completion and sale
of the proposed project

