



## TOWN OF WEST BOYLSTON ZONING BOARD OF APPEALS

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### MEETING MINUTES

**December 17, 2015**

Chair: Kristina Pedone

Members Present: Kristina Pedone (Chair), John Benson (Vice-Chair), David Femia (Clerk), Barur Rajeshkumar and Charles Witkus .

Others Present: Daniel Cronin (Associate Member) and Secretary Toby Goldstein.

Members Absent: Paul Hennessey (Associate Member).

At 7:17 p.m., Mrs. Pedone called the meeting to order. She read the names of members present. (She started to call associate member Daniel Cronin up to designate him as a full member, but at that moment Mr. Benson arrived). Mrs. Pedone stated that the first item to be discussed on the agenda was the Village at North Main Street, with several items listed on the agenda for discussion, and that this discussion would end at 7:45. She called up Wayne Amico first to speak.

Mr. Amico introduced himself and said that he was a consultant for the Peer Review of 94 North Main Street. Mrs. Pedone, addressing Mr. Amico, listed an overview of outstanding items. Mr. Amico stated that he submitted a comment letter to the board the day before the November 19 meeting (which could not be addressed at that meeting due to late submission) and there were three issues that were remaining: item 4 under Grading and Stormwater, item 6 under Grading and Stormwater, and item 15 under Utilities. He said that, since then, the applicant and his engineer supplied supplemental sheets and a final set of plans, all dated 5/28/15 with revisions through 12/15, and commented that, in the past few weeks, the most comments revolved around underground drainage infiltration system and produced a final set of documents for the board. Mr. Amico said that the following issues were resolved:

1. Separation of infiltration system from Bldg. 1 and that comment was addressed on the submitted plans.

2. The infiltration system and potential for stormwater breakout-the applicant installed a clay barrier to remedy that and this satisfactorily addressed the issue.
3. Utility conflicts in the drain line and these were addressed.
4. Groundwater elevation questions-the applicant agreed to conduct test pits; VHB is satisfied with the response.
5. Soil classification-VHB is satisfied with the response, based upon test pit information.
6. Minor detention issue regarding rip rap on the drainage aprons.
7. Recommendation that the applicant supply conformed drawings and one set of documents to work with; the applicant did that.

He recommended that the applicant submit a cover index sheet and organize all plans so that they can be reproduced, and recommended that the applicant provide copies for the board. Mr. Amico asserted that there were no further outstanding comments.

Mrs. Pedone asked the board if they had any questions on the three items for Mr. Amico? Mr. Rajeshkumar asked Dean Harrison (representing Iqbal Ali, the applicant) if the board can have copies of the plans? Mr. Harrison replied that they would have hard and electronic copies.

Mrs. Pedone then asked Mr. Harrison if Lot 3 is included on the drainage plan? He replied that it is on it, along with the grading infringement.

Mrs. Pedone then read that there were seven items on the agenda for discussion (from the November meeting)(agenda on file). She said that they would omit gradient drainage, and asked Mr. Amico if there is anything outstanding from the other items? He replied that the photometric plan is fine, the site plan is fine (but Lot 3 is not included on it), the utilities plan is fine, and on the gradient and drainage plan, work will be done on Lot 3.

Mr. Witkus next referred to the drainage plan and asked if the fence indicated was necessary, as he thought it to be unsightly and thought that it would not make a difference regarding safety as the land itself was rocky and uneven. Mrs. Pedone responded that they will postpone discussing the drainage plan at this time.

Mr. Amico continued that they will postpone discussion of the retaining wall at this time due to discussion of the grading of Lot 3. Regarding the landscaping plan, he said that that was fine, and the propane and water plan fine also. Mrs. Pedone suggested that they leave items regarding Lot 3 open until hearing from Town Counsel on the Amended Restated Decision. She then asked for any other questions from the board regarding the other plans.

Mr. Femia asked if the site plan had Lot 3 on it? Mr. Amico replied that it did not. Mr. Benson referred to the issue of modification of the test pits that was discussed at the previous meeting. Mr. Amico responded that the applicant clarified the test pit data and he is satisfied based on the information provided.

Mr. Rajeshkumar remarked on the fact that Lot 3 was not on the site plan. Mr. Amico explained that there was no grading of Lot 3 shown on the site plan, which basically had the layout of items such as the parking lot and horizontal layout.

Mr. Femia then moved to approve the aforementioned five sets of plans. Mr. Benson seconded. Mrs. Pedone stated that the board voted unanimously in favor and the board proceeded to sign a vote sheet.

Mrs. Pedone announced that the next agenda item was the Amended Restated Decision and asked Town Counsel (Carolyn Murray) to come forward; she asked Mr. Amico to stay as he might be needed regarding Lot 3.

Atty. Murray discussed that, several months ago, she began to prepare a consolidated version of the Comprehensive Permit due to the age of the project and addition of documents and modifications, and today she e-mailed the board the latest version. She mentioned the long history of the project and references in the original decision to the original owner, Mr. Lever, and that there are a number of what they consider insubstantial modifications along with housekeeping and updating, which need to be incorporated into the decision to reflect current circumstances. She was going to go through the highlights at the meeting. However, she believed that the handling of Lot 3 required more discussion with the board.

Atty. Murray explained that the first few pages of this red-lined version of the decision are only reiterations of prior information such as recording information; the final approved document must be recorded within 30 days with the Registry of Deeds. She said that page 8 begins the real substance, which referenced 2008 plans, but on page 9, plans were updated at the last meeting. On page 9, she suggested deleting the provision that the original applicant had the ability to change things on the plan if the change was 20% or less; paragraph 3 was no longer necessary. Mr. Harrison responded that the applicant agreed to delete that.

Atty. Murray continued that the next significant change was to paragraph 7; previously, 25-100% of the units needed to be affordable. Now at least 25% need to be affordable. Mr. Harrison responded that the applicant agreed with that also. (There was some discussion as to whether or not that sentence should state that "the number of affordable units shall be 25%" but it was agreed to keep the wording at "at least 25%"). Ed Marchant, Affordable Housing Consultant, who was present at the meeting, suggested adding "adjusted for household size."

Atty. Murray continued, referring to paragraph 8, regarding water and sewer fees, that since the total units had been reduced to 80, she thought that an adjustment must be added to reflect this change that's agreeable to the board. Mr. Harrison agreed.

Atty. Murray then referred to paragraph 9, that North Main Street is part of Route 140, and the question if it is all or partially under state jurisdiction-she added language that the Route 140 part of North Main Street may be under the jurisdiction of Mass. Department of Transportation (DOT), pending comments from Mass. DOT.

Atty. Murray continued, regarding paragraph 10, sewer and water fees, that additional permits are not necessarily withheld or additional studies required, adding that if the applicant does not pay water or sewer fees or comply with the terms of the Comprehensive Permit, permits to connect to sewer and water can be pulled. Mr. Harrison agreed. (Mrs. Pedone then asked everyone to turn off the ringers on their mobile phones).

Regarding paragraph 15, Atty. Murray suggested that the board insert that no building permit will be issued for any work until MHP gives final approval of the project. Mr. Harrison said that the applicant also would want to be able to start foundation work or site work.

Regarding paragraph 17, regarding issuance of the building permit by the Building Inspector, Atty. Murray suggested adding "unless the applicant has not received final approval from MHP, as was stated in paragraph 15, or complied with terms of the Comprehensive Permit." Mr. Harrison agreed. (Mrs. Pedone then asked the board, since there is still paperwork remaining to discuss, if they should push back the scheduled public hearing for ½ hour, or continue this discussion after the public hearing? Mr. Femia responded that the representatives for the public hearing were not yet present, so Atty. Murray continued her discussion).

Next, regarding paragraph 20, Atty. Murray suggested deleting it, stating that the applicant will not be required to post a performance bond as a requirement for receiving a Certificate of Occupancy. Mr. Harrison agreed.

**Public Hearing, TMC CF New England, LLC, (3) Petitions for Special Permit, 184 West Boylston Street:**

(The representatives for this public hearing, for the construction of a Cumberland Farms at the above address, arrived, so Mrs. Pedone instructed that the board would hear the public hearing, then return to the 94 North Main Street discussion).

Mrs. Pedone then read the agenda item for the public hearing, and asked the representatives to state their names for the record. They were Thomas Reidy, Attorney for Cumberland Farms,

Tracey Roll, the Site Developer from Crowley, and Colleen Medeiros from McMahon and Associates engineers. Mr. Femia then read the notice for the public hearing aloud.

Mr. Reidy spoke first and gave some procedural background. He discussed that he met with the Town on September 14 at a Roundtable meeting with their preferred site plan. He summarized that the area the applicant is looking to develop is for business zoning, a 36,000 square foot parcel at Wachusett Plaza. They met with the Town to obtain feedback on what they liked or did not like about the site plan; they made some changes and then met with Planning Board on December 9 with a plan for Site Plan Review (they also met with them previously), hopefully for approval, which was before the ZBA this evening. Mr. Reidy continued that their proposal was to build a 4,738 square foot retail convenience store with auto fueling stations (six fueling stations, 12 fueling positions), 22 parking spaces in total (8 in the rear of the store, 14 in the front of the store). He said that there were and will be some modifications based on the Site Plan Review comments and peer review engineering comments, and all comments will be addressed. This evening, he explained that they were seeking special permits for use as an auto fueling station with retail allowed in that district, for operation between the hours of 2 and 6 a.m. to allow for 24-hour operation, and modification of parking (parking in front of the establishment is prohibited by the zoning bylaws, so they are requesting modification to this due to the site use), and also they need to modify the zoning bylaws regarding waiting spaces, which requires 1 in front of, and 3 behind, any fueling island; Mr. Reidy suggested that four spaces per fueling island would be unnecessary). He then asked if there were any questions from the board.

Mrs. Pedone then commented that Planning Board continued their hearing (an email discussing this was sent to the ZBA), stating that Planning Board would like the applicant to consider a smaller sized sign, and she asked Mr. Reidy if there was any discussion regarding other sign sizes along Route 12? He replied that there was not.

Next, Mr. Rajeshkumar asked Mr. Reidy to show them the parking on the map. Mr. Reidy pointed out the 14 spaces in front of the retail store, and 8 spaces in the back. They are designated for Cumberland Farms and the property owner, Surabian Realty, issued them a letter and said he will clear the snow from those spaces and store it. Mr. Benson asked if there will be access to the larger lot of the plaza? Mr. Reidy replied that there will be a full access curb cut from the plaza driveway, and also a right turn only curb cut from Route 12 (entrance only), the width being 18 feet (to Mrs. Pedone). Mr. Reidy added that this will allow emergency vehicles and the fuel truck to be able to enter.

Mr. Benson then asked about the 8 spaces in the rear of the store and if there will be access from the store side to them? Mr. Reidy replied that people can pull into the back and gain access from there through a walkway. Mr. Reidy added that the planned 20-foot high, 8-foot wide sign will be reduced according to Planning Board's request, and it will not need a variance as Planning Board can modify certain requirements.

Mrs. Pedone next discussed concerns regarding the request to be open from 2 to 6 a.m., such as music at the fuel pumps and videos and advertising at the pumps also, and stated that the Town does not have a lot of 24/7 activity and if they might be able to mute the sound? Mr. Reidy responded, commenting that the lighting will be downcast, with bright LED illumination at the pumps but the light will stay on the site. Regarding noise, he suggested possibly eliminating any sound from 10 p.m. to 6 a.m. and just have visual displays.

Mrs. Pedone then asked about snow removal. Mr. Reidy replied that they received a letter from the landlord stating that he will store it on his site, but asserted that, if they have to, they will truck it off site as they do not want to lose space.

In response to questions from the board, Mr. Reidy replied that the employees' parking will be in the back of the building, and there will be 18 employees in total, with 6 full-time and 12 part-time. Mr. Benson asked if there will be 4 employees at 2:00 a.m., and Ms. Medeiros replied that it would depend on the foot traffic that they have. Mrs. Pedone asked if the traffic study addressed delivery times? Mr. Reidy replied that the deliveries will have to be off-hours, not at peak times, but they have not addressed that yet. In response to questions by the board regarding location of dumpsters, Mr. Reidy replied that they will be in a screened-in area where there will be handicapped access.

Next, Mr. Benson commented on the fact that a van would block the line of the employees' sight to the pump. Mr. Reidy responded that employees know that they have to maintain the line of sight to the pumps, and added that there is also video view of the pumps, and commented that there is monitoring of the underground fuel storage tanks for scheduling of deliveries.

Mr. Benson then asked about the number of waiting spaces at the fueling pumps. Ms. Medeiros, who is the Traffic Engineer, addressed this question. She pointed out that there would be room on the western side of the site for queueing, but there are not official queueing spaces. Mr. Femia then asked if all vehicles are in the queues, if a truck enters, will there be enough room for maneuvering of the vehicles? Ms. Medeiros replied that they will try to have truck deliveries take place at off-peak times, and Cumberland Farms can dictate and regulate

that. She then pointed out the typical vehicle route and the area that will allow for queueing. Mr. Benson asked how often deliveries would be made? Mr. Reidy replied that it would depend on need, maybe two per week. He added that, due to the size of the store, there will be more storage area and deliveries probably will not need to be made more often than that. Mr. Femia asked why deliveries would be made at the front of the building, as it would alleviate congestion if loading was done through the back of the building. Mr. Reidy replied that Cumberland Farms looked at this, and wanted to keep everything in the front for security reasons, and distance from the curb to the pumps was all thought of for appropriate movement of traffic.

Mr. Femia then asked them to elaborate more upon the traffic study. Ms. Medeiros explained that the traffic study was prepared in three parts; existing conditions, future scene without the project, and with the project. She said that peak periods were studied in October; they did traffic counts. They asked if they had to adjust October volumes and found that they did not. Regarding available crash data, she reported that only four occurred at that signal, and they found no safety deficiencies. Mrs. Pedone asked her if there were any fatalities at the traffic light? She commented that recently there was one.

Ms. Medeiros continued that, regarding future conditions, they look seven years ahead, and they agree with other towns and any other development on Route 12. She then explained the Trip Generation Handbook, by which they calculate trip generation. There are two parts to the traffic-60 to 65 percent of the vehicles are passer-by vehicles already on the road, and they are not added to traffic volume, and the rest are new trips. The results are based on capacity analysis and level of service; with a scale of grade from A to F, she said that it is realistic to strive for C or D for average conditions. She asserted that there may be additional seconds of delay but nothing major and they do not see major impact, no left turns into or out of the property will be introduced, and there will be capacity to handle the additional traffic that the new store/fueling station might bring about. Mr. Femia disagreed that the one traffic light will be sufficient for traffic from and to the plaza and the Cumberland Farms and asserted that people will get delayed at the light. He continued that the most impact would be on Saturdays, when it is busiest on Route 12, and suggested that perhaps Mass DOT could change the timing on the signal, and maybe a traffic study could be done for Saturdays.

Mrs. Pedone next referred back to the (3) special permits, read again what each was requesting, and asked if there were any questions on the three permits? Mr. Femia referred to the permit requesting 2 to 6 a.m. opening and asked if the applicants can turn down music and video noise from the pumps so that if people drive by, they cannot hear it? Mr. Benson asked him if he wanted it to be a condition of the permit? Mrs. Pedone suggested that there be no

music or advertising. Mr. Reidy asked if she meant only visuals to be at the pumps? She replied that there should be no sound heard on Route 12.

(With no more questions by the board regarding the (3) special permits, Mr. Benson moved to open the discussion to public comment. Mr. Rajeshkumar seconded. All in favor). Mrs. Pedone opened the discussion to public comment, and with no comments/questions by the public, Mr. Femia moved to close it to public comment.

(Next, the board deliberated). Mrs. Pedone began with the permit for 2 to 6 a.m. operation, and she suggested conditions that no music or advertising play at the pumps from 9 p.m. to 6 a.m. Mr. Benson moved to approve the request for special permit provided the applicant does not have any advertising or music between the hours of 9 p.m. to 6 a.m. Mr. Rajeshkumar seconded. The board voted as follows:

Mr. Witkus-"yes"

Mr. Femia-"yes"

Mrs. Pedone-"yes"

Mr. Benson-"yes"

Mr. Rajeshkumar-"yes"

The motion carried; the special permit was granted.

Mrs. Pedone then addressed the special permit request for fueling station. Mr. Femia moved to approve the request. Mr. Rajeshkumar seconded. The board voted as follows:

Mr. Witkus-"yes"

Mr. Femia-"yes"

Mrs. Pedone-"yes"

Mr. Benson-"yes"

Mr. Rajeshkumar-"yes"

The motion carried; the special permit was granted.

Mrs. Pedone then addressed the special permit request for modification of off-street parking. In response to a question from Mr. Femia, Mr. Reidy replied that the ZBA can modify off-street parking and loading in the bylaws, and pointed out that Town Hall has their parking in front rather than along the sides and in the rear as the bylaws require. With no further comments, Mr. Femia moved to approve the request for special permit. (Mr. Benson noted to specify waiting spaces and parking in the front of the store). He then seconded the motion. The board voted as follows:

Mr. Witkus-"yes"

Mr. Femia-"yes"



Mrs. Pedone-“yes”

Mr. Benson-“yes”

Mr. Rajeshkumar-“yes”

Mr. Reidy added that the plans will be in accordance with Planning Board’s requests, and noted that construction will start when Planning Board decides.

**Continuation of 94 North Main Street Discussions:**

Atty. Murray continued, recommending that paragraph 20 be deleted, regarding that the permittee is not required to produce a performance bond as a condition of the certificate of Occupancy, as there may be construction that has not been completed. She pointed out that paragraph 32 is in conflict with paragraph 20; paragraph 32 states that the permittee shall provide the Town with a bond. She said that the board will retain the flexibility of the bond as a condition of the Occupancy Permit. Mr. Marchant agreed that it would be in the interest of the Town to delete paragraph 20. Mr. Harrison commented that they agreed to keep paragraph 32 which is standard to construction. In response to a question from Mr. Femia, Mr. Marchant responded that the bond is established in the same way as for a non-40B project; the board would look at the work that needs to be done (Mr. Harrison then commented that they are not clear on the wording, and asked, if they are working on Building 1 and the landscaping is not completed on Building 2, would that affect the wording of the bond)? Mr. Marchant explained that the language is related to the building for which the Certificate of Occupancy is requested.

Atty. Murray continued with paragraph 25, discussing the actual dates that the original permit expired, which was five years from the date of the appeal, the decision of which was given on October 3, 2008; a three-year extension was granted by the board on May 28, 2013, so the permit will expire on 10/3/16. Mr. Harrison added that construction must stop by 10/26/16. Mrs. Pedone and Mr. Benson asked what constitutes construction? Atty. Murray replied that it would be a substantial exercise of the permit. For example, if the foundation is poured, the applicant is going forward with construction and therefore exercising the permit. Mr. Harrison asked, if the applicant signs the amended and restated permit, does it begin on this date? Atty. Murray replied that the applicant has not applied for a new permit. Mr. Marchant responded that it will end on 10/3/16 unless the applicant applies for an extension and the board grants it. Mr. Harrison then referred to paragraph 15, and stated that they discussed the possibility of the applicant beginning site work and pouring of the foundation; he does not have a building permit due to not having final approval from MHP, but thought that, by right, he should be able to work on those two things. If the board does not agree and the applicant has to wait for final approval before beginning any type of work, the applicant will have to ask for an extension; he will ask the board for an additional three years to start the work.

In response to a question from Mr. Femia regarding the status of the final approval, Mr. Harrison responded that they have a list from them of items that need to be satisfied, such as upfront review by their engineer, but the plans need the final approval from the board and it could take as long as thirty days for MHP to give their final approval and there are other issues as well. He continued that they believe that work has started, and if it is to be appealed.

Mr. Benson commented that the Town is concerned with the foundation being poured, but there is no money yet. Mr. Harrison responded that the applicant has the construction loan, and if MHP does not give final approval, Rockland Trust can become the permanent lender. Mr. Benson was concerned that the Town could potentially be responsible to pay. Mr. Harrison responded that the applicant has the right to use Rockland Trust as the permanent lender, and continued that they have the project eligibility letter, and that Mr. Ali is asking to start the site work and foundation as any other contractor would do before obtaining the building permit. Mr. Marchant explained that if it happens that MHP does not give final approval or the terms are not accepted, the applicant must agree to request an insubstantial modification to change the subsidizing agency from MHP to Rockland Trust. He also said that the construction loan commitment is for 10 years and there would be no risk as long as the construction loan stands.

Atty. Murray then discussed paragraph 26, the change of the project name to Sajda Gardens. Next she discussed paragraph 27, and believed that this was an open issue; she explained that typically in a comprehensive permit, the board has the authority to grant waivers from various requirements, either in the decision or reflected on the plans themselves, and this paragraph states that the board can grant additional waivers, but she could not find any documents showing that the board granted any previous waivers. Mr. Harrison asserted that the original 2004 permit contained waivers. Mr. Marchant added that it is important to find that list so that the applicant can make sure that no additions or modifications of waivers are needed. Atty. Murray said if it is located, the list should be attached as an exhibit or put into the decision. Mr. Harrison pointed out the list of waivers is part of the 4/16/04 decision (paragraph 11), and they are not asking for any other dimensional requirements and can confirm and incorporate it into the new decision. Atty. Murray responded that the 2008 decision replaced the one from 2004, and the one from 2008 spelled out the conditions from 2004 to be carried forward, and she did not believe that paragraph 11 was one of them. Mr. Benson said that the only issue is identifying the waivers and putting them in; Atty. Murray qualified, if they still apply. Mr. Harrison said that they are not asking for additional ones, only to tie in those identified. Atty. Murray added that this is for the purpose of confirming and clarifying.

She then continued with paragraph 28 regarding that the board grants any local permits, and the word "occupancy" should be stricken; also to clarify, regarding building permits, to include

that the board does not grant building permits. Mr. Marchant added that building permits are issued based on the building inspector's determination of compliance with building codes and compliance with the terms of the comprehensive permit. Atty. Murray added that the comprehensive permit statute says that one board acts on behalf of the other local boards that have jurisdiction. Mr. Marchant explained that, for example, if there are wetlands and the Conservation Commission has jurisdiction, the applicant still needs a Notice of Intent and Order of Conditions; a 40B applicant can request bylaw waivers, but still needs an Order of Conditions that the State requires.

Atty. Murray then referred to paragraph G, condition 21, which stated that greater than 25% of the units, with up to 80% median income, adjusted for family size, is required for a 40B. Mrs. Pedone referred to the bottom of paragraph G; Atty. Murray said that the language is conflicting regarding length of the affordability restriction, as court cases have taken place since the original decision was written, so changes were made in that length to the longest term allowed by law but not less than 99 years or as long as the project is not in compliance with local zoning requirements. Mr. Marchant then mentioned the SJC decision, which said that unless there is a change in zoning to multi-family, 25% must be affordable in perpetuity. In response to a question from Mr. Rajeshkumar, Atty. Murray pointed out that rentals are different because they depend on affordable candidates; if someone owns, they can control. If the units are rentals, they may get more than 25% eligible, but that amount fluctuates. She suggested that the language should say "a minimum of 25% affordable." Mr. Marchant added that there is one important requirement in the lottery plan by the developer: the applicant must identify 25% affordable in each building, and the subsidizing agency will review the distribution of them. Those units will be held in reserve for occupancy by affordable housing. And if the applicant can't find eligible tenants, he can either keep trying to rent them or drop the rents; there is a maximum but no minimum. Atty. Murray then asked him if there are requirements that affordable units be rented first, then the rest at market rate? Mr. Marchant replied that the permit does require three market units to be rented to one affordable (paragraph H). Mr. Harrison said that the applicant submitted a summary of unit breakdown as part of the binder and identified affordable units. Mr. Rajeshkumar asked if an affordable unit remains affordable? Mr. Marchant replied that if the income increases to greater than 140% of the eligibility limit, the tenant can stay in that unit, and the applicant has to take the next available unit as an affordable unit.

Next, referring to paragraph H, Atty. Murray removed the requirement that one of four units must be affordable, and replaced it with language stating that a lottery and marketing plan be submitted. Mr. Marchant added that the affirmative fair housing marketing plan is required for listing on the affordable housing inventory.

Next, Mrs. Pedone addressed paragraph J, which discussed lot 3, and she suggested discussing any other items before addressing that paragraph.

Atty. Murray then addressed paragraph 30 again, that regarding affordability restriction, it would be the “longest term allowed by law.”

Paragraph 33 discusses various regulations and permits, and that state regulations will apply.

Paragraph 36, she suggested changing the language to state that the board will comply with whatever DHCD allows regarding lottery regulations.

Mrs. Pedone then summarized that the remaining topics were Lot 3, the grading and drainage plan, and retaining wall plan.

Mr. Rajeshkumar then asked to refer back to paragraph 6. Atty. Murray discussed the paragraph, which described the change in unit mix and the change in allocation of one-bedroom units in Building A (no changes were made in Bldg. B) and number of total units in Building C, and suggested that this be verified. Also, she said that the change in bedroom mix of the units in Building C should be added.

Mr. Femia then referred to paragraph 29, which discussed affordability restriction and noted that it has the same wording as paragraph 30. Atty. Murray responded that they need to make it clear that the affordable restriction is to be the longest period it can have. Mr. Marchant commented that they would have to look into whether or not they need that mentioned twice.

Next, Mrs. Pedone asked for a two minute summary for recommendations on Lot 3 and why from Mr. Amico. Referring back to he 11/18/15 comment letter, he discussed that the applicant wants to ledge cut to a two to one slope, and install a gully at the bottom to catch water. Mr. Amico asserted that 2 to 1 would be a safer slope, and suggested perhaps a fence at the top. Mr. Benson then commented that he thought a fence would be needed for a 4 to 1 slope. Mr. Amico responded that he recommends that the board discuss if the Town has any requirements, but he thinks 2 to 1 would be safer.

In response to questions from Mrs. Pedone regarding line of ownership of Lot 3, Atty. Murray explained that, if the Town does not accept the lot, the permittee must record the Conservation Restriction against that parcel but it still would belong to the applicant. Mr. Amico asked Atty. Murraray, if one accepts the lot, is it as a conservation parcel or can something be done to it?

After reading the passage, Atty. Murray thought that anything probably could be done to it by the Town but that was probably not the intent of the paragraph. Mr. Harrison read that “such entities cannot accept an open space parcel” but it does not say it has to be a conservation parcel. Mr. Marchant and Mr. Harrison agreed that there is a conflict in the original permit. Mrs. Pedone suggested that perhaps a condition could be that other boards have input.

Next, Mrs. Pedone asked Mr. Benson and Mr. Witkus if they made a visit to the site on 11/28 and what were their opinions? Mr. Witkus thought that Lot 3 should be open space and the contractor responsible for it; he did not think that the Conservation Commission would want it. Mr. Benson thought that there were two separate issues. He said to Atty. Murray that they could say that, if the Town does not want the land, the conservation restriction can be removed or if they accept the land, they could do what they want, and believed that the spirit was probably that the land would be held in a conservation capacity. Mr. Amico asked if the written language of the permit would supercede the plan? Mr. Benson responded that the board has the ability to say that the Town has to take it as conservation land, and Atty. Murray agreed.

Mr. Benson next discussed what the lot would look like with a 2 to 1 slope, and asked if transferred can anything happen to it? Mr. Harrison replied that it would be up to the contractor. There are questions about the area to be disturbed, and said that he has enlarged the handout, and suggested that a condition could be to limit construction to a certain area. Mrs. Pedone suggested that the Building Inspector could monitor that the construction does not go further. Mr. Harrison said that they could attach a sketch as a condition of the permit.

Mr. Benson then asked, since the 2 to 1 slope area will be disturbed, will the other side not be touched? Mr. Harrison replied that this can be a condition of the permit, and said that they will stake it out before construction. He continued that they did provide some dimensions (and showed the board the distances); he identified the disturbed area and added dimensions to reference.

In response to a question from Mr. Rajeshkumar, Mr. Harrison replied that he did not know how much rock there was, but that there would be a 17,000 square foot disturbance. Mr. Femia then asked if there should be a footnote regarding Lot 3 if the board should clarify the degree to be cut or if area has to be left alone? He then asked Mr. Amico how detrimental it would be if the board does not let the lot be touched? Mrs. Pedone then discussed the collapse of a rock wall on Route 140, and agreed that if a 2 to 1 slope is not done, the ledge would be quite steep. Mr. Amico responded that the questions revolve around the lack of geotechnical information, and the area could be stable without 2 to 1 slope but it may not be. In other

situations, 4 to 1 slope is perfectly stable, but the applicant did not have the geotechnical information so they decided upon 2 to 1 as being more reasonable and safer to access.

Mr. Harrison again discussed the size of the disturbed area to create the 2 to 1 slope, and responded to a question from Mrs. Pedone that the area would not be touched after that point so that the growth can mature and continue to grow.

Mr. Benson continued that he was there at the site visit, and thought that 2 to 1 was preferable to 4 to 1. He asserted that 2 to 1 is a fair amount of land in certain areas, but is minimal in other areas, and that the downside would be that trees would have to be removed, and noted that a few were concerning if they were to be removed (he showed photos that he had taken), but that most of the ones to be removed are not in the portion abutting Stillwater Heights (where there is concern of privacy issues regarding tree removal).

Citizen Bud Hanscom of 16 Stillwater Heights remarked that whoever lives there will see the structures built, but he understands the law, and thought that, if a driveway is constructed, additional trees will be of little consequence, as he believed that the damage had already been done regarding removal of trees and that the abutters are so close to the development that they can almost touch it.

Mr. Benson asked him about his perspective of the slope issue? Mr. Hanscom said that the habitat is not the same if there is blasting, and questioned if that would affect his insurance? He then thanked the board for making the site visit.

Mrs. Pedone then asked Mr. Harrison if they were planning to blast? Mr. Amico responded, saying that it is not the applicant's intent but possible, and explained that there are state requirements for blasting, including a pre-blast survey. He explained that the ledge would probably be pre-split, then blasted. Mr. Benson supposed that a 4 to 1 slope would be more likely to need blasting, but Mr. Amico replied that it would if there is solid ledge but they do not know for sure, and said that blasting depends on geological conditions.

Mr. Femia asked Atty. Murray if it is up to the ZBA to decide what happens to Lot 3? She replied "yes" and he asked if the board should contact the Board of Selectmen, Conservation Commission and Land Trust to ask if they want the lot to be left in the same state? Mr. Benson thought that the natural state would be better than the possibility of building on it, and asserted that, in theory, that could be done. Mr. Amico suggested that the board could stipulate that.

In response to a question from Mr. Rajeshkumar, Mr. Amico believed that the original 4 to 1 slope would not have had to infringe on Lot 3, but he would have to check the plans. He asserted that the disturbance into Lot 3 would be approaching the wooded area more than the residential area. The board members discussed again the question of whether or not to approve the 2 to 1 slope which would cause disturbance of Lot 3, along with the residents' concerns with possible blasting. Mr. Amico asserted that VHB was hired for technical review and they were not satisfied with the material presented in order to go with a 4 to 1 slope; the 2 to 1 slope is more stable. Mr. Harrison suggested that, if the 2 to 1 slope is allowed, that the work could be restricted according to the condition that any work in the slope area would have to have the approval of the consulting engineer.

In response to a question from Mr. Femia, Mr. Marchant commented that he knows of quarries in Quincy, MA, with 4 to 1 slopes and it is dangerous. He said that, in his opinion, they must evaluate the situation in terms of safety.

Mrs. Pedone asked Mr. Hanscom for his thoughts, as he has lived in his neighborhood for 30 years and trees have already been removed. Mr. Hanscom discussed the removal of trees from the development, leaving open space, and the fact that the zoning laws allowed it; he commented that he cannot put up a garage as it is too close to the property line; he is concerned with blasting; he is also concerned with safety for children, the disabled and elderly due to the slope or a fence, and he agreed that the trees are of little consequence as they have already been removed, but that safety is more important.

In response to questions from several of the board members regarding a fence, Mr. Harrison responded that they have a five-foot high fence running along the bottom of the slope, black-coated. Mr. Marchant added that he has seen some similar 40B's and there is a right to require a fence, but it needs to be seen if it is necessary or not.

Mr. Benson then asked Mr. Amico if rock will have to be removed if there is a 4 to 1 slope, but from Lot 2? He replied that a cut was proposed originally and it appeared that some excavation was done up to the limit of Lot 3, but he cannot answer for sure if it was soil or rock. Mr. Amico explained that a 1 to 4 slope will not work unless there is solid rock, but there is not enough geotechnical detail (which he stated earlier). They discussed that drilling and blasting would have to be done if there is ledge. Mr. Benson supposed that there would have to be some mechanism to remove ledge if 1 on 4, or some alternative means to hold it back. Mr. Amico restated that there is not enough information for a 1 on 4 slope; a geotechnical analysis is expensive, and a 2 to 1 is stable and an analysis is not needed to determine that.

Mrs. Pedone then asked if there were any last questions? Mr. Benson asked if the board had to vote this evening? Mrs. Pedone explained that it would affect two other items on the agenda and it would require an extension; she asked the board if they wanted to discuss it further? Mr. Rajeshkumar thought that the applicant should not touch Lot 3. Mr. Witkus thought that the applicant was a good builder and that he needs to cut down the slope because it is interfering with the project. Mr. Harrison suggested that the property line was part of subdivision approval and was arbitrarily set, so that perhaps there could be a moving of the property line so that the rest of Lot 3 could be deeded to the Town with no further disturbance. Mrs. Pedone asked Mr. Marchant what he recommended? Mr. Marchant recommended, on the side of safety, to use the gentler slope. She asked him if he has seen a situation like this before? He replied that he had, but this is the applicant's land and there is nothing in the language stating that it has to be deeded in the natural state, but would defer to Town Counsel on that. Mr. Benson suggested that, if they go with the 2 to 1 slope, perhaps they could try to replace trees, which will grow over time. Mr. Harrison said that they would accept that condition. Mr. Hanscom asked if any thought had been given to replacing trees around the perimeter, and what types of trees because of the protection that they need them to provide? Mr. Marchant suggested that the boards could look at whom would be most impacted, perhaps placing them near the abutters. Mr. Benson asked the abutters present for comments; John Owanisian of 8 Stillwater Heights thought that would be a good compromise, with some combination for a visual barrier. He asked if there is room on the landscaping plan? Mr. Benson replied that there is a large open space, but it is difficult to grow on ledge, so they could put them closer to the abutters' properties or on them. Mr. Owanisian agreed that it would be difficult to decide against safety, so perhaps trees could be put in toward the Stillwater Heights area. (Mr. Ali showed the board the plan that he was referencing; he had suggested 10-foot trees to Mr. Owanisian).

Mrs. Pedone suggested that they add five additional trees to thirty 10-foot trees, as a condition, placing them towards the Stillwater line; there would be a 2 to 1 slope on Lot 3 and the land will be marked off and they will not go past that during construction; this will be monitored by the Building Inspector and he could revoke the building permit if it is violated. After some discussion of size, Mrs. Pedone stated that the board proposes a 2 to 1 slope for Lot 3, with the condition that 17,079 square feet of clearing and grading with the understanding that they will, for safety purposes, be allowed to go five feet; they will not work past this, and will then place a five-foot fence around the 2 to 1 slope, black vinyl, per approved plan with condition of 35 10-foot tall trees (30 plus 5 additional along Stillwater) (Mr. Ali specified spruce trees). Mr. Owanisian asked why they could not use 15 or 20-foot trees instead of 10-foot trees? Mr. Amico explained that it is very difficult to plant large trees, and the smaller ones will mature



and stabilize. Atty. Murray next commented that the plans for Lot 3 refer to land in the “natural state” and wanted them to clarify that the balance of Lot 3 will be undisturbed.

(The board next discussed what items were addressed and what was to be voted upon). Mrs. Pedone made a motion to approve the grading and drainage plan with conditions: 2 to 1 slope on Lot 3, the remainder kept in its natural state regardless of the owner, fence, additional five trees to the existing plan, 10-feet tall, on the Stillwater side, and after construction, the limit of work to be staked out and monitored by the Building Inspector, and a five-foot fence will be constructed around the 2 to 1 slope. After Atty. Murray and Mr. Marchant added that a certain plan should be referenced, Mr. Benson made a motion to approve the slope area plan, dated 5/28/15 by Bertin Engineering, with the conditions previously stated by Mrs. Pedone. Mr. Witkus seconded. The vote was as follows:

Mr. Rajeshkumar – “no”

Mr. Benson – “yes”

Mrs. Pedone – “yes”

Mr. Femia – “no”

Mr. Witkus – “yes”

Next, Mr. Benson stated that the board approved five plans (landscaping, photometric, site, utilities and propane/water plans) and wanted to be sure that the correct plans were being referenced. Mr. Harrison responded that the plans were listed in the Restated Amended Comprehensive Permit, which he handed out to the board (Mr. Benson then read names and dates of the approved plans that were listed).

Mrs. Pedone then stated that the last agenda item was the retaining wall plan, and asked if anyone had any questions about it? There were none, so she asked if there were any other concerns or open items? Mr. Amico replied that there were not, and the retaining wall plan was only left out because it had the slope on it, but there are retaining walls in other places on the site. (Mr. Harrison handed out the final one this evening). Mr. Amico did not think there were any drastic changes on it; he said he was satisfied with them, just to hold up the slope. Mrs. Pedone then asked for a motion to approve the retaining wall layout plan, revision #7, 5/28/15 (final 12/15/15). Mr. Femia made the motion. Mr. Rajeshkumar seconded. The vote was as follows:

Mrs. Pedone – “yes”

Mr. Witkus – “yes”

Mr. Femia – “yes”

Mr. Rajeshkumar – “yes”

Mr. Benson – “yes”

Mrs. Pedone summarized that the board heard seven items; also, there was an agenda item of review and possible vote upon the restated amended comprehensive permit, but there are still items such as modification of documents and obtaining waivers to put on the agenda for the next meeting. Mr. Harrison corrected that they are not asking for changes and no new waivers, and the list is attached to the permit. Atty. Murray responded that she was not comfortable with the document. There were waivers in 2004 under the original decision; by 2008, it was very clear which conditions were to be incorporated. Paragraph 11 was not mentioned in 2008. She suggested that perhaps waivers were spelled out elsewhere but she is not sure they were moved along. Atty. Murray replied to Mrs. Pedone that she would want to have a discussion about this. Mr. Marchant continued, that they also need to have a discussion with Mr. Harrison regarding the site work, foundation and building. According to Paragraph 15, no work is to be done prior to final approval, and said that site work does not need a permit, but the Building Inspector issues a building permit for foundation and building work. He suggested that, given the state of the drawings, it would be unwise to allow foundation work until final approval is obtained.

Mr. Harrison responded, first asking if the applicant can obtain a foundation permit before the building permit? He agreed that it is part of the building permit that MHP final approval is provided, and said that, in the construction commitment, if they are not satisfied with the drawings, they will not fund the applicant. He wanted to obtain further information on the building permit process, and thought that the applicant should not be judged differently because of the history of previous projects. Mrs. Pedone responded that the applicant is not being treated any differently from anyone else, and that everyone needs final approval from the subsidizing agency. She had no problem with the applicant reaching out for information on the foundation permit information, and she thought that all parties were making progress and could complete the process soon.

Mr. Ali continued, that if he loses the commitment, the interest rate will go up on the construction loan, and if the board suggests that he needs something attached he will do it, but wants to close the loan and move ahead. Mr. Marchant responded that there should be no foundation work until there is final approval.

Mrs. Pedone asked if they should have conditions so that the applicant can move forward? Mr. Harrison responded that they have agreed to all modifications; but, the waivers of 2004, approved by HAC, is their requirement, and the next decision has five conditions of the original permit. They can summarize and submit them and the board should vote. Atty. Murray suggested that they should word it as, "no building or foundation permit will be issued until

final approval is obtained.” Mrs. Pedone then added that they can do site work, however. Mr. Marchant continued, that Mr. Amico did a thorough review, and the contract allows funding for VHB to monitor.

Mr. Benson then asked, referring to Paragraph 15, why change it? Mr. Harrison replied that he wants it clear that the applicant can do site work. Atty. Murray suggested that no building or foundation permit can be issued until MHP issues final approval; this does not apply to site work.

Mrs. Pedone asked Mr. Marchant, and he replied that if Atty. Murray is comfortable with the waivers, he does not think there is anything substantive. Atty. Murray added, “subject to the condition that they reconcile waivers or come back before the board.”

Atty. Murray then asked for the board to vote to approve the Restated Amended Comprehensive Permit, with the agreement that they will come to agreement on the applicant’s waivers (Mr. Benson added, subject to what was agreed upon this evening). Mr. Benson made the motion; Mr. Femia seconded. The vote was as follows:

Mr. Rajeshkumar – “yes”

Mr. Benson – “yes”

Mrs. Pedone – “yes”

Mr. Femia – “yes”

Mr. Witkus – “yes”

Atty. Murray told the board that the document needs to be signed; she will clean it up, work on it, and if all are in agreement on the waivers, it can be given to the board for signature. (The board agreed upon Thursday, January 28 as the date of the next meeting, and Mrs. Pedone asked Atty. Murray to send the board the document prior to the meeting,, and for the parties involved to notify the board if they need to be placed on the agenda).

#### **Minutes of November 19 Meeting:**

After review of the minutes by the board members, Mr. Rajeshkumar moved to accept the minutes as submitted. Mr. Femia seconded. All in favor.

With no further business to discuss, Mr. Femia moved to adjourn the meeting at 10:57 p.m. Mr. Rajeshkumar seconded. All in favor.

Respectfully submitted,

\_\_\_\_\_

Toby S. Goldstein, Secretary

Date Accepted: \_\_\_\_\_ By: \_\_\_\_\_