



TOWN OF WAYLAND
MASSACHUSETTS
01778
BOARD OF APPEALS

TOWN BUILDING
41 Cochituate Road
TELEPHONE: (508) 358-3600
FAX: (508) 358-3606

DECISION 07-13

APPLICANT/PETITIONER OXBOW PARTNERS, LLC

I, Member of the Board, certify that, in accordance with Massachusetts General Laws, Chapter 40A, Section 11, published in the Town Crier, a newspaper of general circulation in Wayland, on April 19, 2007, and on April 26, 2007, and that notice by mail, postage prepaid, was sent to the applicant/petitioner, abutters, owners of land directly opposite on any public or private street or way and abutters to abutters within three hundred feet of the property line all as they appear on the most recent applicable tax list and to the Wayland Planning Board on April 19, 2007. I further certify that notice of the Decision was mailed to each of the parties in interest as above designated on September 17, 2007.

James E. Grumbach Member

The record and decision was received and recorded as a public record on

9/17/07

TOWN CLERK, WAYLAND, MASSACHUSETTS

TOWN CLERK/ASSISTANT

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TOWN OF WAYLAND
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01778

BOARD OF APPEALS

TOWN BUILDING
41 COCHITUATE ROAD
WAYLAND, MA 01778
TELEPHONE: (508) 358-3600

**NIKE SITE COMMUNITY DEVELOPMENT
COMPREHENSIVE PERMIT #07-13**

FINDINGS AND DECISION

RE: Application of Oxbow Partners, LLC for a Comprehensive Permit

DATE: September 11, 2007

LOCATION: 89 Oxbow Road, Wayland, Massachusetts;
Assessors Map 1, Lot 47 (Part)

TITLE REFERENCE: Middlesex South Registry of Deeds Book 45139, Page 113
and Book 44886, Page 398

PROCEDURAL HISTORY

1. On or about April 5, 2007 Oxbow Partners LLC (hereinafter, the "Applicant", which as used herein, shall mean the Applicant, its heirs, successors and assigns), applied for a comprehensive permit from the Wayland Zoning Board of Appeals ("ZBA"), pursuant to M.G.L. c. 40B, § 20-23 to construct an affordable housing project at 89 Oxbow Road in Wayland (the "Application"). The Applicant proposed to construct 16 "for sale" condominium dwelling units known as "89 Oxbow" (the "Development"). As proposed, the Development would be located on a site with approximately 2.75 +/- acres of land, being part of assessors Map 1, Lot 47 and shown as Lot 2A on a plan entitled "Plan of Land in Wayland, Massachusetts Prepared for Wayland Selectmen, Former Nike Site, Oxbow Road prepared by Town of Wayland Survey Department, 41 Cochituate Road, Wayland, MA 01778, dated January 3, 2006 and revised July 17, 2006 and recorded with the Middlesex South Registry of Deeds as Plan No. 19 of 2007 (hereinafter, the "Subject Property"). The Subject Property is located in a residential zoning district (R60) and within the overlay of the Aquifer Protection District (APD) as set forth in the Town of Wayland's Zoning By-Laws (the "Bylaws").

2. A notice of the public hearing on the 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 April 19 and 26, 2007;
 - b. Posted in a conspicuous place in the Wayland Town Building on April 19, 2007, which was at least fourteen (14) days prior to the first session of the hearing at which evidence was received; and
 - c. Mailed, postpaid, on April 19, 2007, which was at least fourteen (14) days before the first session of the hearing at which evidence was received, to the Applicant, abutters, owners of land directly opposite the property in question on any public or private street or way, abutters within three hundred (300) feet of the Subject Property, the Planning Boards of abutting towns. The notice was mailed to the names and addresses shown on the most recent tax list provided by the Assessors Office.
3. The public hearing was opened on May 8, 2007 and continued to June 26, 2007, continued again to July 10, 2007 and further continued to July 31, 2007, on which date the public hearing was closed. The Applicant consented to all continuances of the hearing.
4. On June 15, 2007 the ZBA, various other Town board members, Town officials and residents of the Town walked and inspected the Subject Property.
5. The following documents and exhibits were received during the public hearing.

APPLICANT'S DOCUMENTS AND RESPONSES:

- Application submitted April 5, 2007
- Applicant Response to Comments dated June 21, 2007
- Applicant Response to Comments dated June 21, 2007 Updated
- Applicant Response to Comments dated June 25, 2007
- E-mail to Dan Bennett from Kevin Maguire sent July 2, 2007
re: tree tagging pictures
- Memorandum from Kevin Maguire to Dan Bennett dated July 5, 2007
Re: Tree Tagging, Summary of Suggested Course Action
- Letter dated July 6, 2007 from Mark Bobrowski to Michael Thomas regarding the discussion of Mr. Haffey's concerns
- Applicant Response to Comments dated July 9, 2007
- Applicant Response to Issue Documentation Summary dated July 24, 2007
- Applicant's Comments on Meeting with Steven Kadlik (Highway Dept) dated July 25, 2007
- E-mail to Dan Bennett from Peter Smith sent July 27, 2007 clarifying materials submitted from the previous week
- Memo to Dan Bennett from Peter Smith dated July 30, 2007 re: Original Submission
- Photographs of existing site submitted by Peter Smith dated July 31, 2007
- E-mail to Dan Bennett from Peter Smith sent on July 31, 2007 regarding waiver requests

- Email from Peter Smith to Dan Bennett dated July 31, 2007 with "Lender Summary" Attachment
- The site plans entitled "Permit Site Plans 89 Oxbow Road, Wayland, MA", prepared by Hancock Associates dated 4/2/07, as revised through 7/24/07 consisting of eight plans T-1, S-1, C-1, C-2, C-3, C-4, C-5 and C-6; and the architectural plans entitled "A Community of Home Owners Wayland, MA" prepared by Prellwitz Chilinski Associates, Inc dated July 30, 2007, consisting of thirteen plans A1, A2, A3, A4, A5, A6, A7, A8, A9, A10, A11, A12 and A13 (collectively "the Plans").

TOWN DEPARTMENT CORRESPONDENCE:

- Letter from Frederic Turkington, Jr., Town Administrator dated April 4, 2007 to Michael Thomas in support of the Comprehensive Permit
- Interoffice Memo from Daniel Bennett dated April 6, 2007 regarding notice of Comprehensive Permit
- Memo from Stephen Kadlik dated May 3, 2007 to Daniel Bennett regarding comments from the Board of Road Commissioner's meeting
- Memo dated May 15, 2007 from Dan Bennett to Town Treasurer Paul Keating with attached check from Oxbow Partners, LLC for \$10,000.00 for payment for outside consultants
- Memo dated May 18, 2007 from Dan Bennett to ZBA, completeness review of the application
- Inter-office Memo from Daniel Bennett dated May 28, 2007 listing documents and information missing from application of Comprehensive Permit
- Memo of comments dated June 1, 2007 submitted by Police Chief Robert Irving
- Interoffice Memo from Daniel Bennett dated June 4, 2007 requesting review and comments from departments
- Memo of comments dated June 4, 2007 submitted by Fire Chief Robert Loomer
- E-mail from Brian Monahan sent June 8, 2007 updating comments from Conservation Commission
- Letter to Daniel Bennett from TEC dated June 11, 2007 regarding Traffic Engineering Review
- Letter to Daniel Bennett from Marchionda dated June 12, 2007 regarding site comments
- Memo of comments dated June 15, 2007 submitted by the Water Department
- E-mail from Mary Antes sent June 15, 2007 on behalf of the Wayland Housing Authority in support of this Comprehensive Permit
- Revised e-mail from Mary Antes sent June 15, 2007 on behalf of the Wayland Housing Partnership
- Memo from Alf Berry to Daniel Bennett dated June 18, 2007 regarding the tree location along Oxbow Road
- Letter from Frederic Turkington, Jr. to Michael Thomas dated June 18, 2007 commenting on behalf of the Board of Selectmen
- Letter from Frederic Turkington, Jr. to Michael Thomas dated June 21, 2007 commenting on behalf of the Board of Selectmen

- Memo dated June 21, 2007 from Joseph Laydon, Town Planner, Planning Board review of the application
- E-mail of Responses to Comments from Stephen Kadlik, Highway Department sent June 21, 2007
- E-mail of no comment at this time from Julia Junghanns, Board of Health sent June 21, 2007
- E-mail of responsiveness summary from applicant sent by Daniel Bennett on June 21, 2007 to departments
- E-mail from Nancy McShea of Park & Rec Department to Daniel Bennett sent on June 22, 2007 regarding the removal of trees within right of way
- Memo from Alf Berry to Daniel Bennett dated June 25, 2007 in response to abutter letter
- Memo from Frederic Turkington, Jr. to Michael Thomas dated June 28, 2007 regarding comments on behalf of Board of Selectmen
- Letter from Clifford Carlson, PE, Project Manager, Marchionda Associates, LLP to Daniel Bennett dated July 7, 2007 regarding review of the Stormwater Management Design
- Letter from Marchionda to Daniel Bennett dated July 30, 2007 in review of revised sited plans dated July 24, 2007
- Financial Analysis dated July 30, 2007 submitted by Michael Jacobs, MHJ Associates
- Letter from TEC to Daniel Bennett dated July 31, 2007 continued Traffic Engineering Review
- Revised Financial Analysis dated July 31, 2007 submitted by Michael Jacobs, MHJ Associates
- Certification pursuant to M.G.L. c. 39, §23D(a) by Jerry L. Boos

NEIGHBORHOOD AND PUBLIC COMMENTS:

- Letter dated June 10, 2007 from William Murphy, Jr. of 85 Oxbow Road regarding comments
- Letter dated June 26, 2007 from Daniel Hill, Esq. of Anderson & Kreiger, LLP representing abutters, John and Karen Haffey regarding their concerns
- E-mail from Betsy Moyer of 36 Hampshire Road sent July 9, 2007 regarding comments
- E-mail from Betty Salzberg sent on July 9, 2007 in support of project
- Letter submitted on July 10, 2007 from Colene Abramson of 4 Hampshire Road regarding comments
- Letter dated July 26, 2007 from Daniel Hill, Esq. of Anderson & Kreiger, LLP representing abutters, John and Karen Haffey updating their concerns
- Letter dated July 31, 2007 from Rachel Bratt of 26 Charena Road in support of project

Any documents or other evidence received during the public hearing which are not listed above are unintentionally omitted. All documents and plans received during the public hearing are hereby incorporated by reference in this decision.

6. During the public hearing, the Applicant through its Attorney, Mark Bobrowski, its Civil Engineers, Joseph Peznola and Frank Biccherri of Hancock Associates, and its Traffic Engineer, Douglas Prentiss of Judith Nitsch Engineering, Inc., presented 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.

7. Numerous 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.

8. 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.

- Traffic Engineers: TEC Transportation Engineering & Construction, Inc., Kevin R. Dandrade, P.E., P.T.O.E., MA;
- Civil Engineer: Clifford Carlson, P.E., Marchionda Associates, LP;
- Special Legal Counsel: Mark J. Lanza, Esq., Concord, MA; and
- Chapter 40B and Financial Consultant: Michael Jacobs, MHJ Associates, Brookline, MA.

9. The proposed development was reviewed by the following municipal officers or agencies:

- Board of Health
- Planning Board
- Building Commissioner
- Conservation Commission
- Fire Department
- Highway Department
- Board of Selectmen
- Police Department
- Parks and Recreation Department
- Nike Site Reuse Advisory Committee
- Town Surveyor
- Wayland Housing Authority
- Wayland Housing Partnership

10. The ZBA deliberated on this decision at its meetings of, August 28, 2007 and September 11, 2007 and made the following findings and decision based on the evidence submitted at the public hearing.

11. The Applicant granted the ZBA extensions through the end of the business day on September 17, 2007 to file its written decision with the Town Clerk.

FINDINGS

1. The Applicant submitted the following information pursuant to 760 CMR 31.01:
 - a. Information that it is or will become a "limited dividend corporation" as that term is used in M.G.L. c. 40B, § 21 and 760 CMR 31.01 (1);
 - b. Evidence of a subsidy as indicated by the project eligibility/site approval letter of the Department of Housing and Community Development ("DHCD") dated April 2, 2007 transferring original letter of July 18, 2006 from the Town of Wayland to Oxbow Partners, LLC; and
 - c. The Applicant has "control of the site" as that term is used in 760 CMR 31.01, by virtue of the Land Disposition and Development Agreement between the Applicant the Town of Wayland dated March 26, 2007.
2. The Town of Wayland, according to DHCD, has not achieved the statutory minimum set forth in M.G.L. c. 40B, §20 and or 760 CMR 31.04 in that (a) affordable housing does not constitute more than 10% percent of the total number of dwelling units; (b) 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; and (c) the approval of the 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.
3. At least .75% of housing units have not been produced in the Town within the last year accordance with a DHCD approved affordable housing plan.
4. Certain provisions of the Bylaws and the Town of Wayland Board of Health's Rules and Regulations and the Board of Road Commissioners' Street Opening Moratorium, as applied to the Applicant's proposed Development, are not consistent with local housing needs
5. If developed in accordance with the terms and conditions set forth herein, the proposed Development will be consistent with local needs.

DECISION

Pursuant to M.G.L. c. 40B, §§20-23 the ZBA, after public hearing and findings of fact, hereby grants a comprehensive permit to the Applicant for the construction on the Subject Property of sixteen (16) for sale dwelling units with associated infrastructure and improvements, subject to the following terms and conditions.

General Conditions

1. The Development shall be constructed in substantial conformance with the Plans, except for *de minimis* deviations. Any other deviation from said plans shall require a modification of this Comprehensive Permit by the ZBA.

2. Duly authorized agents of the Town may enter onto and view and inspect the Subject Property during regular business hours, without notice, to ensure compliance with the terms of this Decision, subject to applicable safety requirements. Unless otherwise indicated herein, the ZBA may designate an agent or agents to review and approve matters set forth herein.

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

4. Before beginning any dwelling unit construction under this Comprehensive Permit, except for any post closing and pre-completion (condominium documents, monitoring services, etc.), the Applicant shall:

a. Within thirty (30) days after the issuance of a building permit for a housing unit on the Subject Property, furnish evidence to the Building Commissioner, adequate in the opinion of the Town Counsel, showing that it owns, in fee simple absolute, the Subject Property;

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

c. Furnish evidence to the Building Commissioner, adequate in the opinion of Town Counsel, that the status of the Development has been preserved as fundable as set forth in the Project Eligibility Letter of the DHCD.

d. Furnish evidence to the Building Commissioner that a copy of this decision and the plans, with any revisions necessitated by this decision, have been recorded with the Middlesex South Registry of Deeds.

5. Prior to the issuance of the first certificate of occupancy for any housing unit, the Applicant shall prepare and submit to the Building Commissioner condominium documents (master deed, declaration of condominium trust, by-laws, rules and regulations, condominium budget with condominium fees and unit floor plans) 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.

6. Prior to the issuance of the first building permit 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 the DHCD.

Affordability Conditions

7. The dwelling units created within the Development shall be "low or moderate income housing" as that term is defined by Massachusetts General Laws Chapter 40B, §20 and DHCD's regulations, in perpetuity, 68.75 percent (%) of the dwelling units, which, as proposed, is eleven (11) of the dwelling 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 price for

such Affordable Units shall be set at a price affordable to a household earning seventy percent (70%) or other % as approved by DHCD of the median household income in the region / Boston PMSA, adjusted for household size, with a five percent (5%) down payment used to calculate such price. In determining the sales price base of 70% or other % as approved by DHCD of the area median income, insurance is to be based on full value and condominium fees are to be based on value in accordance with Massachusetts General Laws Chapter 183A (Condominium Law). Five (5) of the dwelling units shall be reserved, in perpetuity, for sale to households earning no more than one hundred percent (100%) of the median household income for the region/Boston PMSA, or otherwise applicable PMSA in the event of a change. The price for said five (5) Affordable Units shall be set at a price affordable to a household earning ninety percent (90%) or other % as approved by DHCD of the median household income in the region / Boston PMSA, adjusted for household size, with a five percent (5%) down payment used to calculate such price. In determining the sales price base of 90% or other % as approved by DHCD of the area median income, insurance is to be based on full value and condominium fees are to be based on value in accordance with said M.G.L. Chapter 183A. Eleven (11) of the units shall be two-bedroom units and the other five (5) units shall be three-bedroom units.

8. To the extent permitted by law, preference for the sale of seventy percent (70%) 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; (b) have a parent, grandparent or child, whether by birth, adoption, step-relation or marriage, residing in Wayland at the time of application; (c) are employees (including new hires who haven't started work) who work for the Town of Wayland, regardless of duration of employment; (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." The local preference shall be implemented by a Lottery Agent approved by the ZBA. Prior to conducting the Lottery, the Lottery agent shall submit a final Lottery plan to the ZBA, or its agent for its approval. All costs associated with the Lottery shall be exclusively borne by the Applicant.

9. Prior to the issuance of any building permit for a housing unit, the Applicant shall prepare the final draft of a Regulatory Agreement and a Deed Rider and submit same to the ZBA for approval as to form and substance by Town Counsel and for execution by and with the appropriate Town Board or official. 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 documents shall contain at a minimum, the following terms:

- a. Eleven (11) 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 price for such Affordable Unit shall be set at price affordable to a household earning seventy percent (70%) or other % as approved by DHCD of the median household income in the Boston PMSA, adjusted for household size, with a five percent (5%) down payment used to calculate such price. Five (5) Affordable Units shall be reserved for sale in perpetuity to households earning not more than one hundred percent (100%) of the median household income for the Boston PMSA. The price for said five (5) Affordable Units shall be set at a price affordable to a household earning ninety percent (90%) or other % as approved by DHCD of the median household income in the region/ Boston PMSA, adjusted for household size, with a five percent (5%) down payment used

to calculate such price. Said restrictions shall survive foreclosure by any unit owner's mortgagee.

b. After the initial round of sales of the Affordable Units, the Monitoring Agent shall be the Resale Agent responsible for all Affordable Unit resales within the Development, unless a different program is agreed to.

d. The Affordable Units shall be owner-occupied only; provided, however, that the ZBA may authorize the temporary rental of such a unit at a price affordable to a household earning not more than 80% of area median household income or 100% of area median income where the owner demonstrates that there is a bona fide reason for same, such as an illness in the family, military duty, or the like.

e. The Affordable Units shall remain affordable, in perpetuity.

f. The Development shall be subject to a cost certification in accordance with the Regulatory Agreement paid for by the developer on behalf of the Town, the subsidizing agency and the monitoring agent.

g. The owners and occupants of all the Affordable Units shall cooperate with and provide all information reasonable requested by the Monitoring Agent, if any.

10. Prior to the issuance of any building permit for a housing unit, the Applicant shall enter into a monitoring agreement with DHCD or its designee, which shall contain, at a minimum, the following terms:

a. All financial information submitted by the Applicant to the Monitoring Agent for the required cost certification after the first round of sales shall be provided by certified mail to the ZBA at the same time; and

b. The final cost certification by the Monitoring Agent shall be conducted not more than ninety (90) days after conveyance of the final dwelling unit in the first round of sales.

11. Prior to the issuance of a building permit for any dwelling unit, the Applicant shall submit the following final plans for review and approval by the ZBA. The ZBA may distribute such plan(s) to its consultants and/or Town boards and officials for a written recommendation or report.

a. Lighting plan;

b. Landscaping, fencing, and planting plan;

c. Grading plan;

d. Erosion control plan;

e. Architectural plan, including all principal and accessory structures;

- f. Utilities plan including water, hydrants, gas, electric, cable, and telephone;
 - g. Signage plan, including signs during the marketing phase;
 - h. Stormwater management plan consistent with the DEP's Stormwater Management Policy;
 - i. Snow storage and refuse disposal plan;
 - j. Any wastewater disposal application and plan submitted to the Board of Health whether under Title V or the local Board of Health regulations; and
 - k. Fire sprinkler plan.
12. The Applicant shall design such final plans with the following specifications:
- a. The Applicant shall conform with all pertinent requirements of the Americans with Disabilities Act and Massachusetts Architectural Access Board, if applicable.
 - b. All signage, including signs to promote sales, shall comply with the Plans and shall be maintained in a slightly condition by the Unit Owners Association in conformance therewith.

Condominium Development Roadways and Systems

13. The Applicant has proposed, and the ZBA hereby requires, that the following aspects of the Development shall be and shall remain forever private, and that the Town of Wayland shall not have, now or ever, any legal responsibility for operation, maintenance, repair or replacement of same:
- All roadways and parking areas, except that the Town will be responsible for maintenance of the portion of the access way lying between Oxbow Road and the easterly side of Lot 1A (the "Recreation Entry Drive");
 - Storm water management facilities, including detention basins;
 - Snow plowing (except for the Recreation Entry Drive);
 - Landscaping;
 - Trash removal;
 - Street lighting;
 - Building repair and maintenance; and
 - On-site wastewater disposal system;
14. The roadway within the Development shall not be dedicated to or accepted by a town meeting. Said roadway shall be constructed in accordance with the Planning Board's Subdivision Rules and Regulations ("Rules"), except for the following provisions:

RULES SECTION	REQUIREMENT	EXEMPTION
		ALLOWED
B.1.d Streets	40 foot Right of Way	No Right of Way
B1.d Streets	Any dead-end street shall be provided with a circular turnaround at its dead-end terminus having a curb radius of forty-five (45) feet, and a right-of-way radius of sixty (60) feet.	Alternative turnaround proposed as approved adhering to required engineering requirements.
Section V Required Improvements		
B.2.0	15 inch gravel sub-base	12 inch gravel sub-base allowed
B.2. e	Pavement control inspections and coring	No inspections required
B.3	Type VA-4 Vertical Granite Curb at curb inlets and Curves	No curbing to allow Low Impact Design Stormwater System
B.5. a	Catch Basin to manhole drainage design	Allow Low Impact Design Stormwater System
C.1	Planning Board Inspection	As directed by the ZBA

Street numbers shall be provided on each Condominium Unit in accordance with Section 158-4 of the Code of the Town of Wayland

15. The Applicant shall be responsible for the installation, operation and maintenance of all aspects of the common or private facilities set forth above until the final dwelling unit is conveyed. Thereafter, such facilities shall be conveyed to a Unit Owners Association and such operation and maintenance shall be the responsibility of said Association. Prior to the turnover of responsibility to the Association, the Applicant shall provide written evidence to the ZBA that a reserve of four (4) months has been established 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 company.

16. Prior to the issuance of any certificate of occupancy, the Applicant shall establish a Unit Owners Association. Membership in said Unit Owners Association shall be required by a deed restriction prepared by the Applicant and approved as to form by the ZBA's legal counsel prior to execution thereof. The Board's legal counsel shall approve such document as to form after determining that the document is consistent with this decision. Such Unit Owners Association shall maintain the facilities set forth above in Condition 13 above. The ZBA shall notify the Building Commissioner, in writing, of such approval and provide a copy of the approved documents.

17. The Applicant's registered professional engineer shall prepare guidelines for the operation and maintenance of the stormwater management system and the wastewater disposal system, subject to the approval of the ZBA or its agent. Such guidelines shall be incorporated by reference in the organizational documents of the Unit Owners association. In the event a management company is engaged, the guidelines shall be incorporated by reference in the management contract.

18. In the event that the Applicant, its successors or agent fails to maintain the on-site wastewater disposal system or the stormwater management system in accordance with applicable guidelines for operation and maintenance, the Town may conduct such emergency maintenance or repairs, and the Applicant shall permit entry onto the Subject Property to implement the measures set forth in such guidelines. In the event the Town conducts such maintenance or repairs, the Applicant shall promptly reimburse the Town for all reasonable expenses associated therewith; if the Applicant fails to so reimburse the Town within thirty (30) days of a request or demand for such reimbursement, the Town may place a lien on the Development or any unit therein to secure such payment.

19. The Applicant shall provide an access and egress easement to the Town to authorize public use of the Recreation Entry Drive to assure future access to the planned abutting Town-owned park on Lot 1A.

20. All invoices generated by the ZBA's peer review consultants during the application stage shall be paid within thirty (30) days of the filing of this decision with the Town Clerk, whether this decision is appealed or not. No post-permit reviews of documents or plans shall be conducted until such invoices have been paid in full. No building permit or certificate of occupancy shall be issued until such invoices have been paid in full.

Construction Conditions

21. 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) has been initiated. The contractor shall request such conference at least two (2) weeks prior to commencing construction by contacting the ZBA in writing. At the conference, a schedule of inspections shall be agreed upon by the Applicant, the ZBA, and other municipal officials or boards.

22. The Applicant shall promptly pay the reasonable fee of the consulting engineer and the ZBA's legal counsel for review of the plans or documents described herein or for inspections during the construction phase. The results of any inspections shall be provided to the ZBA in written format. The ZBA may require the establishment of an escrow account to assure such payment, subject to replenishment.

23. The Applicant shall provide information to the ZBA for its review and approval of the location and number of construction trailers, storage containers and model units.

24. No certificate of occupancy for any building or phase shall be issued until the infrastructure or common facilities or common improvements specified in this decision and set forth on the

plans of record are constructed and installed so as to adequately serve said building or phase, or adequate security has been provided, reasonably acceptable to the ZBA, to ensure the completion of such improvements. The choice of performance guarantee shall be governed by the provisions of M.G.L. c. 41, §81U (excluding a performance bond and the statutory covenant, which shall not apply in this matter) and shall be approved as to form by the ZBA's legal counsel. The ZBA shall notify the Building Commissioner, in writing, of such completion or performance guarantee.

25. The Applicant shall provide an "as-built" plan to the ZBA and Building Department prior to the issuance of the certificate of occupancy on the final unit in the Development in accordance with applicable regulations, which shall be approved by the ZBA or its agent. The Applicant shall provide a separate as-built plan depicting the water mains and services to the Water Department demonstrating compliance with the Water Department's Rules and Regulations and installation specifications, except as waived in this decision.

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

27. 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 of the Fire Department.

28. All buildings on the Subject Property shall be connected to the Town's water supply and distribution system. The Town and its agents are hereby authorized to enter upon the Subject Property for the purpose of maintaining and repairing the water supply system in the Development after the connection of the system to the Town's system. The Town will be responsible for operating and maintaining the on-site water connection to the existing Town system up to and including the individual water meter pits.

29. The ZBA hereby waives all Building Department fees for the Development to help assist with the creation with this affordable housing development.

30. Prior to receipt of a building permit, Applicant shall obtain a wastewater disposal system permit from the Board of Health.

31. The Applicant shall undertake the tree and shrubbery trimming as outlined in the Nitsch Engineering Report dated January 22, 2007 and the Memorandum from Kevin Maguire, Oxbow Partners LLC re: Oxbow Road Tree Tagging, dated July 5, 2007. For any such trimming within the layout of Oxbow Road, the ZBA hereby grants Oxbow Partners, LLC a license to perform such work. If the Town desires the trees to be removed in lieu of trimmed, this work will be performed or coordinated by the Town so as to ensure no conflicts or disruptions between the existing overhead electrical distribution and the trees to be removed. This work will be completed before the first certificate of occupancy is issued. The Applicant will fund the condominium association with an amount of additional funds, as determined by agreement between the Town's designated representative and Oxbow Partners, LLC. These funds will be segregated in a separate escrow account, to assure the continued maintenance of the trees and shrubbery trimming necessary to assure the required sight lines.

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

Transfer of Comprehensive Permit

33. 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

34. 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 Requirements.

35. 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 will 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.

36. The Development shall comply with (a) all rules, regulations, filing and permit requirements and certifications required by the regulations governing the Massachusetts Endangered Species Act, M.G.L. c. 131, § 23, 321 CMR 10.00; (b) the Massachusetts Wetlands Protection Act, M.G.L. c. 131, §§ 40-40A and 310 CMR 10.00; (c) 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; (d) Massachusetts Title V regulations (310 CMR 15) relative to septic system design and installation; and (e) the regulations adopted by the Executive Office of Environmental Affairs pursuant to the Massachusetts Environmental Policy Act, M.G.L. c. 30, §§ 61-62H.

Waivers

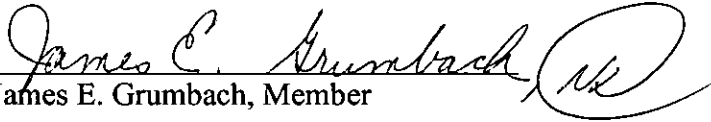
37. The Applicant has requested, and the ZBA hereby grants, the waivers from the local by-laws, rules, regulations and requirements that are listed in the attachment hereto identified as Exhibit "A" entitled "Waivers Granted".

To the extent the Plans are silent on a particular issue, the appropriate Town by-law, rule, regulation or requirement shall apply. In the event the Applicant or the ZBA's consulting engineer determines, in the final design of the Project, that additional waivers, not shown on the plans are required, the

Applicant shall be required to obtain such additional waivers after written request to the ZBA. The ZBA may grant such additional waivers in accordance with applicable rules and regulations.

RECORD OF VOTE

The ZBA voted (5-0-0; Chairman E. Michael Thomas, Jerry L. Boos, Aida A. Gennis¹, Eric B. Goldberg and James E. Grumbach in favor) to grant a comprehensive permit, subject to the above-stated terms and conditions, and to authorize Member James E. Grumbach to sign and file this decision with the Town Clerk.


James E. Grumbach, Member

Filed with the Town Clerk on September 17, 2007.

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	REQUIREMENT	WAIVER GRANTED TO ALLOW:
Article 5 General Regulations		
§ 198-504.1 Earth Movement	No earth in excess of 1,500 cubic yards shall be moved on any parcel of land in any district 40,000 square feet or more in area.	No more of such excess earth movement than is necessary to achieve the grades shown on the Development Plans
§ 198-506.2 Off-street Parking	Parking as per the Special permit Granting Authority	Allow the parking as shown on the Development Plans.
§ 198-506.7.5 Off-street Parking	Parking stall length of 18.5 feet and aisle width of 24 feet	Parking stall length of 18 feet and aisle width of 22 feet.
§ 198-506.8.2 Off-street Parking	10% of parking area shall be landscaped.	To allow landscaping as shown on Project Plans.
§ 198-704 Lot Coverage	20% in R60	Proposed 29% coverage.
Article 6 Site Plan Approval		Exemption from Site Plan Approval submittal requirements, content, etc. apply only to the extent information is requested by the ZBA.

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BY-LAW REFERENCE	REQUIREMENT	WAIVER GRANTED TO ALLOW:
Article 7 Area, Yard and Bulk Regulations		
§ 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. [60,000 sf – 210 ft Frontage]	Frontage of the Subject Property (Lot 2A) of 89.61' versus 210' required as shown on the Development Plans and 16 dwelling units on the Subject Property (Lot 2A) containing 2.75 acres, more or less.
§ 198-705.1.8	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 frontage of the lot is measured to any point on the dwelling without the circumference intersecting any side lot lines.	To allow the location of proposed dwelling as shown on the Development Plans.
Article 8 Dimensions and Use Table § 198-802 Table of Permitted Uses	No building or structure or land shall be used or occupied, except for the purposes permitted in the district in the Table of Permitted Uses. Multi-family allowed only with mixed-use project master special permit.	Allow multi-family use with grant of Comprehensive Permit by the ZBA.

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<p align="center">BY-LAW REFERENCE</p>	<p align="center">REQUIREMENT</p>	<p align="center">WAIVER GRANTED TO ALLOW:</p>
<p>Article 16</p>		
<p>Aquifer Protection District</p>		
<p>§ 198-1603.3</p>	<p>Cluster, planned or flexible developments require Special Permit</p>	<p>Allow development as shown on Development Plans and with the ZBA being the permit granting</p>
<p>§ 198-1604.1</p>	<p>Residential developments in which disposal of wastewater is by means of septic tank sewage systems, the density shall not exceed 1-1/4 units per acre.</p>	<p>Allow a density of 5.8 units per acre. Wayland has received nitrogen loading approval plan from DEP allowing higher density development.</p>
<p>§ 198-1604.2</p>	<p>The SPGA under Article 16 shall be the Planning Board</p>	<p>Exemption – ZBA is permit granting authority under M.G.L.Chapter 40B. Permit approval submittal requirements, content, etc. apply only to the extent information is requested by the ZBA.</p>
<p>Article 22 Inclusion of Affordable Housing</p>	<p>Requires affordable housing to be included in all residential projects greater than six units</p>	<p>Exemption – Special Permit Approval submittal requirements, content, etc. apply only to the extent information is requested by the ZBA. (see above)</p>

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B. WAYLAND BOARD OF HEALTH RULES AND REGULATIONS

REGULATION PROVISION	REQUIREMENT	WAIVER GRANTED TO ALLOW:
Section I: General Requirements for Wastewater Treatment or Disposal Systems		
Section II: Design Requirements For Septic Systems		
D.1. Distances	Such "setback" distances may be increased for multiple dwellings or higher sewage discharges. These distances shall be determined by the Board of Health on an individual basis, depending on particular circumstances	Exemption from Board of Health setting distance of setbacks. Minimum Wayland Board of Health setbacks will be adhered to.

G

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<p>C. GENERAL BY-LAWS CHAPTER 158 ARTICLE IV, §158-5</p>	<p>Planning Board hold a public hearing and review work proposed.</p>	<p>The ZBA be the permit granting authority for the Scenic Roads Bylaw.</p>
<p>D. FILING AND INSPECTION FEES</p>	<p>Filing fees, connection fees, inspection fees and permit fees.</p>	<p>To waive all building permit fees (for building permits, electrical permits, water hook up, gas and plumbing permits issued by the town's Building Department), connection fees, and inspection fees associated with all 16 affordable units.</p>
<p>E. HIGHWAY DEPARTMENT</p>		
<p>Wayland Highway Department</p>	<p>Street Opening Moratorium</p>	<p>The ability to conduct work within the Oxbow Road right of way as required for the utility and or curb cut installations to support the construction of the development.</p>



TOWN OF WAYLAND
 MASSACHUSETTS
 01778
BOARD OF APPEALS

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

Decision No. 07-13

NAME OF APPLICANTS:

OXBOW PARTNERS, LLC

APPLICATION FOR:

Any necessary approvals as may be required for a Comprehensive Permit to operate and construct 16 condominium units (attached townhouses) 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 89 Oxbow Road, more specifically Assessors Map – Plate 1 Parcel 47A, which is in a SINGLE RESIDENCE DISTRICT and AQUIFER PROTECTION DISTRICT. (07-13)

DATES OF HEARING:

May 8, 2007, June 26, 2007, July 10, 2007 and closed the hearing on July 31, 2007

BOARD CONDUCTING HEARING AND RENDERING DECISION:

James Grumbach, Eric Goldberg, Michael Thomas and Linda Segal.

DECISION:

Comprehensive Permit Granted, with conditions.

VOTE OF BOARD:

Unanimous (5-0).

Eugene C. Brune

Attest Middlesex S. Register

DATE OF FILING OF DECISION:

September 17, 2007

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