



**AMENDED**  
**FINDINGS AND DECISION ON COMPREHENSIVE PERMIT APPLICATION**  
**G.L. c. 40B, §20-23; SCITUATE COMPREHENSIVE PERMIT RULES**

APPLICANT: Herring Brook Meadow, LLC (the "Applicant")

PROPERTY: 126 and 132 Chief Justice Cushing Highway - Route 3A;  
Assessor's Map and Parcels 58-1-8A and 58-1-5 (the "Property")

PROJECT: Herring Brook Meadow (the "Project")

DATE: September 21, 2010

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**I. PROCEDURAL HISTORY AND JURISDICTIONAL FINDINGS**

1. Application for so-called Comprehensive Permit received by the Scituate Zoning Board of Appeals (the "Board") on November 8, 2006. The application is for 60 condominium housing units on an approximately 15.34 acre parcel. The Application also included a so-called "project eligibility letter" by the Massachusetts Housing Finance Agency ("MassHousing").
2. The Applicant proposes to be a limited dividend organization. However, the Applicant failed to allow the Board to conduct review of its proforma to assess compliance with legal requirements. Accordingly, the Board is unable to determine that the Applicant is a complying limited dividend organization. Thus, the Applicant has failed to meet its burden that it has satisfied the provisions of 760 CMR 56.04(1)(a).
3. The subsidizing agency is MassHousing. Per a letter from MassHousing, dated May 26, 2006, the Applicant asserts that project eligibility has been established under the Housing Starts and NEF Programs. However, the Board finds that MassHousing failed to adequately conduct its due diligence and otherwise comply with the regulations under 760 CMR 56.04(2) in the issuance of its letter. Particularly, for reasons detailed more fully herein, MassHousing failed to demonstrate "that the proposed housing design is generally appropriate for the site on which it is located." 760 CMR 56.04(2)(b)(3). Additionally, as detailed more fully herein, MassHousing failed to establish that "the project appears financially feasible on the basis of estimated development costs." 760 CMR 56.04(2)(b)(5).
4. The Applicant possesses an interest in at least a portion of the Property by virtue of the fact that it owns the property located at 132 Chief Justice Cushing Highway

However, based on available information the Applicant has merely executed an Option to Purchase with the current property owner for 126 Chief Justice Cushing Highway. An extension of this agreement to June 30, 2008 was executed, but the Board has not been provided with evidence of any other extensions. Accordingly, the Applicant has not satisfied the prerequisite of site control under 760 CMR 56.04(1)(c).

5. From the very early stages of the public hearing, the Board implored the Applicant to reconfigure the site plan in response to clearly expressed local concerns. However, the Applicant was non-committal to this request until October 4, 2007, the same date that it requested the hearing be closed. On that date, the Applicant formally revised its Application during the public hearing by substantially reconfiguring the site plan, as described more fully in the succeeding sections hereof. This allowed the Board and its consultants as well as Town officials only one hearing session to work with the Applicant during the review of this revised proposal.
6. An original public hearing timely commenced on November 29, 2006 and was continued, with good cause to the following dates: January 3, 2007, March 22, 2007, May 24, 2007, June 12, 2007, August 2, 2007, October 4, 2007 and November 1, 2007. The Board reluctantly closed the hearing on November 1, 2007 despite the existence of several unresolved issues.
7. The hearing was closed on November 1, 2007 because, at the conclusion of the October 4, 2007 hearing session, the Applicant presented a letter requesting that the hearing be closed. The Board refuted the Applicant's reasons that the hearing be closed and continued the same to November 1, 2007. However the Applicant failed to appear on November 1<sup>st</sup> although the Board continued to take new evidence and hear expert testimony. Due to the Applicant's failure to appear (and *ad hoc* standards promulgated by the Housing Appeals Committee), the Board closed the hearing.
8. Among the issues that were unresolved as of October 4, 2007 were: (i) concerns over wetlands issues regulated under the Scituate wetlands protection by-law; (ii) ongoing review of the design of the proposed buildings; (iii) parking and traffic concerns; (iv) a review of the applicant's *proforma* per MHP Guidelines; (v) flooding concerns; (vi) miscellaneous concerns raised by the Board's consulting civil engineers. All of these issues were still unresolved after the November 1, 2007 hearing session and remain unresolved to this day.
9. Rather than work with the Board, the Applicant filed a premature appeal to the Housing Appeals Committee ("HAC") on October 23, 2007.
10. On November 9, 2007, the Board issued a decision denying the Applicant's application. A copy of the Board's underlying decision is attached hereto as Exhibit A. Subsequently, HAC proceedings commenced.

11. During the original hearing, the Board utilized the services of legal consultant Jason Talerma, the engineering firm of Pennoni Associates, Inc., and the engineering/environmental firm of Woodard & Curran to assist in the review of the Application. Town officials, boards and commissions, including, but not limited to, the Building Inspector, Conservation Commission, Design Review Committee, Fire Department and Planning Board also contributed a significant amount of information and analysis. The Applicant agreed to bear the expense for all of these consultants. The Board obtained a proposal for review of the Applicant's proforma but the Applicant refused to fund the same. At the time of the issuance of this decision, the Applicant was in arrears on payments due and owing for the Board's peer review and legal consultants.
12. During the original hearing, the Applicant was represented in the original hearing by Attorney Janet Stearns. The Applicant was also represented by Sitec Engineering and McMahon Transportation Engineers and Planners. The Applicant also utilized the services of Dr. Peter Rosen with respect to flooding issues. The Applicant's Architect is Phung/Porzio.
13. While the original hearing was pending, multiple site visits were taken by all Board members and working sessions were held with Board members and the Scituate Design Review Committee.
14. Interested members of the public, as well as organizations such as the Committee for the Preservation for the First Herring Brook and the North and South River Watershed Association participated in the original public hearing. All comments by such interested parties were offered in opposition to the project. Professional Wetlands Scientist Mario DiGregorio provided a written report and testimony to the Board on behalf of the Committee for the Preservation of First Herring Brook.
15. Throughout the original public hearing, the Applicant provided a variety of reports and plans but left unaddressed many of the Board's primary concerns. Nor was the Applicant adequately responsive to the inquiries of the Board's consultants.
16. The Applicant's appeal to the HAC involved extensive procedural disputes. Eventually an evidentiary hearing was held, and, on May 26, 2010, the HAC issued a decision overturning the Board's decision and directing the Board to issue an approval of the application. The HAC imposed only a few conditions, leaving, to the Board, the authority to impose any additional necessary conditions.
17. The Board duly and timely appealed the HAC's decision to the Massachusetts Land Court. The Board also moved for a stay of the HAC's decision but, on August 31, 2010, the Land Court denied the Motion. Accordingly, per the HAC decision and G.L. c. 40B, the Board must issue a decision by September 30, 2010.

18. On September 21, 2010, the Board met to deliberate on this amended decision.
19. The approval authorized by this decision is issued as required by law but does not represent the true interests and position of the Board. The Board's Land Court appeal remains pending and, as of the date hereof, the Board's primary interest is in overturning the HAC's decision.
20. Certain abutters to the Project intervened in the HAC proceedings and also appealed the HAC's decision. Abutters have also filed an appeal under G.L. c 40A.

## II. PROJECT and PROPERTY DESCRIPTION

1. The Project and the Property are described in the plans of Sitec, as revised through September 17, 2007. The Project is also described in the architectural plans of the Phung/Porzio Studio of Architecture, as revised through October 4, 2007. The architectural plans are not stamped by a registered architect as required under applicable regulations. Hereinafter, the collective plans describing the project, as revised, are referred to as the "Plans."
2. The Property contains 15.34 acres - 126 Chief Justice Cushing Highway contains .95 acres and 132 Chief Justice Cushing Highway contains 14.39 acres. Sitec contends that the total buildable area of the Property is limited to 3.94 acres (or 26% of the total acreage). As described below, even this small percentage may be drastically overestimating the amount of buildable acreage.
3. In the area of development as shown on the Plans, the Applicant proposes to place up to seven (7') feet of fill. The area where fill is proposed contains one or more wetland resource areas.
4. As revised, the Project consists of 60 so-called garden-style condominium units arranged in three large buildings, two which contain 21 units and one which contains 18 units. The buildings are proposed to be concentrated on the portion of the Property that is closest to Route 3A, which is a State Highway and a busy commuter road. The Project would be highly visible from Route 3A and the adjacent First Herring Brook.
5. The Project is not within walking distance to any local services and Route 3A does not have sidewalks. To address the total lack of pedestrian services, the Applicant presented (primarily to the HAC) a significant amount of evidence and argument regarding the purported benefits of a walking trail on the Property that would connect to a yet-to-be built walkway along an abandoned rail-line which may, in turn, provide access to the Greenbush commuter rail station.

6. The immediate area's development is limited to upland areas and is characterized by low density single-family residential uses. Town center (Scituate Harbor) is miles away and the smaller Greenbush Village is approximately a mile away.
7. The Applicant proposes public water and a private wastewater treatment facility.
8. The Property is located off of Route 3A and is adjacent to the First Herring Brook, a river in the Town of Scituate. The First Herring Brook is connected to the North River, which is a State designated scenic river. Scituate is a coastal community. This area of Town exhibits great natural beauty and environmental sensitivity. The Property is in an area that is designated for preservation by the Town's Master Plan and Zoning Bylaws. The Master Plan and Zoning Bylaws favor housing development in village centers.
9. The Property is extremely low lying with a high elevation of 24 feet in the southwest corner. Most of the site is well below this elevation. There is substantial and undisputed evidence that the Property floods during nearly every significant period of rainfall and/or ocean storm event. The Applicant's proposed filling and re-grading will alter the currently existing flooding characteristics of the Property and the surrounding parcels.
10. Flooding concerns were addressed in each of the reports from Woodard & Curran ("W&C"). These reports, dated March 20, 2007, May 24, 2007, June 7, 2007 and October 3, 2007, made repeated inquiries into flooding relating concerns that were not addressed by the Applicant. Unfortunately, the Applicant was not fully responsive to the flooding concerns that were raised in W&C's technical reviews. Among other concerns, W&C also questioned the Applicant's calculation of purported Land Subject to Flooding, an issue that the Applicant did not address (but ultimately conceded) until the 10/4/07 hearing.
11. The Property is in the A-1 and Saltmarsh and Tideland Conservation zoning districts and the Flood Plain and Watershed Protection overlay zoning district. The Saltmarsh and Tideland Conservation zoning district is adopted for the purpose of "designating and protecting saltmarsh and tideland natural resources" and places great restrictions on development within its boundaries. The purpose of the Flood Plain and Watershed Protection District is to protect health and safety of residents from development in low-lying areas, to protect water supplies, and to protect environmental resources. Like the underlying districts, the overlay district places great restrictions on development within its boundaries. This project would not be possible under existing zoning bylaws.
12. The Property is also located along the North River Scenic Corridor.
13. The Property is located within a Zone II well-head protection area.

14. The Property contains area designated as Priority and Estimated habitat for rare species, as contained in the atlas promulgated by the Natural Heritage and Endangered Species Program of the Massachusetts Division of Fisheries and Wildlife.
15. Of great significance in the Board's proceeding is the impact of wetlands. The Town of Scituate has adopted a local Wetland Protection By-law that is significantly more stringent than the State Wetlands Protection Act. The Applicant has not requested any waivers from the local wetlands protection by-law. The HAC erroneously concluded that no locally defined wetland exists but the Board disagrees. There is a large and growing area of locally defined wetland and associated buffer zone on the Property. All or nearly all of the Eastern-most building and its associated parking area is in an area protected under the local bylaw. This area would be wholly destroyed by the Project. The Applicant has proposed no mitigation or replication for this loss.
16. Civil Engineering and traffic issues were reviewed by the Board's consultant James Comeau of Pennoni Associates, Inc. ("Pennoni"). Pennoni issued reports dated March 9, 2007, June 7, 2007 and October 31, 2007. The Applicant did respond to many inquiries raised by Pennoni but, as highlighted in Pennoni's 10/31/07 memo, the Applicant has failed to address a variety of issues regarding utilities, landscaping, parking, construction details, hydrants, drainage, snow storage and dumpsters.
17. The Buildings' design was reviewed by the Board with the assistance of the Scituate Design Review Committee ("DRC"). The DRC met with the Applicant on September 12, 2007. The DRC issued a memorandum, dated September 18, 2007, addressing shortcomings in the design. The DRC presented its findings on October 4, 2007 and commented that the revised architectural plans (also dated and submitted on 10/4/07) did not fully address their concerns. In that there was inadequate time to fully assess the revised plans, the Board directed the DRC to meet in advance of the 11/1/07 hearing and present their findings. At the 11/1/07 hearing, the DRC presented a new memo, dated October 31, 2007. The DRC stated that the Applicant was generally unresponsive to its prior concerns, including, but not limited to: the mass of the buildings, the inadequacies of the floor plans, failure to design the project in a manner that accounts for the visibility of the project from Route 3A and failure to consider smaller buildings in a townhouse format. Of equal concern is that the architectural designs are not consistent with the footprints shown on Sitec's site plans. Nor are the floorplans consistent with the elevations prepared by the same architect. Building Code violations are evident throughout the design. In light of these inconsistencies, and without reliable stamped architectural plans, it is impossible to fully evaluate the designs proposed by the Applicant.
18. During the hearing, the Board raised many concerns regarding the marketability of so-called garden-style condominiums in Scituate. Based upon available market

data, the condominium market in Scituate is weak, specifically for the style of units proposed by the Applicant. The Applicant never addressed this issue and refused to allow peer review with respect to the same. The Applicant did not provide any updated market data or a proforma, as repeatedly requested by the Board.

### III. FINDINGS

In addition to the foregoing findings, the Board hereby finds as follows:

1. During the local public hearing, the Applicant failed to adequately respond to inquiries regarding flooding issues and did not provide sufficient information to allow the Board to evaluate this vital issue. Nor did the Applicant allow for proper peer review of this subject. The Board maintains its finding that the Project will exacerbate the risk of flooding to both residents of the Project and residents of surrounding parcels. Flooding issues are an ongoing topic of litigation with the Applicant.
2. During the local public hearing, the Applicant failed to adequately respond to inquiries regarding wetlands issues and did not provide sufficient information to allow the Board to evaluate this vital issue. Nor did the Applicant allow for proper peer review of this subject. As part of the HAC's proceeding, two experts retained by the Board (Lisa McIntosh and Arthur Allen III) studied the issue and concluded that a large and growing wetland area does, in fact, exist. The Board agrees with their findings. Although the HAC disagreed with these findings, the issue is a primary issue in ongoing litigation against the Applicant and the HAC. The existence of the local wetland and buffer zone would make the Project, as proposed, impossible to build; and the construction of the Project would destroy the wetlands. Accordingly, if the Project is built hereunder and the Board prevails in its appeal of the HAC decision, the Project must be demolished. In such event, the Wetlands must be restored.
3. The Board finds that the Applicant must provide adequate security to demolish the Project and restore the affected area, including the wetlands, should the Town or the abutters prevail in their appeal.
4. The Board was encouraged by the Applicant's redesign of the Project but finds that the Applicant has not allowed sufficient time to study the design further and work with the Applicant on further modifications. The Applicant did not commit to the revised plan until the last hearing at which it participated. At present, the plans have many internal conflicts that cannot be reconciled without further modification. It is vital that these inconsistencies be revised at the local level so that the Board can fully and fairly evaluate the proposal. The Applicant's refusal to participate in the public hearing after October 4, 2007 disabled the Board from completing this process. The Applicant has also failed to address the reasonable

and learned comments by the DRC. Accordingly, the Board finds that before construction, the Project's final design must undergo more review.

5. The Board finds that the Project will destroy and displace valuable open space that has expressly been designated for preservation. Accordingly, the Board finds that the Applicant must provide mitigation for such loss.
6. The Board finds that Low Impact Development (LID) standards must be employed in the construction of the Project in order to limit impacts to the environment
7. The Board finds that the Project is inconsistent with general planning principles espoused by the Town of Scituate and the Commonwealth. The Project is inconsistent with smart-growth principles in that it will replace valuable environmental resources with a large project that is inconsistent with surrounding development patterns. The Board finds that residents of the Project must have adequate means to access the local Greenbush Village and Commuter station by foot or bike. Accordingly, the Board finds that, prior to construction, the Applicant must construct either a sidewalk along Route 3A to the Greenbush commuter rail station; or its planned walkway to a completed and functional rail trail, as it has proposed.
8. The Board finds that the Applicant has not yet adequately demonstrated that the Project's stormwater management plan is satisfactory. Stormwater management is a matter that is regulated both locally and under state standards. The Applicant has failed to fully respond to the inquiries of the Board's consultants. Given health, safety and environmental concerns that are related to proper stormwater design, the Board finds that further review of stormwater management is required prior to the issuance of building permits.
9. The Board finds that the Applicant must provide financial security to ensure the full and proper installation of Project infrastructure.
10. The Board finds that the Project provides a bare minimum of affordable units. The Applicant has claimed that Scituate is in dire need of affordable housing. Accordingly, the Board finds that the Applicant can and must provide additional affordable housing units.
11. The Board finds that the Town has a vested interest in issues regarding excess profit. This finding is based upon the fact that any excess profits are to be paid to the Town. Accordingly, the Board finds that this issue is goes beyond issues that are the sole province of the Applicant's subsidizing agency.
12. The Board finds that the Town has a vested interest in issues arising under the deed riders for the Project's affordable units. This finding is based upon the fact that the Town has potential rights to purchase the affordable units. Accordingly,



the Board finds that this issue goes beyond issues that are the sole province of the Applicant's subsidizing agency.

13. The Board finds that the conditions imposed in the following section are necessary in order to properly address local concerns. The Board finds that such conditions will not render the Project uneconomic. To the extent that such conditions do render the Project uneconomic, the Board finds that the local concerns in imposing the same outweigh the potential benefits of the affordable units that have been proposed.
14. The Board finds that the waivers that have been granted will cause adverse impacts to vital local concerns. To mitigate impacts posed by such waivers, the Board finds that it must impose the conditions included in the following Section.
15. The Board finds that, to the extent that the HAC has the requisite authority to impose conditions of approval, none of the conditions stated herein are inconsistent with the basic conditions stated in the HAC's decision.

#### IV. DECISION AND CONDITIONS

Upon motion, duly seconded, the Board unanimously voted to approve the Project, subject to the following conditions:

1. The Applicant's proposal is conditionally approved only because the law requires that the Board issue an approval. This approval shall be null and void if the Board prevails in its ongoing appeal of the HAC's decision.
2. The Board finds that this decision and approval shall be ineffective, and no building permits may issue, unless and until any appeals by third parties are dismissed with finality.
3. Except as may be otherwise required herein, the Project shall be constructed in accordance with the Plans and the Final Site Plans (as defined below).
4. To avoid any undue delays, final, fully designed site plans (the "Final Site Plans") shall be submitted to the Board, the Board's designated engineer and the Building Inspector no less than 45 days prior to the application for building permits or the commencement of construction of the project. This is the minimum amount of time that is necessary in order to review plans of the scope and complexity that are required for construction of the Project. The Final Site Plans shall be of a quality and level of detail sufficient to allow the Building Inspector, the Board, and its consulting engineer to review the Final Site Plans for consistency with the Plans, the terms of this Comprehensive Permit, legal requirements and industry standards. No construction shall commence and no building permits shall issue under this Comprehensive

Permit until the Board, in consultation with any engineer that it may choose to retain, has approved the Final Site Plans as being in conformance with this Decision. If no written response or comments have been given to the Applicant by the Board concerning the Final Site Plans within forty-five (45) days after the Final Site Plan submission date, the Final Site Plans, as delivered, will be deemed to have been approved, provided that, for good cause shown, the Applicant shall allow a 30 day extension of such approval period. Nothing herein shall be construed to limit or otherwise affect the Building Department's authority and obligations under the State Building Code. The Final Site Plans shall include, but not be limited to, complete construction plans, final stormwater management plans, construction sequencing plan, an erosion control plan, a landscaping plan, and a lighting plan, as well as all other plans that are customarily submitted for projects of this scope, as may be determined in the discretion of the Board's engineer and the Building Inspector. The 45 day time period under this paragraph shall not commence if the Board's engineer notifies the Applicant in writing that the Final Site Plans are incomplete.

5. No building permits may be issued and no construction may commence unless and until the Applicant provides the Board with evidence that it either has closed on a construction loan that is adequate to build the project, or has adequate equity to complete the Project.
6. To adequately mitigate for the lost open space parcel on the Property, the Applicant shall either: (a) provide an equal amount open space on another parcel which provides, in the opinion of the Board, equivalent attributes; or (b) provide the Town with a sum of funds that will enable the Town to purchase a lot of equivalent area and attributes.
7. To provide adequate security in the event that the Board (or a third party) prevails in its current appeal, the Applicant shall provide a cash deposit, passbook, tri-party agreement or bond in an amount that is deemed adequate to pay for demolition of the Project and restoration of the wetlands and open space on the Property. The amount of such security, and a reasonable contingency, shall be determined by the Board and any consultants that it may choose to retain. Such security shall be governed by a binding agreement which is subject to the review and approval of the Board's Counsel, prior to the issuance of building permits and commencement of construction. Should the Board (and a third party) not prevail in its appeal, all security under this paragraph shall be released. In order to assist in any required restoration, the Applicant shall provide, with the Final Site Plans, an existing conditions plan which catalogs, in detail, existing topography, soil conditions and vegetation. Such plan shall be subject to the peer review by the Board's consultants.
8. In order to provide adequate accommodations for pedestrian safety, no building permits may be issued unless and until the Applicant either: (a) constructs a sidewalk along Route 3A to the Greenbush roundabout at the intersection of Rte

123 and Route 3A; or (b) the Applicant provides a paved walkway to a fully completed and functional walkway and bridge along the railroad bed to Greenbush.

9. During the construction of the Project, the Applicant shall be responsible for the scheduling of a meeting with the Board or the Board's designated engineer at least once every month to discuss the progress of construction. Failure to schedule and attend such a meeting may be grounds for a stop work order.
10. The Final Site Plans shall include a list of measures to ensure that Low Impact Development (LID) standards are implemented to the maximum extent feasible. The Board may retain a consultant, at the Applicant's expense for review of plans for compliance with LID standards. The Board, in consultation with such consultant, may mandate additional LID measures to be implemented by the Applicant.
11. The final landscaping plan shall exhibit a detailed planting list. All plantings shall be guaranteed by the Applicant for at least two years. Maintenance of the landscaping shall be ensured by the Applicant in assurance with a maintenance Plan reviewed and approved by the Board and/or its designated consultant. Only environmentally friendly landscaping products and fertilizers may be used.
12. The Final Site Plans shall include a construction mitigation plan that will address all aspects of construction mitigation, including, but not limited to: (i) excavation activities; (ii) provisions that meet the prior approval of the Fire Department and Police Department for traffic flow and emergency vehicle ingress/egress along any partially constructed driveways within the Project; (iii) stockpiling of materials; (iv) a concise construction mitigation plan; and (v) erosion control plan.
13. The Final Site Plans shall include a narrative of the construction sequencing for the Project. Such narrative shall include a phasing plan for the Project. The Board may impose reasonable amendments to such phasing plan, to address public safety issues.
14. No building permits shall be issued until the Applicant provides the Board with evidence that it possesses adequate permits and/or connections to a viable water supply, with sufficient pressure for the fire suppression system, and wastewater disposal system.
15. The Final Site Plans shall contain a final design of the drainage system that exhibits compliance with all applicable best management practices, any applicable Stormwater Management Guidelines promulgated by the DEP or the Commonwealth of Massachusetts and any standards that may be applied under local bylaws or guidelines, as well as reasonable requirements that may be imposed by the Board, in consultation with its engineer. The Massachusetts Stormwater Guidelines shall apply to the entire stormwater management system

even if there are no wetland resource areas present. Should any requirements reasonably imposed by the Board's engineer result in a material change to any aspect of the Project, the Board's approval under 760 CMR 56.05(11) must be obtained. Additionally, an operation and maintenance plan for the stormwater system must be approved by the Board's engineer prior to issuance of building permits.

16. With respect to each of the Applicant's requests for waivers from local by-laws and regulations, the Board hereby decides as follows:
  - a. The Board approves waivers to dimensional requirements in the Zoning Bylaw only to the minimum extent necessary in order to build the Project that is shown on the Plans.
  - b. No waivers are granted from requirements that are beyond the purview of G.L. c. 40B, §§20-23.
  - c. No waivers are granted from permit or inspection fees. No waivers are granted from sign regulations.
  - d. Any by-law or regulation not expressly waived hereunder shall be strictly enforceable. Any subsequent revision to the Plans that require additional or more expansive waivers of any local by-laws or regulations must be approved by the Board in accordance with 760 CMR 56.05(11).
17. To address unmet needs for affordable units, at least 33% of units in the Project shall be restricted as affordable. All of the Project's affordable units shall be restricted, in perpetuity for sale or lease to households earning no more than 80% of AMI. Affordability shall survive foreclosure. So as to provide a window of affordability, the actual rents or sale prices of these affordable units shall be an amount that is deemed affordable to households earning no more than 70% of the AMI. The deed riders that are required in order to ensure the restrictions on affordability is subject to the review and approval of the Board, which may consult with Town or Special Counsel. Such approval must be provided prior to the issuance of building permits and evidence of the recorded deed rider/restriction must be provided to the Board and the Building Inspector prior to the issuance of occupancy permits.
18. The maximum number of affordable units allowed by law and applicable subsidy program, but no more than seventy (70%) percent of the units, shall be reserved for present residents of Scituate, or the parents of present Scituate residents, or employees of the Town of Scituate or teachers employed by the school district serving Scituate. A lottery shall be established in a form approved by the Board. No building permits may be granted until the Board, in consultation with its Counsel, has approved the lottery plan. The Board shall be kept apprised of all events in the lottery process.

19. At a minimum, one out of every four units initially sold must be an affordable unit. Sales of excess market rate units shall result in an immediate stop-work order.
20. The Monitoring Agent for the project shall be a qualified entity approved by the Board. The Applicant shall provide the Board with copies of any and all correspondence, documents and statements provided by the Applicant to the Monitoring Agent or from the Monitoring Agent to the Applicant. The Monitoring Services Agreement(s) must be approved by the Board in consultation with its counsel and executed by the Board and all other relevant parties prior to the issuance of building permits.
21. The Applicant may earn no more than 20% profit for the project, with all excess profit being paid to the Town of Scituate for the exclusive purpose of facilitating affordable housing. In the calculation of profit, the Applicant shall conform with existing law. The Town, as beneficiary of excess profits, may enforce compliance with this paragraph.
22. Any and all Regulatory Agreements are to be executed by and between the Town, the Applicant and MassHousing and shall be subject to the prior review and approval of the Board, in consultation with its counsel. The Regulatory Agreements shall be executed and recorded prior to the issuance of any building permits. Additionally, the Applicant shall provide the Board with a copy of any and all limited dividend audits certified cost/income statements, as well as any other correspondence or documents that are shared by and between the Applicant and the Monitoring Agent and their respective sub-contractors. The Applicant shall also provide the Board with a copy of each deed and each HUD settlement statement for the initial sale unit. The Board and the Town shall not be bound by the post-construction audit prepared by any third party.
23. To address the need to secure completion of infrastructure (roadways, driveways, sidewalks, drainage, lighting, utilities, wastewater, landscaping, etc) and completion of finished top coat paving, landscaping, curbing or lighting for the Project, the Board hereby imposes the following requirements and restrictions:
  - a. No occupancy permit shall be issued until all infrastructure has been completed up to, and including, the location of the building requiring the permit. Infrastructure includes all drainage, utilities, base and binder course as depicted on the approved final site plans. Installation and completion of infrastructure must be approved by the Board's or Town's Engineer, in writing, and signed off by the ZBA.
  - b. Following this approval and prior to the issuance of the occupancy permit for the third building in the Project, the Applicant shall provide to the

Town a passbook, tri-party agreement or cash deposit to cover the cost of all remaining infrastructure, the final course of pavement, curbing, lighting and landscaping. The terms of any such security and the amount there of shall be approved by the Board, who may consult with the Counsel and/or its Engineer.

- c. Upon satisfactory completion of all such infrastructure, the Board shall authorize the release of occupancy permits as aforesaid. No occupancy permit shall be issued without such authorization and such authorization shall be ineffective unless it is in writing.
- d. No occupancy permits shall be issued until the Applicant complies with any other requirements or specifications that are reasonably required by the Board or its engineer after review of the final construction and the actual installation of Project infrastructure.

24. During construction, the Applicant shall maintain all feasible and reasonable means of dust control and shall collect all debris on a daily basis. No construction may occur on Sundays or on New Year's Day, Memorial Day, July 4<sup>th</sup>, Labor Day, Thanksgiving, Christmas Eve or Christmas. No construction may begin before 8:00 a.m. nor continue past 5:00 p.m., unless approved in advance by the Board. Interior construction that doesn't generate excessive noise may occur on evenings and weekends.

25. Snow and ice removal shall be the responsibility of the Applicant. The Final Site Plans shall indicate a suitably sized and located area for snow storage. Snow and ice removal shall be undertaken as soon as is practicable after snowfall and shall not impede or obstruct the roadway and driveways or the sight lines thereon and so as not to impede or obstruct the hydrants. Accumulated ice on the roadway, driveways and parking lots shall be promptly removed or sanded such that vehicles may pass safely. The use of sodium-based de-icers shall not be permitted.

26. The Board's engineer shall be charged with general oversight over the construction activities of the project. In this capacity, the Board's engineer shall provide monthly reports to the Board during times of active construction. In addition, the Applicant shall also provide the Board's engineer with any pertinent photographs, logs, data or other information that may be helpful in the monitoring process.

27. Any and all condominium and/or homeowner's association documents are subject to the review and approval of the Board's counsel prior to the issuance of any building permits.

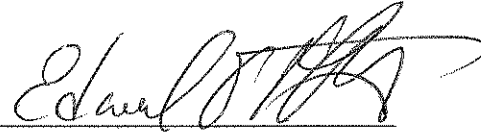
28. The open space shown on the Plans shall be restricted in perpetuity by a proper conservation restriction approved by the

Commonwealth and the Town of Scituate. Such restriction shall be subject to the review and approval of the Town prior to the issuance of any building permits.

29. The fees of the Board's engineer's, the Board's Counsel's and any other consultants hired by the Board for any services contemplated hereunder shall be paid by the Applicant in the manner prescribed by G.L. c. 44, §53G. Failure to provide prior funding for such services shall be grounds for a stop-work order.
30. Upon their construction, the buildings in the proposed development shall be considered non-conforming and no exterior alterations, expansions or changes shall be permitted without an approved project modification under the provisions of 760 CMR 56.05(11).
31. Water-saving devices shall be utilized throughout the buildings.
32. Any and all easements that may be necessary shall be in a form approved by the Board's Counsel and must be recorded prior to the issuance of building permits.
33. The term "Applicant" shall refer to the current Applicant(s) and its assignees, successors, affiliates, subsidiaries or any other entity related thereto. Any sale, transfer or assignment of the permit; or any sale of more than 50% of the assets or interests in the Applicant; or any change in the control or management of the Applicant shall require Board approval.
34. This permit shall expire if construction is not commenced within three years from the date it is filed by the Board with the Town Clerk. For the purposes of this paragraph, commencement of construction shall be defined as the full construction of the foundation for at least two of the project's proposed buildings. Once commenced, the Project must be completed in three (3) years.
35. Any failure by the Applicant to adhere to any of the conditions herein shall constitute a violation of this comprehensive permit in its entirety, except that any finding, by any court of competent jurisdiction, that any condition hereof is unenforceable shall not otherwise affect the enforceability of the remainder of the conditions hereof.
36. In the event of any conflict between the conditions imposed by this Comprehensive Permit and the terms of any other document, agreement or policy regarding this project, the terms and conditions of this permit shall control. Similarly, should any conditions of this permit conflict with the conditions of any approval of any other State, Local or Federal entity, the terms of this permit shall control.

37.

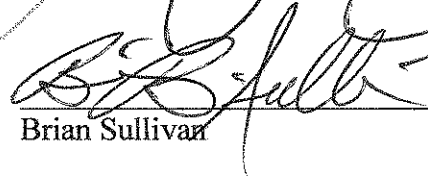
Appeals of this permit may taken in  
accordance with G.L. c. 40B, §§20-23.



Edward C. Tibbetts



Sara Trezise



Brian Sullivan

September 21, 2010

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