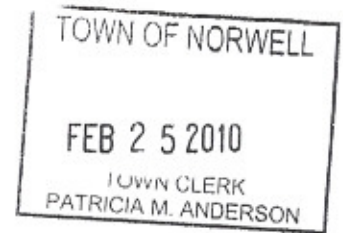


COMMONWEALTH OF MASSACHUSETTS  
HOUSING APPEALS COMMITTEE



\_\_\_\_\_  
TIFFANY HILL, INC.,  
Appellant,

v.

\_\_\_\_\_  
NORWELL ZONING BOARD OF APPEALS,  
Appellee.  
\_\_\_\_\_

No. 04-15

**ENDORSED DISPOSITION AGREEMENT**

The Appellant ("Tiffany Hill") and Appellee ("Board") hereby agree to the following terms and conditions as a mutually-acceptable disposition of Tiffany Hill's appeal to the Housing Appeals Committee:

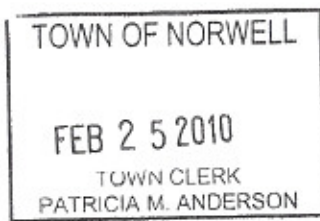
1. Subject to the express terms and conditions described herein, Tiffany Hill and the Board agree that the Comprehensive Permit is hereby amended to allow for the construction of twenty-four, single-family detached homes, of which six units shall be two-bedrooms and eighteen units shall be three-bedrooms for a total of sixty-six bedrooms, consistent with the Comprehensive Permit and this Endorsed Disposition Agreement (the "Project").

2. Tiffany Hill asserts and the Board acknowledges and agrees that the changes described herein do not constitute a substantial change pursuant to 760 C.M.R. § 56.05(11).

3. The revised twenty-four unit plans shall be consistent with the plan circulated by the parties for settlement purposes, which is titled "Alternative 3" and which is attached hereto as Exhibit A. Tiffany Hill shall further amend the Alternative 3 plan as follows:

- a. The cul-de-sac adjacent to the proposed detention basin towards the front of the site (the "Forward Basin") shall be eliminated.

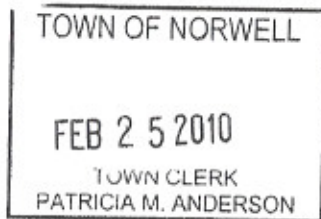
- b. The cul-de-sac at the rear of the project shall be redesigned in a manner that allows for the Norwell Fire Department trucks and apparatus to turn around and otherwise access and egress the site safely and without impediment. The planted interior island shall be eliminated if necessary and the large school bus template shall be used to determine turning ability.
- c. Tiffany Hill shall redesign the existing septic system leaching field (the "Existing Field") so as to divert a portion of the effluent design flow from not less than eight (8) units containing not less than sixteen (16) bedrooms away from the Existing Field to one or more additional leaching fields to be designed and installed toward the back of the project near Route 3, wherever suitable soils may exist.<sup>1</sup> Tiffany Hill may satisfy this condition through the design of one or more common septic systems serving more than one unit or through the design of several systems serving one unit each, so long as effluent design flow to the Existing Field is reduced by no less than eight (8) of the proposed units. In addition to the foregoing, Tiffany Hill shall investigate and report back to the Board's Engineer as to the possibility of having additional units from the proposed twenty-four single family detached homes served by the proposed new leaching field(s) towards the back of the property near Route 3, and if there is additional capacity, will propose to include additional units' wastewater in the new leaching field(s).



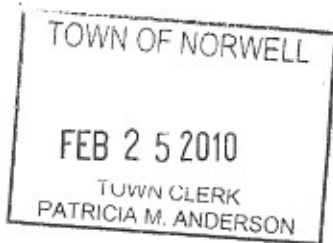
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<sup>1</sup> Tiffany Hill has conducted preliminary soil testing revealing the ability to locate a second leaching field towards the rear of the subject property.

- d. Tiffany Hill shall move the Existing Field shown on Alternate 3 in its re-designed size as far back from Tiffany Road and from the abutting westerly property line (156 Tiffany Road) as it can consistent with good engineering practice and in compliance with the provisions of Title 5 to minimize any groundwater mounding impacts to any abutting property. In addition, Tiffany Hill shall redesign the Existing Field to minimize the height and size of the area of the Existing Field and elevation of the Existing Field in general as shown on the Alternative 3 plan showing a reduction in height
- e. The retaining wall associated with the Existing Field as originally shown in Tiffany Hill's design shall be eliminated as a part of the redesign of the Existing Field. Tiffany Hill represents and warrants that through the use of the "Presby Enviro-Septic Leaching System", or "GeoFlow System" or an equivalent alternate technology system allowed under Title 5 there would be no requirement for any such retaining wall system, if the Board grants the requested waivers from the local Board of Health Regulations. Tiffany Hill shall provide the Board with a written certification from its licensed professional engineers that under Title 5 there would be no requirement for any such retaining wall system associated with the proposed redesigned system. The Board's Engineer's acknowledgment that the proposed Presby and/or GeoFlow design and calculations do not violate Title 5 and any unwaived local regulations shall not be unreasonably withheld or conditioned.
- f. Tiffany Hill shall design, construct and shall bear the cost of sufficiently upgrading the Tiffany Road drainage system (including catch basins and



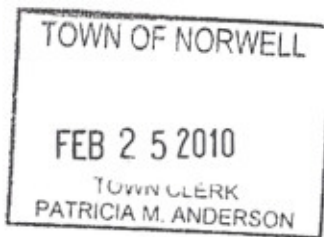
pipings) along the frontage of the project site and within the layout of Tiffany Road and shall integrate project stormwater management into the Tiffany Road drainage system, notwithstanding anything to the contrary in the Comprehensive Permit. The nature and extent of the improvements shall be shown in the final plans, which plans shall include updated drainage calculations demonstrating that the proposed redesign does not violate the current DEP Stormwater Management Regulations ("SMR"). The final plan shall be reviewed by the Highway Surveyor of the Town of Norwell and Board's Engineer for the limited purpose determining consistency with the SMR. Tiffany Hill shall also integrate into the final overall design of the project stormwater swales, rain gardens and other roof drain infiltration facilities in order to minimize the quantity of stormwater entering into the proposed detention basin which, as redesigned herein, shall be located adjacent to the re-designed Existing Field. The Board will facilitate, to the extent practicable, any such approval and review process with the Highway Surveyor since it believes currently that the drainage system in Tiffany Road must be upgraded and a greater quantity of stormwater should be managed on site.. Tiffany Hill shall be solely responsible for obtaining any permission required from the abutter property owner, Eileen Sullivan, or any other property owners for any work or impact, if any, proposed on their properties and nothing herein shall be construed as the Town of Norwell authorizing any entry upon the property of others, including Eileen Sullivan, to the extent that any legal right or permission is required to conduct such work. In addition, Tiffany Hill, and its successors and assigns, agrees as a condition



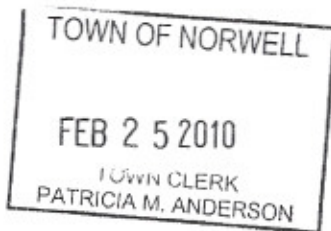


of being able to connect to and upgrade the drainage system to indemnify and hold the Board, Town of Norwell, and its agents, servants and employees harmless from any and all suits, claims, costs, expenses or damages of any nature and type, including reasonable counsel fees, arising from and relating to Tiffany Hill's connecting its drainage system to the drainage in Tiffany Road. The parties acknowledge that Tiffany Hill may not be able to obtain permission to conduct work on or impact the Sullivan or other persons' properties.

- g. Tiffany Hill shall design, construct and submit to the Board's engineer a revised construction drawing of the Existing Detention Basin located immediately next to the Existing Field so as to divert a portion of the stormwater drainage to a secondary detention basin in approximately the location shown on Alternative 3 plan towards the rear of the property. The purpose of the revised drawing shall be to divert some of the drainage from impervious surfaces which are located on the upper portion of the Project away from the front of the property on Tiffany Road to the rear of the property nearer to the Route 3 side of the property where it is believed, based on preliminary soil testing by Tiffany Hill's engineers, there are some suitable soils for infiltration and/or retention. Tiffany Hill shall also redesign the Existing Detention Basin located immediately next to the Existing Field so that the bottom of the basin is raised and there is an impervious liner reasonably satisfactory to the Board's engineer around the Existing Detention Basin and the Board's engineer's approval of such design shall not be unreasonably withheld. Also with respect to the swale, rain gardens and roof drainage systems set forth above in Paragraph f,



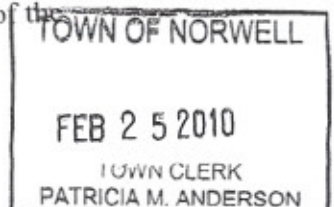
Tiffany Hill shall demonstrate with a proposed design and also revised drainage calculations that such stormwater swales, rain gardens and other roof drain infiltration facilities to be proposed have the ability to capture and detain or infiltrate that quantity of stormwater required by the SMR and/or is consistent the SMR maximum extent practicable standard as described in the DEP Stormwater Handbook using the actual soil classifications determined to exist on the site. The Board's Engineer's acknowledgment that the proposed design and calculations do not violate the DEP SMR or are consistent with the SMR's maximum extent practicable standard shall not be unreasonably withheld or conditioned. The revised design shall also include an on-site stormwater management swale, wetpond, detention basin or infiltration basin to address stormwater flowing from the first 300 feet of the on-site driveway by detention or infiltration..



- h. Tiffany Hill shall propose a part of its revised plans a layout showing the clustering of at least six units located in the mid-section of the proposed project along the sides of the access driveway (as opposed to the cul-de-sac areas), so as to preserve open space on the lot to the extent possible. Nothing herein shall preclude Tiffany Hill from proposing to further cluster the units to increase open space on the lot.

4. Tiffany Hill shall amend the Alternative 3 plan pursuant to Paragraph 3(a-h). Tiffany Hill shall submit a revised plan to the Norwell Board of Health for approval of the revised septic system design pursuant to Title 5. The Board understands that as a part of the approval process for the septic system, Tiffany Hill must submit to the Board a conventional Title 5 mounded soil absorption system, including a reserve area, as initially proposed can be

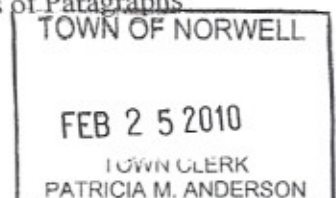
installed on the site; however, Tiffany Hill agrees that it will not construct such a system and will construct the system contemplated by this Endorsed Disposition Agreement and referenced below. In its submissions to the Norwell Board of Health, the Board agree that Tiffany need only provide the plan details required by Title 5. Any additional local Board of Health plan detail requirements or plan detail regulations shall be waived. Tiffany Hill or the system owner shall then size and design the soil absorption system for the "Presby Enviro-Septic Leaching System", or "GeoFlow System" or an equivalent alternate technology system allowed under Title 5, with no retaining wall. The revised plans shall contain such details and information as may be reasonably required to obtain Board of Health approval under Title 5, in the discretion of the Norwell Board of Health as the Local Approving Authority or in the event of any disagreement therewith by the Department of Environmental Protection on an appeal under Title 5. In addition to those waivers previously granted by the Board, the Board hereby waives any other local bylaws or local Board of Health Regulations as may be necessary to allow Tiffany Hill to proceed with the revised plans as modified by Paragraph 3. The Norwell Board of Health may consult with the Board's Engineer to confirm that the revised septic system design does not violate Title 5, provided that the Board of Health retains final approval authority as the Local Approving Authority under Title 5. In the event the Board's Engineer disputes whether or not the revised septic system violates Title 5 based upon the revised plans prepared and submitted by Tiffany Hill's engineer, the matter shall be submitted to the Department of Environmental Protection on appeal consistent with DEP appellate processes. Approval by the Board of Health pursuant to this paragraph shall be deemed to satisfy Conditions 51-53 of the Comprehensive Permit. Upon approval by the Board of Health of the final plans for the septic system, the following conditions in the Comprehensive Permit shall be deemed modified as described herein. The first sentence of Condition 54 of the Comprehensive Permit is deleted and the second sentence is incorporated herein by reference. The last sentence of Condition 55 of the





Comprehensive is waived and the first four sentences of Condition 55 are incorporated herein. The last sentence of Condition 56 is waived and the remainder of Condition 56 is incorporated herein, with the exception that the word "eliminate" in the first sentence shall be replaced with the word "minimize" and "in compliance with Title 5" shall be added at the end of that sentence. Condition 57 shall be re-written as follows: "Tiffany Hill shall conduct such further hydro-geologic analysis as required by Title 5 before the final design is submitted to the Board of Health. If such hydro-geologic analysis reveals any problems with the function of the wastewater disposal facility as designed, the design shall be modified to accommodate these site limitations in order to function as intended." Condition 58 shall be re-written as follows: "Copies of any further hydro-geologic analysis shall be submitted to the Board of Health promptly upon completion. In the event that Tiffany Hill's Engineering Consultant determines that that the design septic system need not be modified on account of subsequent analysis, he or she shall so certify in writing with a summary of the reasons to the Board of Health. In the event the design septic system must be modified on account of subsequent hydro-geologic analysis that reveals conditions different than previously discovered, the Board of Health may engage, at the reasonable cost and expense of Tiffany Hill, its own peer review consultant and/or hydrologist to review such revised plans and analysis to determine consistency with this Agreement." The septic system and leaching facilities shall be monitored consistent with the requirements of the Presby general use and / or the GeoFlow general use permits, Title 5 and any other federal or state permits.

5. In the event Tiffany Hill receives Board of Health approval, Tiffany Hill may then proceed to submit additional revised plans to the Board's Engineer for review only to ensure consistency with the Comprehensive Permit as modified by this Endorsed Disposition Agreement. The plans and details required to be submitted to the Board's Engineer shall comply with the submissions required under Paragraphs 23-25 and meet the requirements of Paragraphs





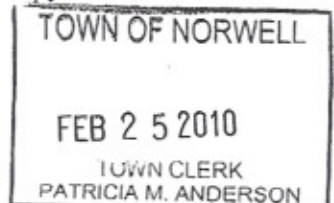
62 (except as provided herein), 64 (except as provided herein), 65 (first sentence only), 66-73 and 76 of the Comprehensive Permit which are expressly incorporated herein and additionally with the provisions of this Endorsed Disposition Agreement.

6. Upon confirmation by the Board's Engineer that the revised site plans are consistent with the Comprehensive Permit as modified by this Endorsed Disposition Agreement, Conditions 23-25, and 60-76 of the Comprehensive Permit shall be deemed satisfied excepting those provisions which require continuing obligations including 62, 65, 66-73 and 76. Tiffany Hill shall make the following submissions prior to ground disturbance: (i) the plans described in Conditions 24 and 25 shall be submitted to the Norwell Highway Surveyor; (ii) the operations and maintenance plan described in Conditions 68 and 69 shall be submitted to the Building Inspector; (iii) the easement in Condition 70 shall be submitted to Town Counsel.

7. Tiffany Hill shall bear the reasonable costs associated with outside engineering consultants in connection with the future review costs associated with this Endorsed Disposition Agreement. Prior to incurring costs, the Board will obtain written proposal(s) for such work and Tiffany Hill's approval of such proposal(s) shall not be unreasonably withheld, delayed or conditioned. In addition, Tiffany Hill shall pay forthwith upon the execution hereof to the Town of Norwell the sum of \$5,000 towards unpaid review fees and expenses existing from the original hearings before the Board.

8. The parties agree that the MassHousing shall serve as the project administrator for the Project. The Board shall execute MassHousing's form Acknowledgement of Zoning Board of Appeals and Tiffany Hill shall execute MassHousing's standard form regulatory agreement. Notwithstanding anything herein contained, Tiffany Hill agrees to comply with the local preference requirements set forth in Condition 11 of the Comprehensive Permit.

9. Tiffany Hill's execution of MassHousing's regulatory agreement shall be deemed to satisfy Conditions 9, 10, and 14. Tiffany Hill will supply the Board with a copy of the draft



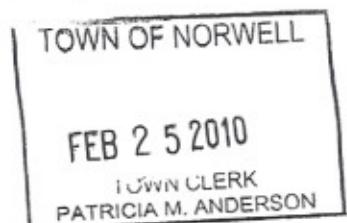
and executed monitoring and regulatory agreements forthwith upon receipt of the same. If MassHousing shall now or in the future fail to perform such duties and oversight authority it may enjoy for any reason whatsoever, the Board reserves the right to protect the interests of the Town by appointment of the Norwell Housing Authority or other recognized agency to preserve the affordability requirements on behalf of the Town under M.G.L. c. 40B and any modifications thereto, provided that the Board shall give MassHousing and Tiffany Hill at least thirty (30) days advance written notice of its intention to act under the paragraph.

10. The proceedings before the Committee are hereby stayed indefinitely, except as provided in Paragraph 11.

11. In the event that: (i) the Board of Health deems Tiffany Hill's revised septic system design in violation of Title 5 pursuant to Paragraph 5 above; or (ii) the Board's Engineer does not make a determination of consistency pursuant to Paragraph 6, this Agreement shall be null and void and the parties shall proceed with the hearing pursuant to the Supplemental Pre-Hearing Order on remand, provided that the parties shall agree upon a mutually acceptable timeline for the filing of pre-filed testimony and the evidentiary hearing.

12. The Committee hereby retains jurisdiction over this matter and either party may petition the Committee to resume these proceedings pursuant to Paragraph 11 in writing at any time.

13. Tiffany Hill agrees to purchase and maintain for a minimum five years from the date of substantial completion for the benefit of the Town and the future Condominium Homeowner's Association, as additional insureds, an environmental risk policy of insurance, with a face value of not less than one million dollars, insuring against the cost of potential future damage caused by a failure of the septic system or the release of hazardous septic waste from a failed system. A copy of the sample policy is attached hereto as Exhibit B. Tiffany Hill shall




submit the necessary information to the underwriting department of the proposed insurer thorough the agency contacted in connection with this policy forthwith to confirm insurability.

14. In the event of a conflict between this Agreement and the Comprehensive Permit, the terms of this Agreement shall control.

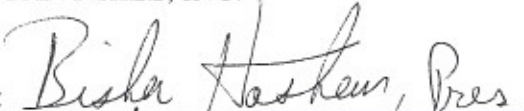
Executed this \_\_\_\_ day of November, 2009.

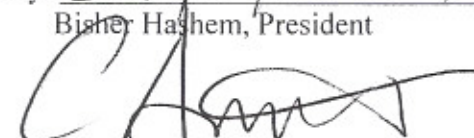
NORWELL ZONING BOARD OF  
APPEALS

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