

OFFICE OF THE

HARVARD ZONING BOARD OF APPEALS

13 AYER ROAD HARAVRD, MA 01451 978-456-4106 EXT.2 FAX: 978-456-4119



PINE HILL VILLAGE COMPREHENSIVE PERMIT

FINDINGS AND DECISION

RE: Application of Transformations, Inc. for a Comprehensive Permit

DATE: October 29, 2008

**LOCATION: Assessors Map 36 Parcels 85-0 and 86-1;
Stow Road, Harvard, Massachusetts**

TITLE REFERENCE: Worcester District Registry of Deeds Book 28320, Page 113

I. PROCEDURAL HISTORY

1. On December 19, 2007, Transformations, Inc. (hereinafter, the "Applicant") applied for a comprehensive permit from the Zoning Board of Appeals ("ZBA") pursuant to M.G.L. c. 40B, §§20-23 for the construction of an affordable housing project located on Stow Road in Harvard (hereinafter, the "Application"). The Applicant proposed to construct twenty-four (24) "for-sale" condominium dwelling units in seventeen (17) buildings on five (5) lots within a subdivision (hereinafter, the "Development"). As proposed, the Development would be located on a site with approximately 20.5 +/- acres of land, being Assessor's Map 36, Lots 85-0 and 86-1 (hereinafter, the "Subject Property"). The Subject Property is zoned "Agricultural-Residential (AR)" under the Town of Harvard's Protective By-Law.

1.1 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:

1.1.1 Published in the Harvard Post, a newspaper with general circulation in the Town of Harvard on December 28, 2007 and January 24, 2008;

1.1.2. Posted in a conspicuous place in the Harvard Town Hall on December 19, 2007, which was at least fourteen (14) days prior to the hearing; and

1.1.3. Mailed, postpaid, on December 20, 2007, which is at least fourteen (14) days before the hearing, to the petitioner, abutters, owners of land directly opposite the

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Subject Property on any public or private street or way, 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.

1.2. A duly advertised public hearing was opened on January 23, 2008, and continued to February 27, 2008, further continued to April 23, 2008, again continued to May 21, 2008 (no evidence was received at this session of the hearing), once again continued to May 28, 2007, further continued to June 25, 2008, again continued to July 23, 2008, penultimately continued to September 10, 2008 and, finally, continued to September 24, 2008, when the public hearing was closed. All continuances of the public hearing were agreed to by the Applicant.

The ZBA retained the following consultants pursuant to M.G.L. c. 44, §53G and its rules and regulations relative to comprehensive permits, at the applicant's expense, and received advice from them concerning the following aspects of the applicant's proposed project:

- ✚ Civil Engineer: Judith Nitsch Engineering, Inc., Boston, MA
- ✚ Legal Counsel: Town Counsel Mark J. Lanza, Concord, MA
- ✚ Pro Forma-Financial: Edward Marchant, Brookline, MA

During the public hearing, the Applicant, through its President, R. Carter Scott, and its Engineers, R. Wilson & Associates, Inc., presented the ZBA with the applicant's plans and supporting materials.

1.3 Numerous abutters, other parties in interest, persons residing in the area of the proposed Development site and other residents of the Town appeared at the public hearing and gave the ZBA input relative to the anticipated impacts of the proposed project.

1.4. In addition to the application, including the attached exhibits and plans, the following documents and exhibits were received during the public hearing:

FROM THE APPLICANT

- Mass Housing Site Approval letter dated February 14, 2007
- Plans submitted with the Application: Existing Conditions Plan , Subdivision Plan, Profile Plan and Utilities Plan, all dated December 10, 2007 prepared for Transformations, Inc., by R. Wilson & Associates, Inc.
- Letter from Applicant extending the time for opening of the hearing past the required 30 days filed with the Town Clerk on December 19, 2007.

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- Meridian Associates letter dated February 7, 2008 to the Massachusetts Department of Environmental Protection ("DEP") explaining division of lot ownership as it pertains to a public water supply.
- Letter from Transformations, Inc., dated April 11, 2008 submitting additional copies of application for consultant review, as well as requesting that the roadway within the Development be accepted as a public way.
- Letter from Transformations, Inc. dated May 15, 2008 relative to waiver clarification, associated map for soil and perk information, cross section of roadway plan, roadway widths, sound and public access. This submittal included: a plan entitled "Profile Plan for Pine Hill Village in Harvard, Mass." prepared by R. Wilson & Associates, Inc. revised May 9, 2008 and Geosyntec Consultants letter dated May 14, 2008 re: Road Widths.
- Letter from Transformations, Inc. dated June 25, 2008 relative to detailed waivers, septic and well feasibility and revised site plan. This submittal included: a letter from R. Wilson & Associates, Inc. dated June 24, 2008 re: preliminary septic designs; a letter from Meridian Associates re: Preliminary List of Requested Exemptions dated June 25, 2008 and Existing Conditions Plan for Pine Hill Village prepared by R. Wilson & Associates, Inc. revised 6/18/08.
- A list of Zero Energy Challenge Projects received July 23, 2008.
- ZBA Project Revisions filed with the Town Clerk on August 12, 2008 by Transformations, Inc.
- A letter from Transformations, Inc. dated September 10, 2008 regarding examples for private water supplies in conjunction with private septic systems.
- A letter from Transformations, Inc., dated September 24, 2008 regarding the September 24, 2008 Board of Health letter showing another example of a private water supplies in conjunction with private septic systems, including plans Working Plan of Hammond Woods in Charlton, MA dated April 28, 2005 and Definitive Plan Title Sheet of Hammond Woods in Charlton, MA dated January 29, 2004.
- Stormwater Analysis Appendix A – C
- Subject Property Appraisal dated May 3, 2007.
- Traffic Impact and Access Study dated August 2007.

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- Soil Evaluation Information, various dates.
- 12th ASES National Solar Tour magazine.
- “The Hidden Message in the Water”.

FROM PEER REVIEW CONSULTANTS

- Nitsch Engineering letter dated May 13, 2008, First Review.
- Nitsch Engineering letter dated June 24, 2008, Response to Comments.
- Nitsch Engineering letter dated July 23, 2008 re: Technical Feasibility.
- Nitsch Engineering memorandum dated September 10, 2008 re: Additional Information.
- Edward Marchant letter dated September 10, 2008, including Preliminary Construction Budget and a Draft Methodology Used to Estimate Sale Prices for Affordable Homes.

FROM TOWN BOARDS AND COMMISSIONS

- Letter from Harvard Municipal Affordable Housing Trust dated January 18, 2008.
- Letter from the Harvard Board of Health (“BOH”) dated January 17, 2008.
- Letter from Harvard Fire Department dated January 22, 2008
- Letter from Harvard Conservation Commission dated January 23, 2008.
- Letter from Harvard Planning Board dated January 23, 2008.
- Letter from the ZBA to the BOH, dated January 24, 2008 re: allow BOH to seek counsel from DEP relative to the public water supply.
- Letter from BOH to DEP dated January 29, 2008 re: clarification of public water supply as it applies to the Development.
- Letter from ZBA to DEP dated January 31, 2008 re: the BOH January 29, 2008 letter to DEP.
- Letter from Harvard Municipal Affordable Housing Trust dated March 17, 2008, including letter to Transformations, Inc. dated January 18, 2008.

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- Letter from Harvard Police Department dated April 23, 2008.
- Letter from Harvard Planning Board dated April 28, 2008.
- Letter from Harvard Planning Board, dated April 29, 2008.
- Letter from Harvard Conservation Commission, dated May 22, 2008.
- Letter from the BOH dated June 25, 2008.
- Letter from Building Inspector Gabriel Vellante dated July 7, 2008.
- Letter from the BOH dated July 23, 2008.
- Letter from Harvard Planning Board dated July 23, 2008.
- Letter from the BOH dated August 26, 2008.
- Letter from Harvard Conservation Commission dated September 4, 2008.
- Letter from Harvard Planning Board dated September 8, 2008.
- Letter from the BOH dated September 24, 2008.

FROM OTHERS

- Letter from Codman Hill Condominium Association dated January 8, 2008 to Codman Hill LLC re: increase in fees.
- E-mail message from John Kennefick dated January 23, 2008.
- Letter from DEP dated February 25, 2008 re: public water supply.
- Photos submitted by Warren Henderson dated January, 2005 re: runoff of torrential rain.

Any documents or other evidence received during the public hearing which are 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.

1.5 The Applicant granted the ZBA an extension through October 20, 2008 to complete the public hearing on the Application.

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- 1.5. The ZBA deliberated on this decision at its meetings of September 24, 2008, September 30, 2008, October 1, 2008, October 7, 2008 and October 29, 2008.

II. FINDINGS

2.1. The Applicant submitted the following information pursuant to 760 CMR 56.04(1):

- a. it will become a "limited dividend corporation" as that term is used in M.G.L. c. 40B, § 21 and 760 CMR 56.02;
- b. evidence of a subsidy as indicated by the project eligibility/site approval letter of the Massachusetts Housing Finance Agency dated July 30, 2007; and
- c. it has "control of the site" as that term is used in 760 CMR 56.04(1)(c), by virtue of fee ownership of the Subject Property as evidence by the deed dated November 26, 2002 and recorded with the Worcester District Registry of Deeds in Book 28320, Page 113

2.2. The Town of Harvard, according to the Department of Housing and Community Development ("DHCD"), has not achieved the statutory minima set forth in M.G.L. c. 40B, §20 and 760 CMR 56.03(3) in that a.) affordable housing does not constitute more than ten percent (10%) of the total number of dwelling units located in the Town of Harvard; 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 Harvard 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 Harvard zoned for residential, commercial or industrial use or ten (10) acres, whichever is larger, in any one calendar year.

2.3 DHCD has not certified the Town's compliance with the goals of its approved Housing Production Plan, in accordance with 760 CMR 56.03(4) by increasing the Town's number of Subsidized Housing Inventory ("SHI") Eligible Housing units in an amount equal to or greater than its 0.50% production goal for the calendar year.

2.4 The Town has not made recent progress toward the statutory minima set forth in M.G.L. c. 40B, §20 and 760 CMR 56.03(3), in accordance with 760 CMR 56.03(5) in that the number of SHI Eligible Housing units that have been created within the Town during the twelve months prior to the date of the Application, evidenced by being inventoried by the DHCD or established according to 760 CMR 56.03(3)(a) as occupied, available for occupancy, or under permit as of the date of the Applicant's initial application to the Board, is not equal to or greater than 2% of the Town's total housing units, as determined in accordance with 760 CMR 56.03(3)(a).

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2.5 A related application has not previously been received, as set forth in 760 CMR 56.03(7) in that more than 12 months has elapsed between the date of the Application for a Comprehensive Permit and (a) the date of filing of a prior application for a variance, special permit, subdivision, or other approval related to construction on the Subject Land for a prior project that was principally residential in use and it did not include at least 10% SHI Eligible Housing units; (b) any date during which such an application was pending before a permit granting authority of the Town; (c) the date of final disposition of such an application (including all appeals); or (d) the date of withdrawal of such an application.

2.6 The proposed Development was reviewed by the following municipal officers or agencies:

- ✚ Board of Health
- ✚ Planning Board
- ✚ Building Inspector
- ✚ Conservation Commission
- ✚ Fire Department
- ✚ Department of Public Works
- ✚ Board of Selectmen
- ✚ Police Department
- ✚ Housing Partnership

2.7 There are extensive inland wetlands, wetland buffer zones and an intermittent stream on the Subject Property. Parts of the Subject Property are located in the Watershed Protection and Flood Hazard zoning districts.

2.8 There is a severity of soil limitations in the Town of Harvard for sewage or wastewater disposal, and a high vulnerability of the Town's wetlands, water absorption areas, water-bearing bedrock fissures, groundwater supply, and individual wells to pollution and contamination. Except for parts of Devens, there is no system of common public sanitary sewers in the Town of Harvard. The inhabitants of the Town depend for the most part on individual wells for their drinking water, and will continue to do so for the foreseeable future, since no large sand and gravel aquifers have been located in the Town which could serve as a municipal groundwater supply.

2.9 The primary, if not the sole reason for the Applicant's proposed five-lot land division scheme for the proposed Development is avoidance of the installation of a public water supply system in accordance with 310 CMR 22.00.

2.10 There is no evidence in the record showing that the owner or operator of the wastewater disposal facilities which the Applicant asserts will be in separate ownership will operate the

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facilities or that or that such owner will act with due regard for the independent financial interests of the owners, operators and any beneficiaries of the assertedly separate facilities;.

2.11 The ownership or control of the wastewater disposal facilities for the Development which the Applicant asserts will be in separate ownership or control was arranged, in part, to circumvent the requirements of 310 CMR 15.202 (recirculating sand filters).

2.12 Certain provisions of the Protective (Zoning) Bylaw of the Town of Harvard, the Planning Boards Subdivision Rules and Regulations and the Town of Harvard' Wetlands Protection Bylaw, as applied to the Applicant's proposed Development, are not consistent with local housing needs.

2.13 If developed in accordance with the terms and conditions set forth herein, the proposed Development will be consistent with local housing needs.

III. DECISION

Pursuant to M.G.L. c. 40B, §§20-23, the ZBA, after a public hearing and based on the foregoing findings of fact, hereby grants a comprehensive permit to the Applicant for the construction on the Subject Property of twenty four (24) for sale dwelling units with associated infrastructure and improvements, subject to the following conditions. As used herein, the term "Applicant" shall mean the Applicant, its heirs, successors and assigns. Unless otherwise indicated herein, the ZBA may designate an agent or agents to review and approve matters set forth herein.

Conditions

3.1. The Development shall be constructed in substantial conformance with the plans of record set forth below. The development shall be constructed in conformance with the plans referenced in this decision, as modified in accordance with this decision (the "Plans"), except for *de minimis* deviations. Any other deviation from the Plans shall require a modification of this Comprehensive Permit by the ZBA.

3.2. The Development shall be limited to twenty four (24) dwelling units. The dwelling units shall have the number of bedrooms as shown on the sketch entitled "Neighborhood Site Development Plan, Comprehensive Permit Plan Set, Pine Hill Village, Stow Road, Harvard, Massachusetts", dated August 8, 2008, prepared by Meridian Associates, Inc. No loft space in any unit shall be converted to a bedroom. This condition shall be placed in the organizational documents of the Unit Owners Association(s) and in the master deed(s) for the Development.

3.3. Twenty-five percent (25%), or in the event that the Applicant receives a contribution of \$100,000.00 from the Harvard Municipal Affordable Housing Trust, forty-one and two-

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thirds percent (41.67%) of the dwelling units shall be reserved in perpetuity for sale to households earning no more than eighty percent (80%) of the median household income for the "Eastern Worcester County, MA" HMFA, or applicable HMFA in the event of a change (the "Affordable Units"). The price for such Affordable Unit shall be set at the price affordable for a household earning not more than seventy percent (70%) of the median household income in the "Eastern Worcester County, MA" HMFA, adjusted for household size, with a five percent (5%) down payment used to calculate such price. 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.

3.4. To the extent permitted by law, preference for the sale of seventy percent (70%) of the Affordable Units in the initial round of sales shall be given to persons or families who shall qualify for the "Local Preference" established by the Town's Board of Selectmen. 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 Town's Board of Selectmen for its approval. All costs associated with the Lottery shall be exclusively borne by the Applicant.

3.5. Prior to the issuance of any building permit, 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 by the ZBA's legal counsel and for execution by and with the ZBA and/or the Town. Such document(s) shall contain, at a minimum, the following terms:

3.5.1. 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 "Eastern Worcester County, MA" HMFA, and the price for such Affordable Unit shall be set at the price affordable to a household earning not more than seventy percent (70%) of the median household income in the "Eastern Worcester County, MA" HMFA or applicable HMFA in the event of a change, adjusted for household size, with a five percent (5%) down payment used to calculate such price.

3.5.2. The right of first refusal to purchase an Affordable Unit on resale shall be granted to the Town of Harvard, or its assignee.

3.5.3 The actual Affordable Units shall be identified in the Regulatory Agreement.

3.5.4 The Affordable Units shall be owner-occupied only; provided, however, that the ZBA 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 an illness in the family, military duty, or the like.

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3.6. Prior to the issuance of any certificate of occupancy, the Applicant shall enter into a monitoring services agreement(s) or similar agreement with a monitoring services provider, approved by DHCD or MassHousing and the ZBA, to provide project monitoring services relative to the profit limitations on the Development and the affordability restrictions on the dwelling units. Within three (3) months of occupancy of the housing units the Applicant shall submit to both DHCD and the ZBA a project cost accounting prepared by a certified public accountant. The ZBA reserves its right to retain an independent certified public accountant to perform an audited review of said project cost certification at the Applicant's expense.

3.7 All financial information submitted by the Applicant for the required cost certification which shall be conducted not more than ninety (90) days after the conveyance of the last unit to be sold in the initial sales of all units shall be provided by certified mail to the ZBA at the same time.

3.8. The Affordable Units shall not be segregated from the market rate units. The Affordable Units shall not be substantially different in exterior appearance from the standard market rate units. For every four (4) units constructed, at least one (1) unit shall be an affordable unit so that, at all times, at least twenty-five (25%) percent of the units constructed shall be affordable housing units or, alternatively, if the Applicant receives a contribution of \$100,000.00 from the Harvard Municipal Affordable Housing Trust, for every five (5) units of the first twenty (20) units constructed, at least two (2) units shall be affordable units, and for the last four (4) units constructed, the first (21st overall) and third (23rd overall) unit shall be affordable units so that, for the first (20) twenty units, at least forty (40%) percent of the units constructed shall be affordable housing units and, for the last (4) four units, at least fifty (50%) percent of the units constructed shall be affordable housing units.

3.9. During construction, the Applicant shall conform with all local, State and Federal laws regarding noise, vibration, dust and blocking of Town roads. The Applicant shall at all times use all reasonable means to minimize inconvenience to residents in the general area. Exterior construction or interior construction that is audible from the exterior shall not commence on any day before 7:00 a.m. and shall not continue beyond 6:00 p.m.; provided, however, that exterior construction or interior construction that is audible from the exterior shall not commence on Saturday before 9:00 a.m. There shall be no exterior construction on any Sunday or State or Federal legal holiday. Hours of operation shall be enforced by the Harvard Police Department.

3.10. Prior to the issuance of a building permit for any dwelling unit, the Applicant shall submit the following final plans for review by the Building Inspector. After the Building Inspector's review is complete, said plans shall be submitted for approval by the ZBA. The ZBA's approval of said plans shall include a written determination that the Development is technically feasible. The ZBA may distribute such plan(s) to its consultants and/or Town boards and officials for a written recommendation or report.

a. Site Plan;

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- b. Lighting plan;
- c. Landscaping, fencing, and planting plan;
- d. Grading plan;
- e. Erosion control plan;
- f. Architectural plan, including all principal and accessory structures including structural, mechanical, electrical and plumbing systems;
- g. Utilities plan including water, hydrants, gas (if any), electric, cable, and telephone and detail sheets;
- h. Signage plan, including signs during the marketing phase;
- i. Stormwater management plan consistent with the Massachusetts Department of Environmental Protection's ("DEP") Stormwater Management Policy together with a written maintenance plan;
- j. Snow storage and refuse disposal plan;
- k. Final wastewater disposal system permits and plans approved by the Board of Health and/ DEP; and
- l. Site Access and Parking plan.
- m. Definitive Subdivision Plan pursuant to M.G.L. c. 41, §§81K-81GG.

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

3.11.1. The Applicant shall conform with all pertinent requirements of the Americans with Disabilities Act and Massachusetts Architectural Access Board, if applicable.

3.11.2. All signage, including signs to promote sales, shall comply with the Protective By-law and shall be maintained in a sightly condition by the Unit Owners Association(s) in conformance therewith.

3.11.3 The Applicant shall provide to the ZBA a construction management plan, including, at a minimum, truck routes, fill sources and laboratory analyses and contact information for review and approval by the ZBA.

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- 3.11.4 The Applicant shall submit to the ZBA site sections demonstrating constructability, along with spot shots.
- 3.11.5 The water supply well(s) and system serving the Development shall be shown on the utilities plan and shall be a public water system within the meaning of 310 CMR 22.00, *et seq.*, and shall comply with the provisions of 310 CMR 22.00, *et seq.*
- 3.11.6 The wastewater disposal facility(s) serving the dwelling units in the Development shall comply with the requirements of 310 CMR 15.202 (recirculating sand filters).
- 3.11.7 The utilities plan shall show the placement of all utilities to be located outside the Stow Road right-of-way underground.
- 3.11.8 The subdivision division plan shall contain a note stating that the ZBA's endorsement on this plan shall not be construed as a determination by the ZBA that the land division hereby approved complies with the criteria set forth in 310 CMR 15.011(1).
- 3.11.9 Acceptable sight distances meeting AASHTO standards shall be provided. The plans showing the provision of such sight distance shall be reviewed and approved by the Police Chief.
- 3.11.10 The parking plan shall show twenty-four (24) visitor parking spaces, including signage and the method of demarcation of parking spaces on the ground.
- 3.11.12 The roadway and vehicular circulation system and the placement of structures (including proximity to off-site structures) must be designed and arranged to meet the Fire Chief's fire safety standards as evidenced by a written determination of compliance from the Fire Chief.
- 3.11.13 The plan showing the roadway shall show a two-foot reinforced shoulders on both sides of the road with soil stabilizing geo-fabric on each side and grass pavers that can support the weight of any and all public safety vehicles.
- 3.12. 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 Harvard shall not have, now or ever, any legal responsibility for operation, maintenance, repair or replacement of same:
- ✚ All parking areas
 - ✚ Storm water management facilities, including detention basins, unless the roadway in the

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Development is accepted and acquired by the Town, in which case such facilities that are located within the layout of said roadway shall be maintained by the Town

- ✚ Snow plowing, unless the roadway in the Development is accepted and acquired by the Town
- ✚ Landscaping
- ✚ Trash removal
- ✚ Street lighting, unless the roadway in the Development is accepted and acquired by the Town
- ✚ Building repair and maintenance
- ✚ On-site wastewater disposal system
- ✚ On-site public water system

3.13. In the event that the roadway within the Development is not accepted by the Town Meeting or acquired by the Town, said roadway shall be and shall remain forever private, and that the Town of Harvard shall not have, now or ever, any legal responsibility for operation, maintenance, repair or replacement of same. The surface of the roadway shall be maintained so that the porous surface does not become nonporous. Deicing agents which are detrimental to the adjacent wetlands shall not be used on said roadway.

3.14. 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(s) and such operation and maintenance shall be the responsibility of said Association(s). Prior to the turnover of responsibility to the Association(s), the Applicant shall provide written evidence to the ZBA that an adequate reserve has been established to fund maintenance, repair, operation and replacement of such facilities. In the event that a management company is engaged, the Applicant or the Unit Owners Association(s) shall provide the ZBA with a copy of the contract.

3.15. Prior to the issuance of any certificate of occupancy, the Applicant shall establish a Unit Owners Association(s). Membership in said Unit Owners Association(s) 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 ZBA's legal counsel shall review and approve such document(s) as to form after determining that the document is consistent with this decision. Such Unit Owners Association(s) shall maintain the facilities set forth above in Condition 3.12. The Board of Health shall review and approve such document(s) to insure that adequate provision has been made for the operation and maintenance of the wastewater disposal system(s). The ZBA shall

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notify the Building Inspector, in writing, of such approvals and provide a copy of the approved documents.

3.16. The Applicant's registered professional engineer shall prepare guidelines for the operation and maintenance of the stormwater management system and the wastewater disposal system(s), 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(s). In the event a management company is engaged, the guidelines shall be incorporated by reference in the management contract.

3.17. In the event that the Applicant, its successors, or agent fails to maintain the on-site wastewater disposal system(s) 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, the Town may place a lien on the Development or any unit therein to secure such payment.

3.18. All invoices generated by the ZBA's peer review consultants during the application stage shall be paid within (30) thirty 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.

3.19. 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.

3.20. 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 Town officials or boards.

3.21. The ZBA or its agents 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.

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3.22. The Conservation Commission's Order of Conditions pursuant to 310 CMR 10.00, or any order of the Department of Environmental Protection (DEP), if applicable, regarding the Subject Property, shall be made a part of this comprehensive permit. If there is any inconsistency between the plan of record for this permit and the plans as may be approved by the Conservation Commission or the DEP, the Applicant shall submit an amended plan(s) to the ZBA and to the Conservation Commission and to DEP (if applicable) for approval in order that all approvals are consistent with one another. Such submittal shall be made by certified mail or in hand at a regular meeting. Said amended plan submitted to the ZBA shall be accompanied by a letter setting forth any and all changes from the submitted plan of record and shall include revised drainage calculations, if applicable.

3.23. No certificate of occupancy for any building, unit or phase shall be issued until the infrastructure or common facilities or common improvements (i.e., roadway, utilities, stormwater management systems, wastewater disposal system(s), public water system and landscaping within and along the roadway), 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 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 Inspector, in writing, of such completion or performance guarantee.

3.24. Performance bonds, if any, shall be released by the ZBA in accordance with the Subdivision Rules and Regulations of the Planning Board.

3.25. In determining the amount of the bond or surety, the ZBA shall be guided by the following formula in setting the sum of the security:

- a. the ZBA's estimate of the cost to complete the work; plus
- b. a ten percent margin of error; plus
- c. an appropriate rate of inflation over a five year period.

3.26. All performance bonds shall contain the following provision:

If the Principal shall fully and satisfactorily observe and perform in accordance with the qualifications and time schedule set forth herein specified all the covenants, agreements, terms and provisions set forth in the following:

- a. The plan of record;
- b. This Decision attached hereto as an exhibit with all attachments thereto; and

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then this obligation shall be void; otherwise, it shall remain in full force and effect and the aforesaid sum shall be paid to the Town of Harvard as liquidated damages.

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

3.28. The Applicant shall provide an "as-built" plan to the ZBA and Building Inspector prior to the issuance of the final certificate of occupancy 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 Department of Public Works demonstrating compliance with said Department's rules and regulations and installation specifications.

3.29. The landscaping shown on the final approved plan shall be maintained in perpetuity by the Unit Owners Association(s). Any dead vegetation shall be removed immediately and replaced in accordance with the specifications on said plan during the life of project by Unit Owners Association(s).

3.30. 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.

3.31. The Applicant has requested, and the ZBA hereby grants, the waivers from local rules set forth below, but only to the extent shown on the Plans and as necessary to construct the Development in accordance therewith:

3.31.1 Town of Harvard's Protective By-Law

Article III (generally); § 125-21: waiver to permit multi-family dwellings in the AR District;

§ 125-9: waiver from the individual lot and lot area requirements to allow 24 dwelling units on 5 lots as shown on the Plans (see Condition No. 3.8 above);

§ 125-29: waiver from the lot width and lot area requirements to allow 24 dwelling units in the locations shown on the Plans (see Condition No. 3.8 above) and to allow the access frontage for Lots 3 and 4 as shown on the Plans;

§ 125-30 A, B and E: waivers to permit multiple structures per lot and reduced setback distances as shown on the Plans and Floor Area Ratio (FAR) of up to 15% for Lots 3 and 4 as shown on the Plans;

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§3.31.2 Planning Board's Subdivision Rules and Regulations.

§130-23 B(1): waiver to permit a dead-end street as shown on the Plans without provision for extension to adjoining properties.

§130-23 D(1)(a): waiver to permit a street with a width of 20 feet on each side of the roadway centerline.

§130-23 D(1)(c): waiver to permit centerline radii for the roadway including a 68.0 foot centerline radius at the cul-de-sac as shown on the plan entitled "Subdivision Plan for Pine Hill Village in Harvard, Mass." dated August 7, 2008 prepared by Meridian Associates, Inc. (the "Subdivision Plan").

§130-23 D(1)(e): waiver to permit tangent lengths between reverse curves in the roadway as shown on the Subdivision Plan.

§130-23 D(1)(g): waiver to permit roadway pavement width of 20 feet from the beginning of the road to the beginning of the cul-de-sac.

§130-23 E: waiver to permit a dead-end street length of 1,040 linear feet as shown on the Subdivision Plan.

§130-23 I: waiver to permit the installation of a sidewalk on one side of the road only.

3.31.3 Town of Harvard's Wetlands Protection Bylaw

§ 147-15 waiver of the wetlands setback provisions to allow (1) a crossing of the wetlands at the stone culvert and, for 50 feet on both sides of the crossing, disturbance associated with roadway construction be allowed and, for 75 feet on both sides of the crossing, the roadway be allowed; (2) disturbance associated with the roadway construction and associated stormwater management improvements along both sides of the road right-of-way from its beginning to Station 5+40 be allowed within 10 feet of the wetlands; (3) driveways, roadway and structures within 10 feet of the wetlands in the area of Stations 0+00 and 4+40 and not closer to the wetlands than 35 feet along the first 540 feet of the roadway; and (4) the construction of driveways and structures not closer to the wetlands than 40 feet grading and the installations of wells and water lines no closer to the wetlands than 35 feet in the so-called Pine Bank Neighborhood, all as shown on the Subdivision Plan.

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The Applicant's requested waivers from the Harvard Board of Health's Rules and Regulations relative to sewage disposal and well construction and the sewage disposal system setback requirements of the Protective Bylaw are all denied without prejudice to resubmission of requests for waivers of such provisions if any are necessitated by compliance with Condition No.'s 3.11.5 and 3.11.6 above.

The Applicant's requested waiver from §125-32 D (communal sewage disposal systems) of the Protective Bylaw is denied.

The Applicant's requested waiver from §125-31B(3) is denied.

The Applicant's requested waivers from the provisions of the Planning Board's Rules and Regulations relative to roadway shoulders and guardrails are both denied without prejudice to resubmission when plans showing grades in the subject areas are presented to the ZBA.

The Applicant's requested waivers from the Protective Bylaw provisions relative to earth moving, Watershed Protection (W), Flood Hazard (WFH), Type 3 lot review process and shared driveway review process and the Planning Board's Rule and Regulations relative to road embankments, utilities and drainage are all denied as unnecessary since the ZBA is empowered under M.G.L. c. 40B to make the requested reviews and grant the requested approvals within the scope of this comprehensive permit.

To the extent the plans are silent on a particular issue, the appropriate Town bylaw, rule or regulation 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 Plans are required, the Applicant shall be required to obtain such additional waivers after written request to the ZBA, which the ZBA may grant.

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 and the Federal Government. pertaining to the Subject Property unless specifically waived herein.

3.32 The Applicant shall record the Plans and an attested copy of this decision with the Worcester District Registry of Deeds and provide written evidence of such recordation to the Building Inspector prior to the issuance of any building permits for the Development.

3.33 Prior to substantial completion of the Development a phase thereof, this Comprehensive Permit may be transferred to a person or entity other than the Applicant, upon written confirmation from the Subsidizing Agency that the transferee meets the requirements of 760 CMR56.04(1)(a) and (b), and upon written notice to the ZBA. Transfer of this Comprehensive permit shall not, by itself, constitute a substantial change pursuant to 760 CMR 56.07(4). After substantial completion, this Comprehensive Permit shall be deemed to run with the land.

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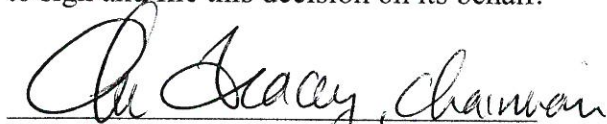
3.34 If construction authorized by this Comprehensive Permit has not begun within three years of the date on which the permit becomes final except for good cause, this Comprehensive Permit shall lapse. This time period shall be tolled for the time required to pursue or await the determination on any appeal on any other state or federal permit or approval required for the Development. The ZBA may extend such commencement date. An extension may not be unreasonably denied or denied due to other affordable housing projects built or approved in the interim. Extension of the Comprehensive Permit shall not, by itself, constitute a substantial change pursuant to 760 CMR 56.07(4).

3.35 The Development authorized by this Comprehensive Permit shall be completed on or before five (5) years after the issuance of all permits and approvals, except for building permits, but in no event later than December 31, 2013. This time period shall be tolled for the time required to pursue or await the determination on any appeal on any other state or federal permit or approval required for the Development.

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RECORD OF VOTE

The ZBA voted (3-0-0; Tracey, Moeser and Capobianco) to grant a comprehensive permit, subject to the above-stated terms and conditions, and to authorize Chairman Christopher Tracey to sign and file this decision on its behalf:


Christopher Tracey, Chairman

Filed with the Town Clerk on _____, 2008.

10/31/08
(1)