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TOWN OF WAYLAND
MASSACHUSETTS
01778
BOARD OF APPEALS



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TOWN BUILDING
41 COCHITUATE ROAD
TELEPHONE: (508) 358-3600
FAX: (508) 358-3606

RECEIPT FORM

APPLICATION NO. 07-09

RECORD OWNER'S NAME: TRIPOLIS CIRCLE, LLC

ADDRESS OF PROPERTY AFFECTED 225 OLD CONNECTICUT PATH

DEED RECORDED: BOOK _____ PAGE _____

CERTIFICATE OF TITLE NO. _____ BOOK 47336 PAGE 202

This is to certify that the attached is a true copy of the decision of the Board of Appeals

Comprehensive Permit granted with conditions

filed with the Town Clerk of Wayland on January 25, 2008

that twenty days have elapsed since the filing, and no appeal has been filed.

Kathleen L. Sracusa
Town Clerk/Asst. Town Clerk - Wayland

Date February 15, 2008

_____ 20 _____ at _____ o'clock and _____ minutes

Received and entered with the Register of Deeds in the County of Middlesex

_____ Book _____ Page _____

ATTEST

Register of Deeds

MAIL to
TRIPOLIS LLC
32 JOYCE ROAD
WAYLAND, MA 01778



TOWN OF WAYLAND
MASSACHUSETTS
01778

BOARD OF APPEALS

TOWN BUILDING
41 COCHITUATE ROAD
TELEPHONE: (508) 358-3600

Decision No. 07-09

NAME OF APPLICANTS:

TRIPOLIS CIRCLE, LLC

APPLICATION FOR:

Application of Tripolis Circle, LLC for any necessary approvals as may be required for a Comprehensive Permit to construct an 8 unit development (4 duplex style townhouse buildings) with associated site work under Massachusetts General Laws Chapter 40B Sections 20-23 (Chapter 774 of the Acts of 1969). This property is located at 225 Old Connecticut Path, more specifically Assessors Map – Plate 38 Parcel 55, which is in a SINGLE RESIDENCE DISTRICT and AQUIFER PROTECTION DISTRICT. (07-09)

DATES OF HEARING:

April 9, 2007, May 22, 2007, June 26, 2007, July 24, 2007, September 11, 2007, October 9, 2007, November 13, 2007, November 27, 2007, December 10, 2007 and December 17, 2007.

BOARD CONDUCTING HEARING AND RENDERING DECISION:

E. Michael Thomas, Eric B. Goldberg, James E. Grumbach, Jerry L. Boos and Shaunt Sarian.

DECISION:

Comprehensive Permit Granted, with conditions.

VOTE OF BOARD:

4-0-1; Jerry L. Boos, Shaunt Sarian, Eric B. Goldberg and James E. Grumbach in favor and Chairman E. Michael Thomas absent.

DATE OF FILING OF DECISION:

January 25, 2008

The decision and the reasons therefore are on file with the Town Clerk. Any person aggrieved by this decision, except for the Applicant, may appeal to the Framingham Division of the District Court Department, the Superior Court of Middlesex County or the Land Court by bringing an action within twenty (20) days after the decision has been filed in the office of the Town Clerk. Appeals, if any, shall be made pursuant to Massachusetts General Laws Chapter 40A, Section 17. Notice of appeal action, with a copy of the complaint, shall be given to the Town Clerk so as to be received within the same twenty-day appeal period. If the Applicant is aggrieved by this decision, the Applicant may appeal to the Housing Appeals Committee pursuant to Massachusetts General Laws Chapter 40B, Section 22.

Eric Goldberg
James Grumbach
Steven Fugarazzo
E. Michael Thomas

Jerry Boos
Shaunt Sarian, Associate
Linda Segal, Associate
Aida Gennis, Associate



TOWN OF WAYLAND
MASSACHUSETTS
01778
BOARD OF APPEALS

TOWN BUILDING
41 COCHITUATE ROAD
TELEPHONE: (508) 358-3600

TRIPOLIS OF WAYLAND
COMPREHENSIVE PERMIT DECISION
CASE #07-09

RE: Application of Tripolis Circle, LLC for a Comprehensive Permit

DATE: January 22, 2008

LOCATION: Assessors Map 38, Parcel 55; at 225 Old Connecticut Path,
Wayland, Massachusetts

TITLE REFERENCE: Middlesex South Registry of Deeds Book 47336, Page 202.

PROCEDURAL HISTORY

1. On March 12, 2007, Tripolis Circle, LLC (hereinafter, the "Applicant", which, as set forth herein, shall include its heirs, successors, transferees, and assigns) applied for a comprehensive permit from the Zoning Board of Appeals ("ZBA") pursuant to M.G.L. c. 40B, §§20-23 to construct an affordable housing project at the property located at 225 Old Connecticut Path in the Town of Wayland (the "Application"). The Applicant proposed to construct "for sale" eight (8) home ownership condominium dwelling units in four duplex-style buildings to be called "Tripolis of Wayland" (the "Development"). As proposed, the Development would be located on a parcel of land, containing approximately 2.77 acres, being shown on Town of Wayland Atlas Plate 38, as Parcel 55 (hereinafter, the "Subject Property"). Access is by a private drive. The Applicant does not propose to subdivide the Subject Property. The Subject Property is within a single-family residential zoning district (R40) and within the overlay of the Aquifer Protection District as set forth in the Town of Wayland Zoning By-Laws and the Zoning Map referenced therein ("the By-Laws").

2. A notice of the public hearing on this application, a true copy of which is on file in the Office of the Town Clerk, was:

- a.) Published in The Town Crier, a newspaper with general circulation in the Town of Wayland on March 22, 2007 and March 29, 2007;

- b.) Posted in a conspicuous place in the Wayland Town Building on March 22, 2007, which was at least fourteen (14) days prior to the first session of the hearing at which evidence was received; and fourteen (14) days before the first session of the hearing at which evidence was received; and
- c.) On March 22, 2007, which was at least fourteen (14) days prior to the first session of the hearing at which evidence was received, notice was mailed to the Applicant, abutters, owners of land directly opposite the property in question on any public or private street or way, abutters and abutters to the abutters within three hundred (300) feet of the subject property, the Planning Boards of the abutting towns. The notice was mailed to the names and addresses shown on the most recent tax list provided by the Assessors Office.

A public hearing was opened on April 9, 2007 (no evidence was received on that date), and immediately continued to the following dates (at which evidence was received):

May 22, 2007;
 June 26, 2007;
 July 24, 2007;
 September 11, 2007;
 October 9, 2007;
 November 13, 2007;
 November 27, 2007;
 December 10, 2007; and
 December 17, 2007.

All continuances of the public hearing were agreed to by the Applicant.

With the Applicant's consent, the ZBA, various other Town board members, Town officials and residents of the Town were allowed to walk and inspect the Subject Property.

3. The public hearing was closed on December 17, 2007.

4. The following documents and exhibits were submitted and received on behalf of the Applicant and/or its consultants and representatives, the Town and/or its consultants and parties in interest or other residents of the Town during the public hearing and are hereby incorporated by reference in this decision, for reference purposes:

a.) Applicant's Submittals:

- Applicant's Response to Comments dated June 18, 2007
- Letter dated June 19, 2007 from Leeann Bradley of Outback Engineering to the Wayland Conservation Commission
- Supplemental Information on drainage, ruck system and soil assessment submitted by Bull Environmental Contracting dated June 21, 2007

- Letter dated July 11, 2007 from Gareth Orsmond, Esq. to the ZBA regarding Response to Comments by Abutter Robert Olshansky
- Letter dated August 14, 2007 from Gareth Orsmond, Esq. to Brian Monahan, Conservation Administrator
- Letter dated August 15, 2007 from Gareth Orsmond to the ZBA regarding Title V and the number of bedrooms.
- Applicant's Response to Comments dated June 18, 2007 and updated August 21, 2007
- Applicant's List of Waiver Requests dated August 21, 2007
- Applicant's Response to Comments/Waiver's List dated August 27, 2007
- Applicant's Response to Comments dated October 5, 2007
- Applicant's Attorney's (Gareth Orsmond, Esq.'s) two(2) e-mails in response to Robert Olshansky's e-mail to have ZBA Chairman Michael Thomas recuse himself
- Letter dated October 9, 2007 from Gareth Orsmond, Esq. to Mr. Robert Olshansky in response to Mr. Olshansky's e-mails regarding the recusal of ZBA Michael Thomas
- Letter dated October 10, 2007 from Tripolis Circle, LLC to the Wayland Board of Health in response to Mr. Calichman's Memorandum dated September 25, 2007
- Letter dated October 14, 2007 from Anthony Christakis to Michael Jacobs regarding market and affordable pricing along with other budget costs
- E-mail sent on October 28, 2007 from the applicant regarding some features of the homes.
- Letter dated October 22, 2007 from Gareth Orsmond, Esq. to Wayland Conservation Commission regarding conservation issues
- October 22, 2007 received pre-development drainage plans drawn by Outback Engineering.
- Letter dated October 23, 2007 from Gareth Orsmond, Esq. to Wayland Board of Health in response to BOH issues
- Letter dated October 24, 2007 from Gareth Orsmond, Esq. to Wayland Conservation Commission in response to Mr. Olshansky's letter
- E-mail sent October 26, 2007 from Anthony Christakis to Steve Calichman regarding engineering calculation
- Letter dated November 7, 2007 from Gareth Orsmond, Esq. to ZBA regarding Mr. Olshansky and the Wetlands Protection Act
- Letter dated November 9, 2007 from Sean L. Papich, ASLA to Anthony Christakis regarding the landscape treatment for Tripolis
- Letter dated November 12, 2007 from Gareth Orsmond, Esq. to Wayland Conservation Commission in response to the second RDA request from Mr. Olshansky
- Letter dated November 25, 2007 from Anthony Christakis to Michael Jacobs regarding the Financial Analysis
- Letter dated November 27, 2007 from Gareth Orsmond, Esq. to the ZBA in response to Daniel C. Hill, Esq. (attorney for abutters) letter dated November 19, 2007
- Drawing dated December 11, 2007 of Mass Plantings of Shrubs and Flowers at Sharry's and Keenan's Property lines

b.) Town Departments', Officials' and Boards' Responses

- Letter dated August 8, 2006 from Board of Selectmen to Roderick Hawks, Massachusetts Housing Finance Agency, regarding a Project Eligibility Application from Bull General Contracting, Inc.
- Ch 40B Technical Review Assistance Application dated April 2, 2007 and filed by Daniel F. Bennett
- Letter from Massachusetts Housing Partnership dated April 9, 2007 approving the application of the Town of Wayland for a grant up to \$5,000.
- Memo dated May 1, 2007 from Joseph Laydon, Town Planner; re: Planning Board Review of proposed 40B
- Memo dated May 16, 2007 from Daniel Bennett regarding a list of documents and/or information missing in accordance with the Supplemental Rules.
- Memo dated May 22, 2007 from Steven Calichman commenting on a hearing the BOH held regarding this project.
- Memo dated June 4, 2007 from Daniel Bennett to all necessary boards and commissions requesting review of the application.
- Memo dated June 5, 2007 from Daniel Bennett to Paul Keating, Town Treasurer, to deposit \$10,000 from Tripolis.
- Letter dated June 5, 2007 from Daniel Bennett to Cliff Carlson of Marchionda & Associates requesting a review of the materials and plans submitted.
- E-mail sent June 8, 2007 from Brian Monahan, Conservation Administrator with input on this project.
- Letter dated June 12, 2007 from Paul Marchionda regarding the plan review services.
- Letter dated Jun 15, 2007 from Wayland Water Department to Daniel Bennett with comments regarding 225 Old Connecticut Path.
- E-Mail from Daniel Bennett on June 21, 2007 to all necessary boards and commissions sending the responsiveness summary from the applicant.
- Letter from Clifford Carlson of Marchionda & Associates dated 24, 2007 to Daniel Bennett regarding comments and review of this project.
- Memo dated July 24, 2007 from Brian Monahan, Conservation Administrator with comments on this project.
- Memo dated September 6, 2007 from Wayland Housing Partnership to the ZBA regarding this project.
- Letter dated September 7, 2007 from Cliff Carlson to Daniel Bennett regarding soil testing and soils information at 225 Old Connecticut Path.
- Memo dated September 25, 2007 from Steven Calichman, BOH regarding the issues of this project.
- Memo dated October 4, 2007 from Steven Calichman, BOH to the ZBA with responses to the wavier requests.
- Memo dated October 9, 2007 from Brian Monahan, Conservation Administrator, to the ZBA comments and conditions of this project.
- E-mail sent October 24, 2007 from Michael Jacobs to Daniel Bennett regarding unit square footage, mix and pricing.

- Certification form pursuant to M.G.L. c. 39, §23D signed by Shaunt Sarian and dated November 7, 2007
- Letter dated November 10, 2007 from Daniel Coughlin of Coughlin Environmental Services, LLC to Daniel Bennett with details and review of various issues mentioned in the October 20, 2007 letter.
- Financial Analysis report dated November 12, 2007 from Michael Jacobs, MHJ Associates to the ZBA.
- Letter dated December 5, 2007 from Brian Monahan, Conservation to Robert Olshansky regarding the Determination of Applicability and Wetland and Water Resources Permit issued by the Conservation Commission.
- Memo dated December 10, 2007 from the Wayland Housing Partnership to Zoning Board of Appeals conditions of affordability.
- Certification form pursuant to M.G.L. c. 39, §23D signed by Jerry L. Boos and dated December 10, 2007
- E-mail sent December 17, 2007 from Brian Monahan to Daniel Bennett clarifying the Conservation Commission's decision.
- Memo dated December 17, 2007 from Michael Jacobs to E. Michael Thomas regarding the addition of 3-bedroom affordable unit and WHP affordability conditions.
- E-mail sent December 17, 2007 by Cliff Carlson to Daniel Bennett attaching the draft civil conditions for the board to review.

c.) Submittals by Parties in Interest and Other Residents

- Letter dated April 3, 2007 from Peter J. Drevinsky of 219 Old Connecticut Path, to the Zoning Board of Appeals commenting on concerns about the project.
- Comments on Board of Health meeting held on April 24, 2007.
- Development Alert article from Brian Fishwick of 10 Old Farm Road to all abutters dated April 24, 2007.
- Letter dated May 29, 2007 from Mary Ann and Ed Keenan of 227 Old Connecticut Path to the Building Commissioner expressing their concerns about the project.
- Letter dated May 31, 2007 from Bob Olshansky and Nan Denton of 8 Old Farm Road to Wayland Board of Health regarding the impact on the neighborhood water table and septic systems.
- Letter dated May 31, 2007 from Daniel Sharry of 221 Old Connecticut Path to Dan Bennett with concerns regarding the project.
- Letter dated June 1, 2007 from Robert Olshansky & Nan Denton to ZBA regarding the impact of this project to their property.
- Letter dated June 11, 2007 from Robert Olshansky to ZBA and Wayland Planning Board regarding the comparison of Tripolis Circle Units to Abutting homes.
- Comments dated June 18, 2007 from Robert Olshansky of 8 Old Farm Road, regarding abutter's response to comments.
- Letter dated June 23, 2007 from Tripolis Circle Abutters on OCP, OFR, OFC and Davelin to the ZBA and Wayland Board of Health requesting a hydrology study of impact of this project on public health issues.

- Letter dated July 4, 2007 from John B. Howe of 8 Old Farm Circle to ZBA Chairman E. Michael Thomas expressing his concern of hearings and the information exchange process.
- Letter dated July 14, 2007 from Robert Olshansky to the ZBA regarding the "Response to Comments".
- Letter dated July 14, 2007 from Robert Olshansky, Nan Denton, Ed & Mary Keenan, Dan & Heidi Sharry and Homer & Diana Moy to the ZBA requesting an independent review of the landscape design and site plan of this project.
- Letter dated July 16, 2007 from Robert Olshansky to the ZBA and Wayland Board of Health in regards to the critique of the drainage and grading plans.
- Letter dated July 17, 2007 from Mary Ann & Ed Keenan to the Board of Health regarding septic and high water table in the neighborhood.
- Letter dated July 23, 2007 from Daniel Sharry to Dan Bennett regarding the list of waiver requests.
- Letter dated September 4, 2007 from Robert Olshansky to ZBA regarding the Tripolis Drainage Plan.
- Letter dated September 13, 2007 from Robert Olshansky to ZBA with comments on drainage discussion at September 11, 2007 hearing.
- Letter dated September 13, 2007 from Robert Olshansky to ZBA in response to Gareth Orsmond, Esq.'s letter of August 15, 2007; revised floor plan.
- Letter dated October 15, 2007 from Robert Olshansky to Wayland Conservation Commission requesting Conservation to review the Tripolis plan for possible impact on vernal pool.
- E-Mail sent October 16, 2007 from Robert Olshansky (representing abutters) to Steve Calichman regarding concerns about the proposed septic system for this project.
- Letter dated October 22, 2007 from Robert Olshansky to Conservation Commission in response to letter of October 22, 2007 from Gareth Orsmond, Esq.
- Letter dated October 26, 2007 from Mary Ann Keenan to the ZBA regarding the impact of the proposed project on their basement along with the drainage, flooding and septic system.
- Letter dated November 9, 2007 from Robert Olshansky to Wayland Conservation Commission regarding the impact statements from abutters to vernal pool and ILSF.
- Letter dated November 11, 2007 from Bruce Jacobs of HydroAnalysis (sent by e-mail from Robert Olshansky) to the ZBA regarding the drainage calculations.
- Letter dated November 12, 2007 from Robert Olshansky to Daniel Bennett attaching the Request for Determination he submitted to the Conservation Commission.
- Letter dated November 12, 2007 from Bruce Jacobs to Wayland Conservation Commission regarding the drainage calculations as related to an abutter's Request for Determination of Applicability.
- Letter dated November 20, 2007 from Robert Olshansky to Daniel Bennett requesting for on-site determination of infiltration rate for Tripolis drains.
- Letter dated November 26, 2007 from Homer & Diana Moy to the ZBA concerning the Tripolis drainage and potential adverse effects to the raised septic.
- Letter dated December 5, 2007 from Robert Olshansky to Cliff Carlson regarding the conditions on design of Tripolis Drainage Systems.

- E-mail sent December 10, 2007 from Robert Olshansky to Daniel Bennett requesting on behalf of the abutters, that Bruce Jacobs of HydroAnalysis testify at the upcoming hearing of December 17, 2007.
- Letter dated December 14, 2007 from Daniel Sharry to Dan Bennett regarding their discussion and agreements with landscaping concerns.
- Letter dated December 17, 2007 from Andrea & Tim O'Brien to ZBA Chairman E. Michael Thomas regarding landscaping pertaining to Building 4.
- Letter from HydroAnalysis to ZBA dated December 17, 2007 re: Tripolis Circle Drainage Calculations

Any document or other evidence received during the public hearing not listed above is unintentionally omitted. All documents and plans received during the public hearing are part of the record on file relative to this decision.

During the public hearing, the Applicant, through one of its managers, Anthony Christakis, its attorney, Gareth I. Orsmond, Esq., of Rackemann, Sawyer & Brewster, P.C., its engineer, David Beecy, P.E., of Outback Engineering Incorporated, and its landscape architect, Sean Papich, A.S.L.A., presented the ZBA with the Applicant's plans and supporting materials. Representatives of the Applicant were present at all sessions of the public hearing at which evidence was presented and received.

Pursuant to M.G.L. c. 44, §53G and its rules and regulations relative to comprehensive permits, at the Applicant's expense, the ZBA engaged the services of and received advice from the following consultants concerning the following aspects of the Applicant's proposed project:

- Civil Engineers: Clifford Carlson, P.E., Marchionda Associates, LP, Stoneham, MA;
- Special Legal Counsel: Mark J. Lanza, Esq., Concord, MA; and
- Chapter 40B and Financial Consultant: Michael Jacobs of MHJ Associates, Brookline, MA

The ZBA sought and received input and recommendations relative to the Applicant's proposed Development from various Town boards, committees and officials including the Planning Board, Board of Health, Conservation Commission, Fire Chief, Water Department, Wayland Housing Partnership, Building Commissioner and the Wayland Housing Authority.

Parties in interest, persons residing in the area of the Subject Property and other residents of the Town appeared at the public hearing and gave the ZBA input relative to the anticipated impacts of the proposed Development.

During the public hearing, the Applicant agreed to make numerous revisions to its plans for the Development in response to concerns, comments and recommendations made by the ZBA, other Town boards and committees, Town officials, the ZBA's consultants, parties in interest and other persons residing in the area of the Subject Property.

The ZBA deliberated on this decision at its meetings on December 17, 2007 (after closing the public hearing) and January 22, 2008, and made the following findings and decision based on the evidence submitted at the public hearing.

FINDINGS

1. The Applicant submitted the following information pursuant to 760 CMR 31.01:
 - a) Information demonstrating that it is or will become a "limited dividend corporation" by executing a Regulatory Agreement as that term is used in M.G.L. c. 40B, § 21 and 760 CMR 31.01 (1) prior to the issuance of any building permits to construct dwelling units authorized by this comprehensive permit;
 - b) The project eligibility/site approval determination letter dated November 21, 2006, issued by the Massachusetts Housing Finance Agency ("MassHousing"), hereinafter referred to as the "Eligibility Letter," establishing fundability by a subsidizing agency under a low and moderate income housing program; and
 - c) Information demonstrating that it has "control of the site" as that term is used in 760 CMR 31.01, by virtue of a deed of the property to the Applicant recorded with the Middlesex South District Registry of Deeds in Book 47336, Page 202.
2. Less than ten percent (10%) of the total number of housing units in the Town of Wayland are "low or moderate income housing" units within the meaning of M.G.L. c. 40B, § 20 or 760 CMR 31.04.
3. Low or moderate income housing does not exist on sites comprising one and one-half percent (1.5%) or more of the total land area in the Town of Wayland zoned for residential, commercial or industrial use.
4. The approval of the Applicant's proposed Development would not result in the commencement of construction of low or moderate income housing on sites comprising more than three-tenths of one percent (3/10th's of 1%) of the total land area in the Town of Wayland zoned for residential, commercial or industrial use or ten (10) acres, whichever is larger, in any one calendar year.
5. At least .75% of housing units have not been produced in the Town within the last year in accordance with a Massachusetts Department of Housing and Community Development ("DHCD") approved affordable housing plan.
6. The Subject Property will be accessed from Old Connecticut Path as shown on the plans entitled "Tripolis of Wayland in Wayland, Massachusetts," prepared by Outback Engineering Incorporated, dated February 20, 2007, revised through June 22, 2007, consisting of seven (7) sheets (cover sheet and sheets C1 through C6) and (hereinafter referred to as the "Site Plans"), which are hereby incorporated into and made a part of this decision, including any revisions thereto necessitated by this decision.

7. There is currently one single-family dwelling on the property. The existing conditions of the Property are shown on the Site Plans.
8. The Subject Property is zoned Single-Family Residential and is within the overlay of the Aquifer Protection District.
9. Certain provisions of the Bylaws and the Board of Health's Rules and Regulations and the Town's Wetlands and Water Resource Protection By-Law, as applied to the Applicant's proposed Development, are not consistent with local housing needs.
10. If developed in accordance with the conditions set forth herein, the proposed Development will be consistent with local housing needs.

DECISION

Pursuant to M.G.L. c. 40B, §§20-23, based on the above findings and the evidence submitted at the public hearing, the ZBA hereby grants a comprehensive permit to the Applicant for the construction on the Subject Property of eight home-ownership condominium dwelling units (two market-rate three-bedroom units, four market-rate two-bedroom units, and two affordable two-bedroom units), comprised of four duplex-style buildings, with associated infrastructure and improvements, subject to the following conditions.

General Conditions

1. The Subject Property, as shown on the Site Plans and the following plans, shall not be substantially changed, altered, or reconfigured or used in any way, except as provided in this Comprehensive Permit:
 - a.) The landscaping plan entitled "Landscape Plan/Tripolis Circle/Wayland, Massachusetts," dated February 23, 2006, prepared by Sean Papich Landscape Architecture, as revised in part with respect to the Subject Property by sketch dated November 7, 2007 and by sketches L2 and L3 dated December 11, 2007; and
 - b.) The architectural plans entitled "Tripolis of Wayland" prepared by Shane Structures, dated February 2, 2007, as revised on or about August 15, 2007, such revisions being described in a letter dated August 15, 2007 by Applicant's counsel, Rackemann, Sawyer and Brewster and in accompanying drawings by Shane Structures of the same date showing revised second floor plans on the right side of each page, which revised plans have been accepted by the ZBA (the "Architectural Plans");

The Site Plans and plans referenced in subparagraphs a.) and b.) of this condition are hereinabove and hereinafter referred to collectively as the "Project Plans." It is noted that the Applicant, by letter dated November 7, 2007 from its counsel, Rackemann, Sawyer & Brewster, has withdrawn its proposal for any work shown within the Isolated Land Subject to Flooding ("ILSF") on the Project Plans; such work is no longer proposed as part of the Development and is hereby prohibited by the ZBA by virtue of the plan references herein.

The Development shall be constructed in substantial conformance with the Project Plans and this decision. Minor or *de minimis* changes or modifications may be made, without review and approval by the ZBA. For purposes of this decision minor or *de minimis* changes or modifications are those which:

- a.) vary from a dimensional requirement, limitation or condition stated in terms of feet by six inches or less;
- b.) vary from a dimensional requirement, limitation or condition stated in terms of square feet by one-half of one percent or less; or
- c. vary from a dimensional requirement, limitation or condition stated in terms of a percentage of a whole by one-half of one percent or less.

Any changes or modifications, which are not minor or *de minimis* may only be made after review and approval by the ZBA pursuant to a written application by the Applicant. Within thirty (30) days after receipt of any such application, the ZBA, without a hearing, shall determine whether such proposed change or modification is substantial or insubstantial. If the change or modification is determined to be insubstantial, the ZBA may act on it, without a hearing. If the ZBA determines that the proposed change or modification is substantial, the ZBA shall hold a hearing and act on it in accordance with 760 CMR 31.03(3)(c).

2. Duly authorized agents of the Town, including, but not limited to the Building Commissioner, the Fire Chief, the Town Engineer their respective assistants and staff, shall have the right, with reasonable notice to the on-site project manager, which notice may be oral, to enter upon the common areas of the Subject Property and any common areas of the buildings thereon to ensure compliance with the terms and provisions of this Comprehensive Permit.

3. During construction, all local, state and federal laws and regulations shall be followed regarding noise (by concussion or otherwise), vibration, dust and blocking Town ways. At all times the Applicant shall use reasonable means to minimize inconvenience to the residents in the area of the Subject Property. Construction shall not commence on any day before 7:00 A.M. and shall not continue beyond 6:00 P.M. There shall be no construction or other related activities, which are audible to persons off-site on any Sunday or state or federal legal holiday. All trucks delivering earth materials of any type to the Subject Property shall be covered in compliance with state law.

4. The Applicant shall comply with all by-laws, rules and regulations, guidelines and codes of the Town and rules, regulations, codes and laws of the Commonwealth of Massachusetts pertaining to the development of the Subject Property and all pertinent requirements of the Americans with Disabilities Act ("ADA"), unless specifically waived herein.

5. Before beginning any dwelling unit construction under this Comprehensive Permit, the Applicant shall:

- a.) Furnish evidence to the Building Commissioner, adequate in the opinion of the Town Counsel, that Applicant is a limited dividend organization.

- b.) Furnish evidence to the Building Commissioner, adequate in the opinion of Town Counsel, that the status of the Development has been preserved as fundable by a subsidizing agency under a low and moderate income housing as set forth in the MassHousing approval referenced above and that all necessary extensions have been granted.

6. Prior to the issuance of the first building permit for a dwelling unit under this Comprehensive Permit, the Applicant shall furnish evidence to the Building Commissioner that a copy of this decision has been recorded with the Middlesex South Registry of Deeds.

7. Prior to the issuance of the first certificate of occupancy for any housing unit, prepare and submit to the Building Commissioner condominium documents for the units in the Development, to be reviewed by Town Counsel for compliance with all of the terms and conditions of this Comprehensive Permit.

8. Prior to the issuance of the first certificate of occupancy for any housing unit, prepare and submit to the Building Commissioner, in a form acceptable to Town Counsel, a monitoring services agreement between the applicant and Citizens Housing and Planning Association ("CHAPA") or such other monitoring agent as approved by MassHousing or DHCD.

Bedroom Restriction

9. The Development shall be limited to eight (8) dwelling units. All of the dwelling units shall have the number of bedrooms as reflected on the Project Plans. A deed restriction shall be established to limit the six (6) two-bedroom dwelling units to not more than two bedrooms per unit and the two (2) three-bedroom dwelling units to not more than three bedrooms per unit. The Applicant shall have the option, but not the requirement, of (i) developing the second floor of the two-bedroom units as shown on the revised architectural plan depicting a library, loft, bedroom, home office, and dormer on the second floor; and (ii) converting the loft shown on this plan into a game room or media room without a window, provided that there shall be no closets in any such upper floor areas except in bedrooms.

Affordability Conditions

10. **Sale Price; condominium fees.** Two (2) of the two-bedroom dwelling units created within Tripolis of Wayland shall be "low or moderate income units" as that term is defined in Massachusetts General Laws Chapter 40B and DHCD's regulations, in perpetuity, or as long as legally permissible (the "Affordable Units") The Affordable Units shall be reserved, in perpetuity, for sale to households earning no more than eighty percent (80%) of the median household income for the region / Boston PMSA, or the otherwise applicable PMSA in the event of a change. The initial sale price for the affordable two-bedroom condominium units may not exceed \$162,850.00, as the same may be increased based on DHCD standards. Thereafter, the price for such Affordable Units shall be set at an amount for ownership by a household earning less than seventy percent (70%) of the median household income in the region/Boston PMSA, adjusted for household size, assuming the following: a five percent (5%) down payment; the buyer will use conventional mortgage financing at prevailing market interest rates for a 30-year

fixed rate loan; the buyer's total monthly housing payment should not exceed 30% of the borrowers' monthly gross income; the total monthly payment is comprised of principal, interest, taxes, insurance, mortgage insurance and condominium fees. In determining the sales price base of 70% of the area median income (Family of 3), insurance is to be based on full value and insurance and condominium fees are to be based on value in accordance with Massachusetts General Laws Chapter 183A (Condominium Law). The condominium fees for the Affordable Units shall be those fees as have been stated in the November 12, 2007 Financial Analysis by the ZBA's designated Chapter 40B and financial consultant, MHJ Associates, for so long as the same remains consistent with DHCD standards. If the Development is funded by the New England Fund of the Federal Home Loan Bank of Boston, pricing shall be in accordance with the "Guidelines for Housing Programs in which Funding is Provided through a Nongovernmental Entity," as published by DHCD ("NEF Guidelines"), or such other guidelines as DHCD adopts in place of the aforementioned NEF Guidelines.

11. **Local Preference.** To the extent permitted by law, preference for the sale of fifty percent (50%) of the Affordable Units in the initial round of sales and to re-sales shall be given to persons or families who are first-time buyers and who (a) are Wayland residents, regardless of duration of residency; or (b) have a parent, grandparent or child, whether by birth, adoption, step-relation or marriage, residing in Wayland at the time of application; or (c) are employees (including new hires who have not started work) who work for the Town of Wayland, regardless of duration of employment; or (d) have resided in Wayland within five years immediately prior to the time of application; or (e) have a child enrolled in the Wayland Public Schools at the time of application. The Town of Wayland shall retain the right to further define "local preference." A Lottery Agent approved by the ZBA shall implement the local preference. Prior to conducting the Lottery, the Lottery Agent shall submit a final Lottery plan to the ZBA for its approval. All costs associated with the Lottery shall be exclusively borne by the Applicant.

12. **Monitoring Agent.** Prior to the issuance of the first building permit for the first dwelling unit, the Applicant shall prepare and submit to the Building Commissioner, for review and approval as to form and substance by Town Counsel, a monitoring services agreement between the Applicant, MassHousing and the monitoring entity ("Monitoring Agent"), approved by MassHousing. Such agreement(s) shall be consistent with the terms of this decision. Should the Town request any substantial or material change, the Town will need to receive approval from legal counsel of the appropriate federal and state agencies. . All costs associated with monitoring shall be borne by the Applicant, and, after the first round of sales, by the sellers of the Affordable Units. The Monitoring Agent shall be subject to the approval of the ZBA, said approval shall not to be unreasonably withheld. All reports of the Monitoring Agent shall be provided by certified mail to the ZBA. The Town reserves the option to select its own independent monitoring agent, at the Town's expense, which may be a Certified Public Accountant ("CPA") to review the financial work of the Monitoring Agent. The CPA shall be provided reasonable access by the Applicant to any financial information necessary to make these determinations and to verify the income and expenses of the Development. Additionally, the Town, or, alternatively, Wayland Housing Authority may, at its option, retain the services of an independent monitoring agent to oversee and review the work of the Monitoring Agent to monitor compliance with the terms and conditions of the Affordable Unit deed riders at the Applicant's expense, which shall not exceed \$3,750.00. The following project cost guidelines or standards shall be used by Monitoring Agent or any independent CPA retained by the Town:

- a. For cost certification purposes, General Conditions, Builder's General Overhead, Developer's Overhead, and Builders Profit must be consistent with normally accepted industry standards and "Local 40B Review and Decision Guidelines" dated November, 2005 signed by the Department of Housing and Community Development, MassHousing Partnership, MassHousing and MassDevelopment.
- b. Should there be an identity of interest between the Applicant and the real estate broker; the brokerage fee, including advertising costs but not applicable costs attributable to a model unit, shall not exceed 5% on market-rate units.

All financial information submitted by the Applicant to the Monitoring Agent and the Town for the cost certification after all initial sales shall be provided by certified mail to the ZBA at the same time. The required cost certification shall be conducted not later than 60 days after the conveyance of the final dwelling unit in the Development.

13. **Deed Rider and Regulatory Agreement.** Prior to the issuance of a building permit for the first dwelling unit, the Applicant shall prepare and submit to the Building Commissioner, for review and approval as to form and substance by Town Counsel, the final draft of a Regulatory Agreement and an Affordable Housing Restriction and Deed Rider. Should the Town request any substantial or material change, the Town will need to receive approval from legal counsel of the appropriate federal and state agencies. Such document(s) shall contain, at a minimum, the following terms:

- (a) The Affordable Units shall be reserved for sale in perpetuity to households earning not more than eighty percent (80%) of the median household income for the Boston PMSA. The initial sale price for the affordable two-bedroom condominium units may not exceed \$162,850.00, as the same may be increased based on DHCD standards. Thereafter, the price for such Affordable Unit shall be set at an amount for ownership by a household earning less than seventy percent (70%) of the median household income in the region/Boston PMSA, adjusted for household size, assuming the following : a five percent (5%) down payment; the buyer will use conventional mortgage financing at prevailing market interest rates for a 30-year fixed rate loan; the buyer's total monthly housing payment should not exceed 30% of the borrowers' monthly gross income; the total monthly payment is comprised of principal, interest, taxes, insurance, mortgage insurance and condominium fees.
- (b) After the initial sales of the Affordable Units, the Monitoring Agent shall be the Re-sale Agent responsible for all Affordable Unit re-sales within Tripolis of Wayland. The terms and conditions of a unit resale will be included in the Regulatory Agreement and in the affordable housing deed rider .
- (c) The Affordable Units shall be identified in the Regulatory Agreement.
- (d) The Affordable Units shall be owner-occupied and the principal residence of the owner-occupant only; provided, however, that the Monitoring Agent, with the

approval of the ZBA, in accordance with the Regulatory Agreement, Deed Rider and Monitoring Services Agreement, may authorize the temporary rental of such unit at a price affordable to a household earning not more than 80% of area median household income where the owner demonstrates that there is a bona fide reason for same, such as military duty, or the like. Rental fees charged cannot exceed 30% of 70% of the applicable Area Median Income as defined by the U.S. Department of Housing and Urban Development.

- (e) The Affordable Units shall remain affordable in perpetuity or the longest period allowed by law but in no case less than ninety-nine (99) years.
- (f) The Development shall be subject to a cost and income certification in accordance with the Regulatory Agreement paid for by the developer on behalf of the Town and the monitoring agent.
- (g) The owners and occupants of the Affordable Units shall cooperate with and provide all information reasonable requested by the monitoring agent(s).
- (h) Once an Affordable Unit has been sold by the Applicant, the amount of any loan or loans secured by a mortgage on an Affordable Unit shall not exceed the maximum initial or re-sale price of the Affordable Unit .

14. **Seniority of Deed Rider.** Simultaneously with the recording of the condominium documents creating the first dwelling unit, the Applicant shall record the above-defined Deed Rider senior to any liens on the Affordable Units to protect the continued availability of and requirement for the affordable units in the event of any foreclosure, bankruptcy, refinancing or sale. The Applicant shall not receive a certificate of occupancy for the first dwelling unit until evidence of this recording has been provided to the ZBA. The condominium documents shall provide that the Affordable Units described in the Master Deed are subject to the terms and provisions of this restriction and that any amendment purporting to alter, amend or delete this restriction shall be void *ab initio* and of no force and effect unless in compliance with the termination and extinguishment provisions of this restriction.

15. **Unit Design and Construction; insurance.** The Affordable Units shall be of the design as are shown on the Project Plans and shall be clearly labeled on the final project plans prepared by the Applicant. While the Affordable Units need not be given the same interior finishes and amenities as the market-rate units, the Building Commissioner shall determine whether the interiors comply with the State Building Code. The condominium master insurance policy shall include an "all-in" clause (HO6) insurance for all dwelling units providing coverage for loss of or damage to improvements and betterments that are not common elements or common facilities. The owners of the Affordable Units shall insure such units for the full replacement value in the event of damage by fire or other casualty commonly insured against, regardless of whether such insured amount exceeds the maximum affordable sale price. The Town of Wayland shall be named as an additional insured on all such unit policies.

16. **Rate of Construction** Building permits and certificates of occupancy shall be issued in the following sequence: At least one (1) building permit and certificate of occupancy shall be

issued for an Affordable Unit before or at the same time that building permits and certificates of occupancy are issued for every three (3) market-rate units.

17. **Non-segregation of Affordable Units.** The Affordable Units shall not be clustered together (i.e., no such affordable units shall be situated adjacent to each other) in any building or area. The exterior appearance of the Affordable Units shall be indistinguishable from the exterior appearance of the market-rate units.

18. **Town Right of Purchase.** All Affordable Unit owners shall grant the Town or its designee the right, but not the obligation, to purchase the residence, in the event that the Town has notice of a pending mortgage (other than by the first mortgage holder) or other lien foreclosure or similar proceeding (e.g., a sheriff's sale against the residence) or has notice that the residence is being taken for unpaid taxes. The Monitoring Agent shall have 90 days to find an eligible purchaser for an Affordable Unit and the Town or its designee shall have 90 days to purchase the Affordable Unit. After the initial sale of a unit by the developer, upon notice by the Affordable Unit owner of intention to resell the Affordable Unit, Monitoring Agent shall have 90 days to find an eligible purchaser and the Town (or its designee) shall have 90 days to purchase the Unit.

Construction Conditions

19. A preconstruction conference with Town departments shall be held prior to the commencement of construction. For the purposes of this decision, "commencement of construction" shall occur when the clearing and grubbing (removal of stumps and topsoil) for construction of the Development (as opposed to further testing and investigation such as installation of monitoring wells) has been initiated. The Applicant's contractor shall request such conference at least (1) one week prior to commencing construction by contacting the Building Commissioner in writing. At the conference, a schedule of inspections shall be agreed upon by the Applicant and the Town officials and boards responsible for the inspections and the location of the construction and storage trailers, if any, shall be agreed upon.

20. All utilities (gas, telephone, electric, fire alarm, cable television, data transmission, wastewater disposal and water) shall be installed underground and in pipes or conduits, as the case may be.

21. During construction the site shall be secured in a manner approved by the Building Commissioner so as to prevent injury or property damage to the residents of the Town.

22. Blasting, if any, shall be performed in accordance with regulations of the Commonwealth of Massachusetts, 527 CMR. 13.00 and in accordance with any existing written regulations for blasting issued by the Town's Fire Department.

23. The Applicant will comply with all rules and regulations of the State Building Code for Fire Suppression Systems.

24. Street numbers will be provided on each condominium unit in accordance with Section 158-4 of the Code of the Town of Wayland.

25. The final design of the wastewater disposal system shall be provided to the Board of Health for its review and approval pursuant to Title V of the State Sanitary Code.

Plan Conditions

26. Prior to the issuance of a building permit for any dwelling unit, the Applicant shall submit the following final plans for review and approval as consistent with this decision by the ZBA, unless the Building Commissioner determines that such final plans have heretofore been submitted. If the ZBA determines that any of the final plans are not consistent with the terms of this decision, it shall provide the Applicant with a statement identifying the inconsistency. The ZBA may distribute such plan(s) to its consultants and/or Town boards and officials for a written recommendation or report. Landscaping, fencing, and planting plan;

- a. Grading plan;
- b. Erosion control plan;
- c. Architectural plans, including all principal and accessory structures;
- d. Utilities plan including water, hydrants, fire alarms, gas, electric, cable, data transmission and telephone;
- e. Signage plan;
- f. Stormwater management plan;
- g. Snow storage plan; and
- h. Operation and maintenance plan for the drainage system (including pretreatment facilities and underground infiltration chambers) and reinforced turf material (used for the emergency turnaround and additional parking spaces).

In addition to the above, the Applicant shall provide the ZBA with a copy of any wastewater disposal application and plan submitted to and approved by the Board of Health under said Title V.

27. The Applicant shall design such final plans with the following specifications:

- a.) The permanent sign installed at the Subject Property shall bear writing no larger than one foot tall by five feet wide and shall be made of chiseled stone (mounted as shown on a plan). The temporary sign installed at the Subject Property for marketing purposes shall be no greater than four feet tall by six feet wide. Such temporary sign may be erected prior to the commencement of construction activities and may remain installed until all units have been sold.
- b.) Exterior lighting shall generally be provided in or near the locations detailed in the revised plans submitted on or about August 15, 2007 through posts with lantern-style lights, except that exterior lighting for purposes of safe

movement into and out of the buildings may be affixed to building sides. Exterior Lighting shall be designed to use energy efficient light bulbs that produce natural white light and shall be the minimum wattage necessary to provide safe movement on the Subject Property. Mercury vapor and low/high pressure sodium lighting shall not be used. Exterior lighting affixed to buildings shall be provided with motion detectors. Exterior lighting units shall be shielded or directed so that they do not shine onto adjacent properties.

- c.) The final plans shall identify the height of the buildings from the lowest grade to the highest roof element which shall be no higher than 31.0 feet above the lowest surrounding grade.
- d.) Building siding shall be one-half-inch by six-inch red cedar clapboard, with an option for a cultured stone façade and for cedar shakes where shown on the Project Plans. Roof material shall be standard asphalt roof shingles with or without texture. Window trims, corner boards, and rake boards shall be wood.
- e.) The emergency vehicle turnaround shall be as shown on a sketch provided to the Fire Chief on March 27, 2007, showing a turning radius of 40 feet.
- f.) The snow storage plan shall provide that the emergency turnaround and parking areas will be cleared of snow as soon as is reasonably possible following a snow storm and will be kept cleared of snow as much as is reasonably possible, with priority given to the emergency turnaround, in order to ensure access for emergency vehicles.
- g.) In addition to the landscaping shown on the Project Plans, landscaping shall be provided as follows: (i) the trees proposed to be planted on the Subject Property near the property line of the property located immediately west of the Subject Property line (N/F Edward C. Keenan, Map 38, Lot 56) shall be staggered so as to make the area look more like a natural wooded area; (ii) at locations generally as depicted on the plan entitled Sketch L2 / Mass Plantings at the Sharry Property Line, Applicant shall provide plantings, including canopy plantings and under-canopy screening plantings, at a sufficient density and at a height deemed sufficient by the Building Commissioner to block passenger vehicle headlights from shining into the first floor of the dwelling presently located on the property immediately east of the Subject Property (N/F Daniel R. and Heidi G. Sharry, Map 38, Lot 54) .; (iii) as set forth in a memorandum dated November 9, 2007 from Sean L. Papich, A.S.L.A. (suggestions 1, 2, and 4) and the attached sketch Revised Landscape Screening Sketch, Olshansky/Denton Property, 11/07/2007, the Applicant shall plant and retain vegetation as set forth in said memorandum; and (iv) on property east of the Subject Property at 8 Old Farm Road (N/F Robert Olshansky, Map 38, Lot 59), the Applicant shall plant one or two evergreen trees (fir or spruce) at least eight feet high (as determined by the nursery) in the locations selected by the property owner and as depicted on the sketch titled "Revised Landscape Screening Sketch" prepared by Sean Papich

Landscape Architecture dated November 7, 2007, provided that the Applicant shall not be responsible for removing and planting any existing vegetation and provided further that the property owner of 8 Old Farm Road shall first obtain all necessary approvals from the Wayland Conservation Commission and provide evidence of said approvals to the Building Commissioner and the Applicant. If approvals are not obtained prior to the time the Applicant prepares to install the plantings on the Subject Property then this condition will become null and void as to that portion of additional work subject to the jurisdiction of the agencies from which permits are required releasing the Applicant from such additional work off of the Subject Property. In addition, Applicant has agreed to remove the chain link fence at the property located immediately west of the Subject Property line (N/F Edward C. Keenan, Map 38, Lot 56) and, to the extent physically feasible, to plant one or more evergreens between Building #4 and the line of the above-referenced property sufficient in the reasonable opinion of the Building Commissioner to provide visual screening.

- h.) The measured infiltration rate used in the final design of the infiltration chambers shall be determined by "The Standard Test Method for Infiltration Rate of Soils in Field Using Double Ring Infiltrometer (ASTM Designation: D3385-03)." At a minimum, testing will be done in the area between Leaching Areas 1 & 2 and Leaching Area 4. Testing shall be done at the most restrictive layer between the bottom of the basin and an elevation 4 feet below the bottom of the basin. A representative of the Building Commissioner shall witness infiltration testing. Final Design Infiltration Rate shall be the measured rate as determined herein but no faster than 15 inches per hour. The Applicant shall set all leaching areas back at least six feet from the property boundaries.
- i.) Within the stone envelope of the underground infiltration galleries the Applicant shall excavate all confining or restrictive layers until it reaches the loose gravel layer that exists underneath these restrictive layers at approximately 12 feet below ground surface. Depending on the specifications of the particular infiltration galleries used, the stone envelope extends 1 to 2 feet laterally from the footprint of the infiltration gallery.
- j.) The Applicant shall install monitoring wells and test these wells in the spring of 2008 to determine the seasonal high water table for the drainage system leaching areas. A secondary purpose is to establish the wells in locations so that they will remain after completion of the drainage infiltration areas so that they can be used as monitoring wells as part of the Operation and Maintenance Plan. The monitoring wells must extend to an elevation of 170 feet (approximately 16 feet below the bottom of the proposed stone elevation) and shall be installed at the following locations: (1) one between Leaching Areas 1 and 2; (2) one in Leaching Area 4; and (3) one in the vicinity of the Title V leaching area at a location coordinated with the Board of Health, the bottom of which shall extend at least five feet below the bottom of the

proposed stone elevation. The monitoring wells shall remain so that they can be used as observation wells in the future.

- k.) The bottom of the proposed infiltration chambers shall be at least two feet above the seasonal high water table as determined pursuant to the testing protocol agreed upon pursuant to Condition No 28(j) above. In addition the infiltration chambers shall be located a minimum of 10 feet from the building foundations.
- l.) The design of Leaching Areas 1 and 2 shall be modified to include an overflow means between the two areas.
- m.) The wastewater disposal system leaching field shall be designed to a flow of 125 gallons per day (gpd) per bedroom, rather than the 165 gpd per bedroom required under the Board of Health regulations, and shall otherwise comply with said Title V. The elevation of the said leaching field shall be determined by the testing protocol required pursuant to Condition No. 28(j) above.
- n.) The Applicant shall install a triple gate valve arrangement in connection with the water main to the Subject Property, provided that the Town's Water Department supplies all necessary materials, such as the necessary valves and tee.
- o.) The Applicant shall install a sleeve on the wastewater disposal line 10 feet on each side where it crosses the water main.
- p.) The Applicant shall provide one American Darling B-84B (open left) fire hydrant located as agreed upon by the Town's Water Department and the Fire Chief in order to accommodate both departments' needs, (i.e., flushing and fire-fighting).
- q.) The Applicant shall install a water main that is 8 inches in diameter.
- r.) The final site grading shall ensure that the street run-off from Old Connecticut Path does not enter the Subject Property and shall include the relevant portion of the existing sidewalk within the final driveway grading to produce an accessible route across the driveway and within the Old Connecticut Path right-of-way.

28. The Applicant shall provide a building location footprint "as-built" plan to the ZBA and Building Department prior to the issuance of the certificate of occupancy for the final dwelling unit in the Development in accordance with applicable regulations, which shall be reviewed and approved by the ZBA or its agent. The Applicant shall provide a separate as-built plan depicting the water mains, appurtenant equipment and services to the Water Department demonstrating compliance with the Town's rules and regulations and installation specifications, except as waived by this decision.

Condominium Development, Driveways and Systems

29. The ZBA hereby requires that the following aspects of the Development shall be and shall remain private, unless the Town determines otherwise and the Applicant agrees to grant any necessary rights to the Town, and that the Town of Wayland shall not have any legal responsibility for operation, maintenance, repair or replacement of same:

- All driveways, sidewalks and parking areas
- Storm water management facilities, including detention basins
- Snow plowing
- Landscaping
- Trash removal
- Street and site lighting
- Building repair and maintenance
- On-site water mains and water services
- On-site sewer systems and service lines
- Drainage structures and facilities

30. The Applicant shall be responsible for the installation of all aspects of the common or private facilities set forth above. The responsibility for the subsequent operations and maintenance the common or private facilities set forth above shall be through the condominium unit owners association ("Unit Owners Association") established pursuant to M.G. L. Chapter 183A and such operation and maintenance shall be the responsibility of the Unit Owners Association. Prior to the turnover of responsibility to the Unit Owners Association, the Applicant shall provide written evidence to the ZBA that a reserve of two months of condominium fees were collected at the first sale of each unit to fund maintenance and operation. In the event that a management company is engaged, the Applicant or the Unit Owners Association shall provide the ZBA with a copy of the contract with such management company.

31. Prior to the issuance of the first certificate of occupancy, the Applicant shall establish the Unit Owners Association. There shall be a single condominium unit owners association to serve the entire Development. Membership in said Unit Owners Association shall be required by the condominium documents pursuant to the requirement of M.G. L. Chapter 183A, which shall be reviewed and approved as to form by Town Counsel prior to execution thereof. Town Counsel shall approve such document as to form after determining that the document is consistent with this decision.

32. The snow storage plan and the operation and maintenance plan for the drainage structures and the reinforced turf material submitted as part of the final plans shall be incorporated by reference in the organization documents of the Unit Owners Association. In addition, the Applicant's registered professional engineer shall prepare guidelines for the operation and maintenance of the sanitary sewage disposal system subject to the approval of the ZBA or its agent. Such guidelines shall also be incorporated by reference in the organizational documents of the Unit Owners Association. In the event a management company is engaged, the snow storage plan and the operation and maintenance plan for the drainage structures, the reinforced

turf material and the guidelines for the sanitary sewage disposal system shall be incorporated by reference in the management contract with such management company.

33. In the event that the Applicant, and then its successors in title, fails to maintain the on-site wastewater disposal system and/or the on-site stormwater management system, the Town may conduct such emergency maintenance or repairs, and the Applicant and its successors in title shall permit entry onto the Subject Property, with reasonable notice, to implement all such necessary measures. In the event the Town conducts such maintenance or repairs, the Applicant, during its ownership of the property, shall promptly reimburse the Town for all reasonable costs and expenses associated therewith within thirty (30) days after receipt of a demand therefore from the Town. In the event the Town conducts such maintenance or repairs after the Applicant has divested itself of ownership of the property, the then owners shall promptly reimburse the Town for all reasonable costs and expenses associated therewith within thirty (30) days after receipt of a demand therefore from the Town. If the Applicant, or its successors in ownership, as the case may be, fails to so reimburse the Town, the Town may place a municipal charges lien on the Development or any unit therein to secure such payment.

34. Garbage grinders are prohibited in any of the units. Once every five years, the professional responsible for operation and maintenance of the wastewater disposal system shall inspect each unit for garbage grinders and shall prepare and submit a report to the ZBA disclosing the results of his or her inspection. The Applicant shall incorporate the prohibition on installation of garbage grinders into the organizational documents of the Unit Owners Association and shall ensure that these organizational documents require each unit owner to assent to and grant access to his or her unit solely for purposes of the above-referenced inspection.

Miscellaneous Conditions

35. Prior to commencing any work within 100 feet of the vernal pool as depicted on the Project Plans, Applicant shall install a sediment barrier outside of the boundary of the ILSF. The barrier shall include a sediment filter fence that has been toed into the ground. The installation of sediment barrier should be done by hand or with equipment designed to minimize the amount of land disturbed. Heavy equipment shall not be used to install the sediment barriers and the trenches shall not be more than 4 inches to 6 inches deep and not more than 3 inches wide. Prior to commencing any work within 100 feet of the vernal pool, a monitoring program for the vernal pool shall be submitted to the ZBA for its review and approval or approval with modifications. The program shall ensure that, while construction is ongoing within 100 feet of the vernal pool, the vernal pool is monitored once every other week during the months of April through May to ensure that this construction is not harming the fairy shrimp population within the vernal pool. The person who is responsible for this monitoring shall have demonstrated experience as well as training in biology and related fields. Prior to commencing any work, a copy of the Storm Water Pollution Prevention Plan ("SWPPP") and EPA Stormwater Notice of Intent number, if applicable, shall be given to the ZBA. Stockpile areas shall be designated in the SWPPP and on the Sediment and Erosion Control Plan. Stockpile areas shall be located more than 100 feet from the vernal pool and shall be located with consideration for the site gradient. A sign shall be posted at the edge of the ILSF with a notation that the vernal pool is a fairy shrimp habitat area where pesticide, herbicide and chemical use are restricted.

36. The Development shall be constructed in the sequence as described in Condition 17. No certificate of occupancy shall be issued for a unit until the driveway to that unit, its parking area and utilities for that unit have been constructed and installed to a level of completion so as to adequately serve the unit for which the certificate of occupancy is being sought, or, alternatively, adequate security has been provided for its completion.

37. The Applicant shall promptly pay the reasonable fees of the ZBA's consulting engineers and/or the ZBA's consulting legal counsel for review of the plans or documents described herein and for inspections during the construction phase. The results of any inspections shall be provided to the ZBA in written format. The ZBA hereby requires the establishment of an escrow account to assure such payment, with an initial deposit of \$5,000.00, subject to replenishment when the balance falls below \$1,000.00.

Transfer of Comprehensive Permit

38. This comprehensive permit shall not be transferred to any person or entity without the express written approval of the ZBA, which approval shall not be unreasonably withheld. Prior to making a decision relative to any such transfer, the ZBA may hold a public hearing.

Lapse of Comprehensive Permit

39. This comprehensive permit shall become final in accordance with the provisions of 760 CMR 31.08(4). If construction authorized by this comprehensive permit has not begun within three (3) years of the date that it becomes final, it shall lapse. Upon written application by the Applicant, the ZBA shall, for good cause shown, extend said expiration date.

Compliance with State and Federal Regulations

40. The Development, and all construction, dwelling units, utilities, roads, drainage, earth removal or relocation of structures and all related appurtenances with respect to the Development, shall comply with all applicable state and federal regulations. The Applicant shall provide the ZBA with copies of all permitting requests and other correspondence directed to any applicable state or federal agency and of all correspondence, approvals or disapprovals received from any such agency.

41. The Development shall comply with all rules, regulations, filing and permit requirements and certifications required by the regulations governing (a) the Massachusetts Wetlands Protection Act, M.G.L. c. 131, §§ 40-40A and 310 CMR 10.00; (b) rules, regulations, filing and permit requirements and certifications required by the Department of Environmental Protection with respect to wastewater disposal, stormwater disposal, and best management practices; (c) said Title V regulations (310 CMR 15) relative to septic system design and installation; and (d) the regulations adopted by the Executive Office of Environmental Affairs pursuant to the Massachusetts Environmental Policy Act, M.G.L. c. 30, §§ 61-62H, if applicable. Specifically, as noted Applicant has withdrawn any proposals to perform work within the ILSF depicted on the Project Plans and shall obtain a negative determination of applicability or an order of conditions pursuant to the Massachusetts Wetlands Protection Act should it propose at some time in the future to perform work in the ILSF.

42. Where approvals by the Town are required by this decision, such approvals shall not be unreasonably denied, delayed or conditioned.

Waivers

43. The Applicant has requested, and the ZBA hereby grants, (1) a waiver of all building permit fees (for building permits, electrical permits, gas and plumbing permits issued by the Town's Building Department) associated with the Affordable Units within the Development; and (2) those waivers that are listed in the attachment hereto identified as Exhibit "A" entitled "Waivers Granted", which exhibit is part of this decision.

44. To the extent the Project Plans are silent on a particular requirement, the appropriate Town by-law, rule, regulation or code provision shall apply. In the event the Applicant or the ZBA's consulting engineer determines, in the final design of the Development, that additional waivers, not shown on the Project Plans are required, the Applicant shall be required to obtain such additional waivers through written request to the ZBA. The ZBA may grant such additional waivers in accordance with law. Certain provisions of the By-Laws, Town's Board of Health Rules and Regulations, and the Town's Wetlands and Water Resources Protection By-Law, which are expressly waived below, as applied to the Applicant's proposed Development, are not consistent with local housing needs for purposes of granting a comprehensive permit under M.G.L. c. 40B, §§20-23.

RECORD OF VOTE

The following members of the ZBA voted (4-0-1; Jerry L. Boos, Shaunt Sarian¹, Eric B. Goldberg and James E. Grumbach in favor and Chairman E. Michael Thomas absent) to grant the foregoing comprehensive permit subject to the above-stated terms, conditions and limitations, and to authorize Chairman E. Michael Thomas to sign the foregoing decision on behalf of the ZBA and file it with the Town Clerk's Office.



E. Michael Thomas, Chairman

Filed with the Town Clerk on January 25, 2008

¹ Associate member sitting in lieu of Member Steven Fugarazzo by designation of the Chairman.

EXHIBIT A

WAIVERS GRANTED

A. ZONING BY-LAWS PROVISIONS

BY-LAW REFERENCE	DESCRIPTION	WAIVER REQUEST	WAIVER GRANTED TO ALLOW
Article 5 General Regulations	§196-501. Signs to comply with yard requirements. Signage in residential districts to be limited to that which is permitted by other section so this bylaw. Certain signs to require special permits.	To allow a permanent monument sign with writing one foot high by five feet wide located and mounted as shown on plans to be reviewed and approved by the ZBA.	Granted to allow a permanent monument sign with writing one foot high by five feet wide located and mounted as shown on plans to be reviewed and approved by the ZBA.
Article 5 General Regulations	§196-502, Temporary Signs. Subdivision signs are allowed in the form of one all-mounted or free standing sign, erected at the subdivision development entrance from a street. The sign shall not exceed 15 square feet, and may bear decorative or logo devices, but no commercial advertisement. For subdivisions, the sign shall not be erected prior to the commencement of construction activities and shall be removed upon the issuance of the first certificate of occupancy or the issuance of certificates of occupancy for 24% of the development, whichever comes later	To allow temporary sign installed at the Subject Property for marketing purposes that is no greater than 4 feet high by 6 feet wide. Such temporary sign may be erected prior to the commencement of construction activities and may remain installed until all units have been sold.	Granted to allow temporary sign installed at the Subject Property for marketing purposes that is no greater than four feet high by six feet wide. Such temporary sign may be erected prior to the commencement of construction activities and may remain installed until all units have been sold.
Article 5 General Regulations	§198-504; Earth Movement. No earth in excess of 1,500 cy shall be moved on any parcel of land in any district 40,000 sf or more	To allow no more earth removal than is necessary to achieve the grades shown on the Project Plans.	Granted to allow no more of such excess earth movement than is necessary to achieve the grades shown on the Project Plans, as finalized.

BY-LAW REFERENCE	DESCRIPTION	WAIVER REQUEST	WAIVER GRANTED TO ALLOW
Article 6 Site Plan Approval		Waiver from any requirement for site plan review/approval by Planning Board. All site plan review/approval will be conducted by the ZBA.	Granted. All site plan review and approval otherwise required are deemed to be satisfied by the ZBA pursuant to the public hearing on the comprehensive permit application and the requirements for submission and approval of final plans.
Article 7 Area, Yard and Bulk Regulations	§198-703 Yards: 703.2 At each side of every house there shall be a side yard meeting the requirements in §198-801 Table of Dimensional Requirements (25' from Lot line)	To allow setbacks as shown on the Project Plans.	Granted to allow side yard setbacks as shown on the Project Plans.
	§198-705 Lot area and frontage: 705.1.2 Lot. The lots on which dwellings are erected in the Single Residence District shall meet the minimum lot area and frontage requirements of §198-801 Table of Dimensional Requirements (Minimum Lot Area = 40,000 sf; Minimum Lot Frontage = 180 ft)	To allow lot area and frontage as shown on the Project Plans.	Granted to allow lot area and frontage as shown on the Project Plans.
	§198-705 Lot area and frontage: 705.1.8 In a zone of 40,000 sf or 60,000 sf in a Single Residence District, no building lot shall be laid out and no dwelling shall be erected on a lot unless the center of a circle 100 feet in diameter can be passed along a continuous line from the side line of the street along which the frontage of the lot is measured to any point of the dwelling, or proposed dwelling, on the lot without the circumference intersecting any side lot lines.	To allow the lot orientation as shown on the Project Plans.	Granted to allow the lot orientation as shown on the Project Plans.

BY-LAW REFERENCE	DESCRIPTION	WAIVER REQUEST	WAIVER GRANTED TO ALLOW
	<p>§198-705 Lot area and frontage: 705.3 No dwelling shall hereafter be erected on a parcel or lot of land not fronting on a street, which parcel or lot of land shall contain less than 20,000 sf or that shall have less than the minimum area and frontage on a right of way required for the zone in which it is located, unless such dwelling is accessory only to some existing building or dwelling, and no dwelling shall hereafter be erected on a parcel or lot of land fronting on a street, which parcel or lot of land shall contain less area and less frontage on a street than the minimum area and frontage required for the zone in which said parcel or lot of land is located, as set forth in §198-705.1.1 through 705.1.7 herein, except that where a parcel or lot was recorded at the Registry of Deeds at the time of this Zoning Bylaw was adopted, the provisions of §198-201, applying to narrow and irregular lots</p>	<p>To allow the construction of four duplex dwelling units on the 2.8 acre parcel of land as shown on the Project Plans.</p>	<p>Granted to allow the construction of four duplex dwelling units on the 2.8 acre parcel of land as shown on the Project Plans.</p>
<p>Article 8 Dimension and Use Tables</p>	<p>§198-801 Table of Dimensional Requirements</p>	<p>To allow setbacks, lot areas, lot coverage and frontage as indicated in Article 7 herein.</p>	<p>Granted to allow setbacks, lot areas, lot coverage and frontage as shown on the Project Plans</p>
	<p>§198-804 Table of Permitted Principal Uses by Districts Item 29. Multifamily unit: low income; Item 57 Multifamily dwelling</p>	<p>To allow the use of multifamily units in a Single Residence District without a two-thirds majority Town Meeting vote and to allow the use of Multifamily dwellings in a Single Residence District without a Special Permit.</p>	<p>Granted to allow the use of multifamily units (eight units altogether) in a Single Residence District without a two-thirds majority Town Meeting vote and to allow the use of Multifamily dwellings (four duplex-style condominium dwellings) in a Single Residence District as shown on the Project Plans</p>

BY-LAW REFERENCE	DESCRIPTION	WAIVER REQUEST	WAIVER GRANTED TO ALLOW
Article 16 Aquifer Protection District	§198-1603 Use Restrictions applying to the Aquifer Protection District 1603.3 Special Permit uses. The following uses and activities are permitted only upon the issuance of a special permit by the special permit granting authority (SPGA) under such conditions as they may require: 1603.3.6 Individual on-site sewage disposal systems shall comply with the Board of Health and DEP requirements for the installation of septic systems in DEP recognized Zone II's.	To waive the requirements to obtain a special permit from the SPGA for on-site septic treatment. The septic system will be designed in accordance with DEP requirements. All site plan review/approval will be conducted by the ZBA.	Granted to allow the proposed multifamily use with a single on-site sewage disposal system that complies with DEP requirements and with Board of Health requirements not waived herein.
	§198-1604 Density Restrictions: 1604.2 Under no circumstances shall the impervious surface of a residential lot exceed 30% of upland area of the lot	To allow impervious surface coverage to be as shown on the Project Plans.	Granted to allow impervious surface coverage to be as shown on the Project Plans.
	§198-1605 Division of Land Parcels. §1605.2. No additional development of an already developed parcel shall cause these density restrictions to be exceeded or further exceeded.	To allow the construction of four buildings containing a total of eight units on a previously developed parcel of land.	Granted to allow the construction of four buildings containing a total of eight units on a previously developed parcel of land as shown on the Project Plans.
	§198-1606 Special permits within the Aquifer Protection District. 1606.1.1 The SPGA under this Article 16 is the Planning Board.	Waiver from any requirement for SPGA review/approval by Planning Board. All site plan review/approval will be conducted by the ZBA.	Granted. All site plan review and approval otherwise required are deemed to be satisfied by the ZBA pursuant to the public hearing on the comprehensive permit application and the requirements for submission and approval of final plans.
Article 22 Inclusion of Affordable Housing		Waive this section in its entirety. Provisions of affordable housing shall be administered under MGL Ch. 40B with a Comprehensive Permit for affordable housing.	Granted.

B. WETLANDS AND WATER RESOURCES BYLAW CHAPTER 194 AND IMPLEMENTING RULES AND REGULATIONS

Bylaw or Rule or Regulation	Description	Waiver Request	Waiver Granted to Allow
Section 194-2 Definitions: Buffer Zone	<p>Unless otherwise specified herein, any land whichever is the greater distance of the following:</p> <p>(1) One hundred feet horizontally lateral from the edge of any bog, marsh, wet meadow, swamp, pond, vernal pool, bank, streambed, lake, stream or any resource area specified in this chapter, or</p> <p>(2) One hundred feet horizontally lateral from the water elevation of the one-hundred-year storm, or land subject to flooding or inundation</p>	To eliminate the one hundred foot buffer zone horizontally lateral from the one-hundred-year storm, or land subject to flooding or inundation and adopt the state regulations for a buffer zone associated with an Isolated Land Subject to Flooding ("ILSF").	Granted to waive the one-hundred foot buffer zone so that the Development is governed by the state Wetlands Protection Act and implementing regulations, which does not establish a buffer zone around ILSF. No filing is required under Chapter 194.
A Rules and Regulations: Prior to Start of Work	2. Resource Area Delineations: Applications for Notices of Resource Area Delineation (ANRAD) are encouraged to be submitted between the months of May and October and shall not be finalized between the months of November through April of any given year.	Allow application and submittal of an ANRAD throughout the year and only dependent on ground or snow cover.	Granted to allow application and submittal of an ANRAD throughout the year and only dependent on ground or snow cover.

Bylaw or Rule or Regulation	Description	Waiver Request	Waiver Granted to Allow
	<p>3. Items to Consider, Where Applicable: <u>Land subject to flooding and inundations:</u> These are areas where there is sufficient change in topography to contain not less than 250 cubic feet of water (500sf area with at least 6 inches of storage) at least once per year. Sufficient topographical information must be provided, at not less than one-half foot elevations and spot grades to demonstrate that an area is incapable of holding at least 250 cubic feet of water.</p> <p>.... Where Applicable: For new construction a vegetated buffer of not less than 30 feet with permanent demarcation is required. Slopes, existing vegetation, and soils all may result in the request for an increased buffer. This area shall consist of ...</p> <p>And so on</p>	<p>To allow the definition of Isolated Land Subject to Flooding in accordance with the States Wetland Protection Act and otherwise eliminate the "Items to Consider, Where Applicable" portion of the rules and regulations base on the waiver of the 100-foot buffer zone for ILSF in favor of the state Wetlands Protection Act and implementing regulations, which does not establish a buffer zone around ILSF. No filing is required under Chapter 194.</p>	<p>Granted to allow the definition of Isolated Land Subject to Flooding in accordance with the Wetland Protection Act and otherwise waive the "Items to Consider, Where Applicable" portion of the rules and regulations base on the waiver of the 100-foot buffer zone for ILSF in favor of the state Wetlands Protection Act and implementing regulations..</p>

C. BOARD OF HEALTH REGULATIONS FOR ON-SITE SUBSURFACE SEWAGE DISPOSAL SYSTEMS

Regulation	Description	Waiver Request	Waiver Granted to Allow
<p>Section I General Requirements for Wastewater Treatment or Disposal Systems</p>	<p>D.3. Ground Water Testing Season: In all other cases, the ground water testing season for new construction is the period between March 1st and May 31st of each year.</p>	<p>To allow ground water testing throughout the year as is the case with developments of three lots or less.</p>	<p>Granted to allow ground water testing in compliance with the condition set forth in this decision.</p>

Regulation	Description	Waiver Request	Waiver Granted to Allow
Section II Design Requirements for Septic Systems	B.1.a Septic Tank Capacity: For multiple unit buildings, the septic tank capacity shall be the sum of the required capacity for each dwelling unit as determined from the following table. In no case shall the septic tank for each building be less than 1500 gallons. Each Dwelling Unit: bedroom 1 = 500 gallons/unit; bedroom 2 = 750 gallons/unit; bedroom 3 = 900 gallons/unit; bedroom 4 = 1000 gallons/unit; bedroom 5 = 1200 gallons/unit	To allow septic tank sizing to be in accordance with 310 CMR 15.223 of the DEP's Title V, which determines tank sizing criteria from design flows.	Granted to allow a septic tank that conforms with Title V.
	C.1 LEACHING FACILITIES; Volume of Sanitary Sewage: The volume of daily sewage flow shall be determined in accordance with 310 CMR 15.203, with the following exceptions: New Construction - Single and Multiple Dwelling Units (per bedroom) = 165 gallons/day	To allow daily sewage flow to be in accordance with 310 CMR 15.203 of the DEP's Title V that uses 110 gpd/bedroom.	Granted, except that the leaching area shall be based on a calculation of the volume of daily sewage flow using 125 gpd/bedroom and shall otherwise comply with Title V in all other respects.
	C.2 Minimum Leaching Area: The minimum leaching area to be installed for residential uses shall be determined from the following chart: 3 bedrooms = 800 sf; 4 bedrooms = 900 sf; 5 bedrooms = 1000 sf; each additional bedroom add 200 sf of leaching area	To allow the minimum leaching area to be calculated in accordance with 310 CMR 15.240 of the DEP's Title V that incorporates effluent loading rates of the underlying soil to determine the leaching area size.	Granted to allow the minimum leaching area to be calculated in accordance with Title V, except that the leaching area shall sized using 125 gpd/bedroom.

Regulation	Description	Waiver Request	Waiver Granted to Allow
	<p>C.4 For systems designed to receive more than 1000 gallons per day the bottom of the leaching facility shall be at least four feet above the maximum ground water elevation <u>and</u> any mounding of the maximum ground water elevation which may result by an addition of the wastewater flow. Groundwater mounding calculations shall be submitted to the Board of Health for review.</p>	<p>To incorporate 310 CMR 15.212 of the DEP's Title V regulation that states "For systems with a design flow of 2,000 gpd or greater, the separation to high groundwater as required by 310 CMR 15.212(1) shall be calculated after adding the effect of groundwater mounding to the high groundwater elevation as determined pursuant to 310 CMR 15.103(3)." This eliminates the requirement to perform groundwater mounding calculations on any system less than 2,000 gpd.</p>	<p>Granted. Groundwater mounding shall be calculated and considered only where required by Title V.</p>
	<p>C.5 Expansion Area and Trench Spacing: The minimum clear distance between leaching trenches shall be ten feet when the area between trenches is utilized for the expansion area.</p>	<p>To allow the reserve or expansion area between leaching trenches to be established in accordance with 310 CMR 15.251 of the DEP's Title V, which states "The minimum separation distance between any two trenches shall be two times the effective width or depth, whichever is greater or where the area between trenches is designated as reserve area, three times the effective width or depth of each trench, whichever is greater."</p>	<p>Granted to allow an expansion area and trench spacing that complies with Title V.</p>

END OF DECISION

Eugene C. Burns

 Attest Middlesex S. Register