



**Town of Southborough
Board of Appeals
Southborough, Massachusetts 01772**
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Southborough, MA 01772-9109
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Southborough, MA 01772

Book: 42985 Page: 198

NOTICE OF DECISION

**APPLICATION FOR
A COMPREHENSIVE PERMIT**

**Absolut Realty Trust
0 Oregon Road
(15-16)**

RE: Application of William Depietri as Trustee of Absolut Realty Trust, d/b/a Capital Group Properties, LLC of 259 Turnpike Road, Suite 100, Southborough, MA 01772, for Comprehensive Permit pursuant to M.G.L. c. 40B.

DATE: October 21, 2010

Sitting as a Board:

Sam R. Stivers, Chairman
Edward D. Estella
Matthew C. Hurley
Regina McAuliffe
Leo F. Bartolini, Jr.

For Petitioner:

Angelo Catanzaro, Esq.
100 Waverly Street
Ashland, MA, 01721

PROCEDURAL HISTORY

1. On or about March 29, 2010, the application of William Depietri¹, as Trustee of Absolut Realty Trust (hereinafter “Applicant”), was filed with the Southborough Town Clerk for a Comprehensive Permit pursuant to G.L. c. 40B to authorize the construction of fifteen (15) condominium units (14 attached, 1 single family), four of which are to be deemed affordable, on approximately 6.56 acres of land (Map 15, Parcel 16) situated on Oregon Road.
2. A duly advertised public hearing was opened on April 28, 2010 by the Southborough Zoning Board of Appeals (the “Board”) and continued to the following dates:
 - a. May 26, 2010
 - b. July 19, 2010
 - c. July 28, 2010
 - d. September 7, 2010
 - e. September 21, 2010
3. The public hearing was closed by the Board on September 21, 2010.
4. For a record of the proceedings at the hearings after the initial hearing on April 28, 2010, refer to the stenographic record of the hearings.
5. The subject “Property” (also referred to herein as the “Site”) consists of approximately 6.5 +/- acres of land on Oregon Road, Southborough, Massachusetts. The Property is shown on Map 15, Lot 16 of the Town of Southborough Assessor’s Map.
6. The Property is shown on a plan entitled “Locus Plan of Stonebrook Village in Southborough, MA, dated September 4, 2009, Connorstone Engineering, Inc. Consulting Engineers and Land Surveyors, with revisions through July 26, 2010” consisting of eleven (11) sheets as follows: Locus Plan (Sheet 1); Existing Conditions Plan (Sheet 2); Site Plan (Sheet 3); Layout Plan (Sheet 4); Grading Plan (Sheet 5); Utility Plan (Sheet 6); Roadway/Driveway Profiles (Sheet 7); Erosion Control Plan (Sheet 8); Construction Details (Sheets 9, 10 and 11).
7. The Property is also shown on two plans entitled “(1) Landscape Plan of Stonebrook Village in Southborough, MA, and (2) Landscape Detail of Stonebrook Village in Southborough, MA, each dated June 30, 2009 with revisions through June 30, 2010, Connorstone Engineering, Inc. Consulting Engineers and Land Surveyors” .
8. The following materials were appended to the original application form:
 - a. Certified Abutters List;

¹ William Depietri, Trustee of Absolut Realty Trust u/d/t June 13, 2001 and recorded at the Worcester District Registry of Deeds in Book 24216, Page 19 holds legal title to the entire parcel. William Depietri, as President of Capital Group Properties LLC is also the developer.

- b. List of Waivers;
 - c. MassHousing Site Approval Letter
 - d. July 21, 2008 SHOPC Meeting Agenda
 - e. July 29, 2008 Board of Selectmen Meeting Agenda
 - f. Site Eligibility Application Letters
 - g. MassHousing Project Eligibility Application
 - h. Marketing Letter from Berkshire Realty Group
 - i. Driving Directions to Stonebrook Village Site
 - j. Community Information
 - k. Market Rate Family Home Features
 - l. Affordable Family Home Features
 - m. Town of Southborough Assessor's Map
 - n. Existing Conditions Plan
 - o. Proposed Locus Plan
 - p. Aerial Photo Showing Project Area
 - q. Front Building Elevation
 - r. First Floor Plan
 - s. Second Floor Plan
 - t. MassDEP Superseding Order of Resource Area Delineation
 - u. Traffic Impact Assessment by Abend Associates
 - v. Environmental Analysis by Carr Research Laboratory, Inc.
 - w. Master Deed of Stonebrook Village Condominium
 - x. Stonebrook Village Condominium Trust
 - y. Quitclaim Deed
 - z. Absolut Realty Trust – Declaration of Trust
9. Prior to the public hearing of May 26, 2010, the following additional materials were submitted to the Board:
- a. Correspondence from William A. Depietri, President of Capital Group Properties, dated May 19, 2010 to the Board with attachments:
 - i. Specification sheets for proposed outdoor lighting.
 - ii. Support letter from the Southborough Housing Opportunity Partnership Committee.
 - iii. 5 lot subdivision concept plan.
 - iv. DEP wetlands map showing the project area and neighboring Southborough Open Land Foundation ("SOLF") land.
 - v. Aerial photo showing the distance from the house at 2 Brookside Road to the nearest unit in the proposed development.
 - vi. 11"x17" plan shown a 3' wide pedestrian/bike lane and 6 grass guest parking spaces with Grasscrete pavers, or equal.
 - viii. Grasscrete paver specification sheets.
 - b. Correspondence from abutters, Andre Mehta and Pamela Saitta dated May 18, 2010;

- c. Correspondence from Southborough Open Land Foundation (“SOLF”) dated May 18, 2010;
10. By letter dated September 16, 2010, the Applicant provided additional information to the Board, including:
 - a. Copy of letter to Lisa Braccio regarding landscape screening
 - b. Revised Erosion Control and Construction Sequencing Plan
 - c. Revised NPDES Stormwater Pollution Prevention Plan
 - d. Energy Star qualified homes standards
 - e. Copy of revised “Typical Way Travel Section”. The July 26, 2010 plan submission already showed the road and common driveway widths on the detail.
 - f. Copy of DEP wetlands map (previously submitted on May 19, 2010)
 - g. Estimated Project Completion Schedule
11. The following are the most current versions, as of September 21, 2010, of the engineering drawings, plans and documents provided to the Board:
 - a. Plan set entitled: “Locus Plan of Stonebrook Village in Southborough, MA, dated September 4, 2009, Connorstone Engineering, Inc. Consulting Engineers and Land Surveyors, with revisions through July 26, 2010” consisting of eleven (11) sheets as follows: Locus Plan (Sheet 1); Existing Conditions Plan (Sheet 2); Site Plan (Sheet 3); Layout Plan (Sheet 4); Grading Plan (Sheet 5); Utility Plan (Sheet 6); Roadway/Driveway Profiles (Sheet 7); Erosion Control Plan (Sheet 8); Construction Details (Sheets 9, 10 and 11)
 - b. Plan (two sheets) entitled “(1) Landscape Plan of Stonebrook Village in Southborough, MA, and (2) Landscape Detail of Stonebrook Village in Southborough, MA, each dated June 30, 2009 with revisions through June 30, 2010, Connorstone Engineering, Inc. Consulting Engineers and Land Surveyors”.
 - c. Traffic Report entitled “Traffic Impact Assessment, Oregon Road Residential Development, Southborough, MA, prepared by Abend Associates dated October 24, 2008”.
12. All of the engineering drawings, plans and documents listed above, together with any updates to such engineering drawings, plans and documents, provided to the Board prior to or during the hearing on September 21, 2010, are collectively referred to as the “Plans”. All of the Plans, plus any other submittals listed above, together with any updates to such submittals and other submittals as provided to the Board prior to or during the hearing on September 21, 2010, will collectively be referred to as the “Plans and Submittals”. In addition, the correspondence listed in Exhibit 3 hereto was received by the Board relative to the Project.
13. Access to the Property is from Oregon Road, a public way, via frontage of approximately 50.26’. The structures will be serviced by a private road approximately 567 feet in length with a cul-de-sac and a common driveway.

14. The proposal by the Applicant calls for the construction of eight (8) buildings containing a total of fifteen (15) two and three bedroom units.
15. As required in this decision, each unit will be serviced by a public water supply and private on site communal septic system. The water supply is adequate to service all units. Septic and wastewater treatment will be per system designed as approved by the Board of Health.
16. The Board utilized the services of John Woodsmall, Town Engineer, to assist in the review of the application materials—particularly the engineering drawings and plans and stormwater calculations. The Town Engineer provided comments indicating his opinion that the development of this project, including the Conditions set forth below, would not endanger public health or safety or the environment.
17. As proposed, four (4) of the units will be restricted for ownership by households at or below eighty (80%) percent of the Southborough area median household income.

FINDINGS

1. The Board finds that Applicant has complied with all rules and regulations of the Town of Southborough as they pertain to the Application for a Comprehensive Permit.
2. The Board finds that the Applicant is qualified pursuant to 760 CMR 31.01 in that:
 - a. Applicant is or will become a “limited dividend corporation” as that term is used in G.L. c. 40B, § 21 and 760 CMR 31.01 (1);
 - b. Applicant has a funding commitment from a subsidizing agency as evidenced by the Project Eligibility Letter from MassHousing dated June 30, 2009, attached hereto as Exhibit 1; and
 - c. Applicant has “control of the site” as that term is used therein in that it has legal and/or equitable interests in the subject property as demonstrated by the fact that the property is owned by William A. Depietri, Trustee of Absolut Realty Trust; Mr. Depietri is the President of Capital Group Properties LLC; and Mr. Depietri is designated as the Owner and Developer on the Application.
3. The Board finds that the Applicant has provided evidence that there exists a regional need for low and moderate income housing and that the Town of Southborough has not met the statutory minima set forth in G.L. c. 40B § 20 or 760 CMR 31.04:
 - a. Qualified Chapter 40B units do not exceed ten (10%) percent of its total housing units, pursuant to M.G.L. c. 40B § 20;
 - b. Nor is affordable housing located on sites comprising one and one-half (1.5%) percent or more of the total land area zoning for residential, commercial or industrial use; and

- c. Nor will the development of affordable housing consistent with this application result in the commencement of construction of such housing on sites comprising more than three-tenths of one percent of such land area.
4. The Board finds that the proposed development is consistent with local needs.
5. The Board finds that the concerns about the proposed development expressed by the Board Members, by the abutters to the Site and by others (for example, Board's concerns about the impact of the construction process on the abutters, the SOLF concerns regarding access to the abutting SOLF property and the concerns of the abutters at 13 Oregon Road and 17 Oregon Road regarding screening along the borders of the Site) have been adequately addressed by the Conditions that are part of this decision.

DECISION

Pursuant to G.L. c. 40B, the Board, after Public Hearings and findings of fact included, but not limited to the facts stated herein, hereby grants a Comprehensive Permit to the Applicant for the construction of fifteen (15) condominium units in eight (8) buildings with associated infrastructure improvements, to be constructed according to the Plans and Submittals as are modified by and subject to the following conditions of approval (the "Conditions"):

Conditions of Approval

General

1. The Applicant, its successors and assigns, shall at all times be a Limited Dividend Organization in good standing and otherwise in accordance with applicable requirements of Chapter 40B and the Massachusetts Department of Housing and Community development ("DHCD") Regulations.
2. Except for the relief granted by the Board relative to specific waivers granted, the Applicant shall comply with all provisions of the General Bylaws, Zoning Bylaws, and all the rules and regulations applicable thereto, including but not limited to the Conservation Commission, Planning Board, and Board of Health generally applicable to a project. The Applicant shall pay all fees of the Town of Southborough imposed generally for construction projects and for the purposes of monitoring compliance of the construction and occupancy of the Project in accordance with this Comprehensive Permit unless otherwise expressly waived in this Decision.
3. The Applicant shall obtain Final Approval from MassHousing in connection with the requirements set forth in the Project Eligibility (Site Approval) letter.
4. The project shall be constructed in substantial conformance with the Plans and Submittals. Any substantial or material deviation from the Plans and Submittals shall require a modification of this Comprehensive Permit by the Board as set forth in 760 CMR 31.03.

5. If between the date this Decision is filed in the office of the Southborough Town Clerk and the completion of the Project, the Applicant desires to change in a material way or to a significant degree the proposed Project as reflected in and approved by this Decision and Conditions, such changes shall be governed by 760 CMR 56.05(11).
6. The development shall be configured to consist two-bedroom condominium and three-bedroom condominium units, for a total of fifteen (15) condominium units with a maximum of 38 total bedrooms. Four (4) of the fifteen (15) dwelling units shall be reserved for ownership by households at or below eighty (80%) percent of the Southborough area median household income in perpetuity (hereinafter, the "Affordable Units"). The Affordable Units shall not be situated so as to segregate the Affordable Units from the Market Rate Units. In the event any handicapped persons are selected and quality for Affordable Units; such units shall be made handicapped accessible in accordance with applicable federal and state requirements, at the Applicant's expense.
7. The Applicant shall execute or cause to be executed: (i) a Master Deed; (ii) Bylaws; and (iii) a Declaration of Trust (or other form of organizational document) for the condominium buildings (collectively, the "Condominium Documents") in a form consistent with the requirements and Conditions of this Comprehensive Permit. All Condominium Documents required to be filed shall be submitted to the Board prior to execution for review to ensure consistency with the Conditions contained herein. Prior to the issuance of a certificate of occupancy, the portion of the Project comprising the condominium building shall be organized as a condominium in accordance with applicable law, the Condominium Documents shall be recorded with the Worcester County Registry of Deeds, and evidence of such recording shall be provided to the Board.
8. Resident pedestrian access to the abutting SOLF land will be provided by the Applicant. In addition, Applicant will include language in the Condominium Documents that permits SOLF trustees, upon reasonable request and no more than six (6) times per calendar year, access through the Project Site to the abutting SOLF property for purposes of fulfilling their obligations of monitoring and stewardship of the SOLF property.
9. As Built Plans:
 - a. As-built drawings for the roads and infrastructure shall be submitted to the Town of Southborough Department of Public Works, prior to the issuance of the 15th occupancy permit.
 - b. As-built drawings shall be submitted to the Town of Southborough Board of Health and to the Building Inspector prior to the issuance of the 15th occupancy permit.
10. The Applicant has proposed, and the Board hereby requires, that all infrastructure shown on the Plans as serving the Project, including but not limited to the following aspects of the development, shall be and shall remain forever private, and that the Town of Southborough shall not have, now or ever, any legal responsibility for operation or maintenance of same:
 - a. All roadways and parking areas (including sweeping and line marking)
 - b. Stormwater management facility
 - c. Snow plowing and ice control

- d. Landscaping
- e. Trash removal
- f. Street lighting
- g. Septic, wastewater treatment and drain utilities (all as located on As-Built plans)

In this regard, the roadway within the development shall never be dedicated to or accepted by the Town of Southborough as a public way.

11. The Project shall be subject to the Southborough Board of Health review of the proposed septic system pursuant to applicable provisions of Title 5 of the State Environmental Code (310 CMR 15.00 et seq.). Any substantive changes required in the Project as a result of the issuance of Septic System Permit Approval, shall be reviewed and approved by the Board pursuant to applicable DHCD regulations.
12. This Comprehensive Permit shall expire two (2) years from the date that the permit becomes final, unless prior to that time substantial use of the Comprehensive Permit has commenced. The Applicant may timely apply to the Board for extensions to the Comprehensive Permit as permitted by law. This two (2) year time period shall be tolled for any time required to pursue or await the determination of any appeal of any other state or federal permit or approval required for the Project.
13. Any Project-related easements on deeds of abutting properties will be recorded at the Worcester County Registry of Deeds prior to the issuance of any building permits for the Project, and evidence of such recording shall be provided to the Building Inspector before such building permits are issued.
14. Deed restrictions shall be incorporated in the Condominium Documents prohibiting trailers, boats, trucks (excluding personal SUVs and personal pick-up trucks) and unregistered vehicles from being stored or parked outside on an overnight basis.
15. The provisions of this Comprehensive Permit Decision and Conditions shall be binding upon the successors and assigns of Absolut Realty Trust, and the obligations shall run with the land. In the event that the Applicant sells, transfers or assigns any of its interest in the development, this Comprehensive Permit shall be binding upon the purchaser, transferee or assignee and any successor purchasers, transferees or assignees. The provisions and limitation of the limited dividend corporation shall apply to the Project regardless of sale, transfer or assignment of the Project. This Decision may be transferred pursuant to the provisions of 760 CMR 56.05(12), upon approval of the Subsidizing Agency, and after submission of notice to the Board.
16. The Project site infrastructure shall be substantially completed prior to the issuance of any Certificate of Occupancy for the Project.
17. The percentage interest of the units in the condominium common elements shall be based on the number of dwelling units. That is, each dwelling unit shall have one-fifteenth (1/15) interest in the condominium common elements, and the condominium fees will be based on this same one-fifteenth interest for each dwelling unit.
18. The Applicant shall copy the Board on all correspondence between the Applicant and any federal, state or Town official, board or commission that concerns the design and/or

conditions set forth in this Decision, including but not limited to all testing results, official filings and other permits issued for the Project.

19. If, at any time after the date of this Decision, the Applicant's subsidizing agency rescinds or revokes its project eligibility determination for the Project, this Comprehensive Permit shall be deemed null and void and have no further effect.
20. This decision is deemed to have become final upon the expiration of the appeal period with no appeal having been filed or upon the final judicial decision following the filing of any appeal, whichever is later.

Affordable Units

21. The Affordable Units shall remain affordable in perpetuity, or if a lesser time the longest period allowed by law, through a Deed Rider in the form approved by MassHousing. Said Deed Rider shall be recorded with the Worcester County Registry of Deeds with the sale of each Affordable Unit and shall run with the land.
22. The Applicant, in conjunction with MassHousing, shall establish the sale price for each Affordable Unit. The Affordable Units shall be made available at a sale price that is affordable to households earning up to 80% of the household median income of the Eastern Worcester County MA, HMFA (as defined by HUD on an annual basis) adjusted for household size, all as more particularly described in the Regulatory Agreement. The maximum sale and resale price for the Affordable Unit shall be set forth in the Regulatory Agreement and Deed Rider.
23. Prior to the advertisement of the Affordable Units for sale, the Applicant shall develop a marketing and resident selection plan for the Affordable Units. The marketing and resident selection plan shall conform to: (i) all affirmative action requirements or other requirements imposed by federal or state regulation; (ii) the "Guidelines for Housing Programs in Which Funding is Provided Through a Non-Governmental Entity" adopted by the DHCD; and (iii) the Local Preference requirements set forth below. The marketing and resident selection plan shall require timely notice to the Board and the Southborough Housing Opportunity Partnership Committee ("SHOPC") of the availability for sale or re-sale of the Affordable Units.
24. Residents of any Affordable Units shall have the same access to all Project amenities (including, but not limited to, recreational facilities and parking) as do residents of non-Affordable Units
25. Unless otherwise prohibited by a federal or state agency under a financing or other subsidy program, not less than seventy-five percent (75%) of the affordable units shall be initially offered to, in order of preference (the "Local Preference"):
 - a. Current employees of the Town of Southborough for at least five (5) years; then
 - b. Current residents of the Town of Southborough who have resided in the Town for a minimum of five (5) years and/or persons who, although not currently residents

of the Town, have previously resided in the Town of Southborough for a minimum of five (5) years in the past fifteen (15) years.

26. The final number of two and three bedroom units, as long as the total number of bedrooms and total number of units do not exceed the number allowed by the comprehensive permit, shall be determined to the satisfaction of the SHOPC, based on future discussions between the Applicant and SHOPC, so as to best reflect the needs of potential purchasers of affordable units and market conditions.
27. The Applicant shall execute or cause to be executed: (i) a Monitoring Agreement; (ii) a Regulatory Agreement; and (iii) a Deed Rider (collectively, the "Regulatory Agreements"). The Regulatory Agreements shall be consistent with the requirements and conditions of the DHCD Regulations, the NEF Guidelines, and MassHousing guidelines and procedures. The Regulatory Agreements shall be in a form approved by MassHousing, as Project Administrator. The requirements of the Regulatory Agreements are incorporated into the Comprehensive Permit by reference. The Regulatory Agreements shall be recorded with the Worcester County Registry of Deeds prior to the issuance of any building permits for the Project, and evidence of such recording shall be provided to the Board.
28. Prior to the issuance of any building permit, the Applicant shall submit to the Board an executed Regulatory Agreement, Monitoring Services Agreement and a draft Deed Rider, which documents shall be approved by the Board and its counsel. Such documents shall contain, at a minimum, the following terms:
 - a. The Affordable Units shall be restricted as affordable in perpetuity to households with less than 80% of the Southborough area median family income;
 - b. The Monitoring Agent for this project shall be Citizens' Housing and Planning Association ("CHAPA") or some other agent as approved by the Board. The Applicant has agreed to enter into an agreement with CHAPA to act as the Monitoring Agent to monitor the limited dividend restrictions imposed under Chapter 40B, and to monitor compliance of the development with the Comprehensive Permits. The Applicant has agreed that the format of such agreement when executed shall be subject to approval by the Board or its agent, and its counsel;
 - c. The right of first refusal to purchase an Affordable Unit on resale shall be granted to the Town of Southborough, or its designee;
 - d. Condominium fees for the Affordable Units shall be identical to the Market Rate Units;
 - e. The Affordable Units shall be identified in the Regulatory Agreement.
 - f. Construction of the Affordable Units shall be proportional to construction of Market Rate Units. For every three Market Rate Units for which a certificate of occupancy is issued at least one certificate of occupancy must be issued for an Affordable Unit.

29. Prior to the issuance of the first building permit, the Applicant shall submit for approval by the Board a Lottery Agent and lottery plan for selection of buyers for the Affordable Units.
30. No more than three certificates of occupancy shall be issued by the Building Inspector for units designated for sale at fair market prices (the “Market Rate Units”) until at least one certificate of occupancy is issued for an Affordable Unit. The proportion of Market Rate Unit certificates of occupancy issued to Affordable Unit certificates of occupancy issued shall at no time exceed 3:1. The Affordable Units shall be comparable to the Market Rate Units in size, bedroom counts and bathroom counts
31. Before the issuance of any building permits, a Regulatory Agreement, substantially in the form currently utilized under the NEF Program and acceptable to the Subsidizing Agency, shall be executed and recorded. The Regulatory Agreement shall provide, among other things, that (a) Affordable Units in the Project will be sold and resold subject to a Deed Rider, in substantially the same form as attached to the Regulatory Agreement and acceptable to the Subsidizing Agency, and (b) the Project Owner’s profit shall be limited to 20% of the total development cost of the Project as defined by the applicable regulations of the Subsidizing Agency. The Deed Rider shall be attached to and recorded with the Deed for each and every Affordable Unit in the Project at the time of each sale and resale, and the Deed Rider shall restrict each such affordable unit pursuant to this Decision in perpetuity. The Deed Rider shall give the Town of Southborough a right of first refusal to purchase the Affordable Unit upon any notice of an impending mortgage foreclosure, which will not affect the “in perpetuity” requirement. The Applicant will comply with the requirements of Mass Housing in connection with all affordable units.

Project Design

32. Prior to issuance of any building permit for the Project, final building plans shall be submitted to the Building Inspector for review and approval relative to their consistency with the Comprehensive Permit, with any material differences identified by the Building Inspector to be reviewed and approved by the Board. The Board intends that the Project Site infrastructure be fully completed prior to the issuance of any Certificate of Occupancy for the Project.
33. Width of primary access road shall be a minimum of 24’ from Oregon Road to the cul-de-sac. The common driveway width beyond the cul-de-sac shall be a minimum of 18’.
34. All drainage, culverts, septic system components, underground utilities and chambers shall be constructed as per the Plans submitted by the Applicant.
35. Access along all streets and driveways shall meet a minimum height clearance of fifteen feet (15’) to allow for proper ingress/egress of emergency vehicles.
36. Building address, numbering and address signage shall be as specified by the Town Fire Chief.

37. The Applicant has requested, and the Board has granted, the waivers from the Southborough Subdivision Rules and Regulations, Zoning By-Laws, and other local by-laws and regulations as specified in Exhibit 2 hereto.
38. No construction shall commence until detailed construction plans and specifications have been reviewed and have received final approval from the Subsidizing Agency and until such agency has granted or approved construction financing, and until subsidy funding for the Project has been committed.

Project Construction

39. The Applicant shall maintain a copy of the Plans and this Decision at the Site during construction.
40. Before the Applicant begins any construction activities, the Applicant shall deliver to the Board, with copies to the Building Inspector, Planning Board, Board of Health, Conservation Commission, Superintendent of the DPW, Fire Chief, and Police Chief, an initial projected construction activity plan (including expected timing of the included construction activities) . This plan will be updated by the Applicant at least every six (6) months during the construction process, with such updated plans distributed as above.
41. At least fourteen (14) days before the start of construction, the Applicant shall provide written notice to the Board and to all parties that were entitled to receive notice of the Board's public hearing on this application of the anticipated construction start date and the anticipated construction schedule.
42. The Project shall conform to all requirements of the Southborough Water Department for utility connections unless waived hereunder.
43. During construction periods of significant removal or delivery of materials to or from the site, Applicant will arrange for necessary police traffic control and appropriate signage, all as may be determined by the Chief of Police.
44. Any portion of Oregon Road that is altered or disturbed during construction activities shall be repaired and repaved in a manner acceptable to the Superintendent of the Southborough Department of Public Works.
45. During all blasting and construction activities (including materials or equipment delivery activities) the Applicant shall conform with all local, state, and federal laws regarding noise, vibration, dust, sediment, and blocking of Town roads. The Applicant shall sweep that portion of Oregon Road adjacent to the project whenever necessary. The Applicant shall at all times use all reasonable means to minimize inconvenience to residents in the general area. Construction (including materials or equipment delivery) shall not commence on any day before 7:00 A.M. and shall not continue beyond 6:00 P.M., except on Saturdays, when all construction (including materials or equipment delivery) activities may commence no earlier than 8:00 A.M. and must cease no later than 2:00 P.M.. There shall be no construction (including materials or equipment delivery) on any Sunday or on any state or federal legal holiday.

46. During the period of construction, no vehicles of construction workers and no construction vehicles or equipment shall be parked on Oregon Road, or any other public way of the Town.
47. During the period of construction, the Applicant shall not be allowed to locate any construction trailer on the Property.
48. During the period of construction, the Site shall be secured in a manner approved by the Building Inspector so as to prevent personal injury or property damage.
49. No bulk construction materials (including, but not limited to, building materials, fill material or landscaping materials) shall be stored on site during construction, in excess those materials to be used for the construction process during the next one hundred eighty (180) days.
50. If requested by the Building Inspector, the Applicant will provide appropriate fill and grading calculations, to the satisfaction of the Building Inspector, before issuance of a building permit for any work on the Project Site.
51. During construction, the Applicant shall employ industry-best-practices dust, dirt and mud control procedures on a daily (or more frequently, as necessary) basis to eliminate dust, dirt and mud moving off of the Site.
52. During construction, the Applicant will install and maintain construction fencing along all borders of the limits of disturbance on the Site and will ensure that no construction activity occurs on any abutting property.
53. The Applicant shall provide Port-a-Potties for use by workers during construction.
54. The Applicant shall provide ninety-six (96) hours advance notice to all affected parties before any water/utility disruptions are to occur.
55. The Applicant shall use only controlled density fill for back filling trenches on Oregon Road to prevent settlement in accordance with the Southborough Department of Public Works requirements.
56. As part of the construction process the Applicant will conduct appropriate tests of the water system to confirm that the necessary water flow is available to meet Town standards pursuant to applicable Town regulations, to the satisfaction of the Town Engineer and the Town Fire Chief.
57. Contract documents, including working drawings and specifications for any building construction, renovation, modification, addition, or removal shall undergo the usual and customary review and approvals of the Building Inspector, the Board of Health, the Fire Department, or any other applicable Town board or commission. Construction of the Project shall be subject to on-site compliance inspections by the Building Department in the customary manner.
58. All utilities serving the Project shall be installed underground, including any extensions from existing lines or poles external to the Property. All existing overhead utilities and poles located on the Project Property shall be removed and replaced with underground service.
59. Landscaping shall be in conformance with the Landscaping Plan as submitted by the Applicant to the Board, except as otherwise provided in these Conditions. Such landscaping

- shall be maintained, repaired, or replaced by the Condominium Association, as needed to maintain compliance with such Landscape Plan and other applicable requirements.
60. Prior to the issuance of a Certificate of Occupancy, evergreen landscaping of sufficient height and density will be installed by the Applicant to hide any retaining walls on the Project property in excess of five feet (5') in height—provided that such landscaping and fencing shall not be installed in any wetland areas.
 61. The Applicant will plant up to ten (10) trees (at the Applicant's option, either pine trees, Douglas fir trees, or other needle bearing evergreen tree native to this region) from Oregon Road along the Site's border with the property at 13 Oregon Road. These trees will be of sufficient number (up to ten) and size to provide (together with the fencing described below) reasonable visual screening and screening of direct light from the headlights of vehicles entering the Project driveway at night. The trees will be installed when the Project is substantially complete. The Applicant will consult with the abutter at 13 Oregon Road relative to specific placement of these trees. The Applicant will also install up to fifty linear feet (50') of six feet (6') high fencing along the same Site border with the abutting property at 13 Oregon road to assist with the visual and headlight screening. These plantings and this fencing will be in addition to any plantings and fencing shown on the Plans.
 62. The Applicant will provide the following mitigation with respect to the abutting property at 17 Oregon Road ("First Steps"):
 - a. Provide and install a wooden stockade fence eight feet (8') in height starting from the shed running along the property line southwest for approximately fifty feet (50') to screen where the Applicant's plan drawing (Sheet L1 dated 6/30/09 and revised 6/30/10) depicts parking adjacent to the street.
 - b. Provide and install slats to the existing fence around First Steps' in-ground swimming pool, to provide privacy on two sides of the pool facing the Site.
 - c. Remove the existing gate in the chain link fence and restore the fence to be continuous fence where the gate existed previously.
 - d. Provide screening via landscaping to maintain privacy relative to the Site for First Steps' children. Such landscaping screening will consist of the Applicant's procuring and planting ten (10) evergreen trees, approximately seven feet (7') to eight feet (8') high plus ten (10) evergreen bushes approximately two feet (2') high. This landscaping screening will be planted on the two sides of the First Steps property facing the Site and the proposed driveway into the Site. The landscaping screening will be installed when the Project is substantially complete. The Applicant will consult with First Steps relative to specific placement of this landscaping screening.
 - e. The Applicant will use the existing stones from the entrance to the Site to make roundings where Oregon Road intersects the entrance to the Site.
 63. Fire lanes denoted on the Project Plans shall be marked "No Parking, Fire Lane" by signs and by marking on the pavement as determined by the Fire Chief. Such markings shall be maintained so as to be clearly readable by residents and visitors. Restrictions on resident and

guest parking at any time in any area designated as a fire lane, and specific penalties for violation of such restrictions, shall be included in the Condominium Documents.

64. Project illumination shall be as per lighting cut sheet in the Plans submitted to the Board.
65. The Project's dwelling units will be constructed so as to meet at least the minimum applicable Energy Star requirements.
66. No occupancy permit for a building in the Project shall be issued until the binder base coat of pavement for the portion of the roadway serving that building has been installed.

Project Marketing

67. During the period of construction and marketing, notwithstanding any pre-conditions for the issuance of a Building Permit or Certificate of Occupancy otherwise set forth herein, the Applicant shall be entitled to designate, construct and operate one of the condominium units as a decorated, model unit and sales office. The model unit and sales office shall be subject to the usual requirements of the Building Inspector with respect to building and fire code compliance.
68. After a building permit has been issued for the Project, the Applicant may display, on the Project property, one temporary construction, marketing, or for-sale sign stating appropriate marketing information, with such temporary sign being in accordance with the sign permit requirements of the Zoning By-Law.
69. After the Project is completed and a Certificate of Occupancy has been issued for the final (i.e., fifteenth) unit, the Applicant may display one permanent sign on the Project property identifying the condominium building in accordance with the sign permit requirements of the Zoning By-Law.

Wetlands and Stormwater

70. The Project shall be subject to the review and approval of the Massachusetts Wetlands Protection Act, and implementing regulations (310 CMR 10.00 et seq.), including the Massachusetts Department of Environmental Protection Stormwater Policy. Any substantive changes required in the Project as a result of the issuance of a Superseding Order of Conditions, shall be reviewed by the Board pursuant to applicable DHCD regulations.
71. The Applicant shall file a Stormwater Management Permit application for the Project and shall receive approval from the Conservation Commission pursuant to applicable rules and regulations.
72. The stormwater drainage system shall be operated and maintained in accordance with the Site Plans and the stormwater drainage report and analysis submitted by the Applicant to the Conservation Commission.
73. Applicant shall provide a Stormwater and Erosion Control Management Plan satisfactory to the Building Inspector and the Town Engineer before issuance of a building permit for any work on the Project site.

74. Snow removal activities shall not be permitted to use standard sand, salt or other similar treatments for paved surfaces. Only an environmentally-friendly snow removal treatment, such as Magic Salt™ (or equivalent) shall be used. Snow storage shall be located on areas set forth on the Plans. Snow plowing will be performed as needed so as to make all designated parking spaces accessible for parking at all times. Should the volume of snow stored in the designated snow storage areas as shown on the Plans exceed the capacity of these snow storage areas, any excess snow will be removed from the Site in a timely manner. The Applicant will include language reflecting all of these snow-related requirements in the Condominium Documents.
75. The Applicant has requested, and the Board has granted, a waiver relative to the specific limitation on stormwater volume runoff, as set forth in Order of Conditions issued by the Conservation Commission.
76. The Applicant proposes to establish a unit owners' association (the "Owners' Association") to maintain and repair all common areas, including the stormwater management system, landscaping, and other improvements within the subject property. The Condominium Documents shall set forth the obligations of the Owners' Association for the operation and maintenance of all such common areas and improvements. Prior to the issuance of any Certificate of Occupancy, the Applicant shall submit the condominium Master Deed and the documents establishing such Owners' Association to the Board for approval by its legal counsel as to form and for verification that such documents are in conformance with this decision. The Owners' Association shall adopt rules and regulations and a copy of such rules and regulations shall be provided to the Board.
77. The Applicant shall be responsible for the installation, operation, and maintenance of all aspects of the septic and stormwater management facility until the fifth (5th) condominium unit has been conveyed. At such time, the operation and maintenance of the on site septic system and stormwater management facility within the development shall be the responsibility of the Owners' Association.
78. Prior to such issuance of the first building permit, the Applicant's registered professional engineer shall prepare a "Stormwater Operations and Maintenance Plan for Final Commissioning and Long-Term Maintenance Program", which plan has been approved by the Conservation Commission and shall be incorporated by reference in the Condominium Documents. Compliance with said operation and maintenance plan is a condition of the Comprehensive Permit. The Owners' Association shall provide to the Town of Southborough Conservation Commission an annual report regarding the maintenance items noted within said document.

Other Conditions

79. As mitigation related to cutting of shade trees on the site, the Applicant shall plant one shade tree, with a value of at least five hundred dollars (\$500) in a location in the Town as determined by the Superintendent of the Department of Public Works and the Planning Board.

80. As a measure to enhance public safety by encouraging residents to park their vehicles in the garages of the dwelling units and thereby allow for maximum availability of outside parking spaces for incidental use, visitor use and emergency access, the Applicant will include in the Condominium Documents the requirement that the garage spaces must remain fully usable as garage space and the residents cannot create finished space in the garage units.
81. Before obtaining a certificate of occupancy for the last Market Rate Unit in the Project, the Applicant shall complete the landscaping improvements located on the Site as depicted on the Plans.
82. The common area landscaping, shall be maintained in perpetuity by the Owners' Association, which obligations shall be incorporated in the Condominium Documents. The Condominium Documents shall require that dead or diseased plantings shall be replaced as soon as possible in accordance with growing and weather conditions.
83. All undisturbed areas on the Site shall remain undisturbed and undeveloped. The Applicant shall include this requirement in the Condominium Documents.
84. The area designated on the Plans as "Play Area" shall remain as a play area, except as may be modified by future approval by the Board.
85. Consistent with the Subsidizing Agency's policies concerning the regulatory profit cap, and to ensure that the Applicant has accurately reported its development costs and profits, the Applicant shall comply with the following terms and provisions:
 - a. Within twelve (12) months following the issuance of a final Certificate of Occupancy for the last unit, or within twelve (12) months following the Project being turned over to the Owners' Association, whichever occurs later, the Applicant shall deliver to the Subsidizing Agency, with a copy to the Board an itemized statement of total development costs together with a statement of gross income from the Project to date in a form satisfactory to the Subsidizing Agency (the "Certified Cost and Income Statement"), prepared and certified by a certified public accountant. If all units in the Project have not been sold as of the date the Certified Cost and Income Statement is delivered, the Applicant shall at least once every ninety (90) days thereafter, until all of the Units are sold, deliver to the Subsidizing Agency and the Town an updated Certified Cost and Income Statement.
 - b. The Applicant shall provide any back-up and supporting documentation, including, but not limited to, cancelled checks, invoices, receipts, and financial statements, reasonably requested by the subsidizing agency for all Project costs and income sources.
 - c. All Project-related transactions between the Applicant and its parents, subsidiaries, affiliates, successors, and assigns, or to their respective partners, limited partners, shareholders, managers, or other owners, or to the relatives of the same, or to any entity in which the Applicant or its members have a financial interest (with such individuals/entities being "Related Parties" and such transactions being "Related Party Transactions") resulting in Project costs or income must be disclosed in the Cost and Income Statement, and documentation must be provided identifying, where

applicable, what portion of costs were paid to non-related third parties (e.g., subcontractors) and what portion was retained by Related Parties. To the extent that payments made to Related Parties for are carried as Project costs, such costs shall not exceed, for purposes of determining compliance with the Profit Cap, the fair market value of whatever was exchanged for such payments (e.g., services, supplies, etc.).

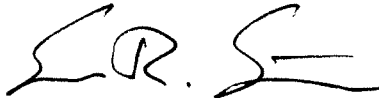
- d. The maximum land acquisition cost that the Applicant may carry as a Project cost is the value of the Site as of the date of the Applicant's original application for project eligibility to the Subsidizing Agency, as determined by an appraisal prepared by a duly-qualified appraiser which cost has already been accepted by Mass Housing as the actual cost of acquisition.

RECORD OF VOTE

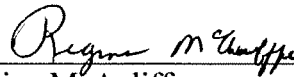
The Board of Appeals voted unanimously (5-0), at its public meeting on October 21, 2010, to grant a Comprehensive Permit subject to the above-stated Conditions, with this decision as attested by the signatures below.

Members in favor: Stivers, McAuliffe, Estella, Hurley, Bartolini

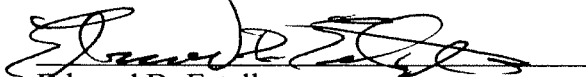
Members opposed: None



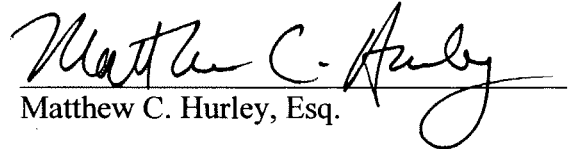
Sam R. Stivers, Chairman



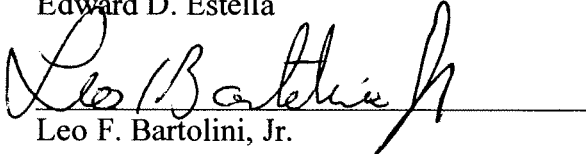
Regina McAuliffe



Edward D. Estella



Matthew C. Hurley, Esq.



Leo F. Bartolini, Jr.

Dated : October 21, 2010, 2010

Filed with the Town Clerk on _____, 2010.

Town Clerk

Notice: Appeals, if any, shall be made pursuant to Massachusetts General Law, Chapter 40A, s.17, and shall be filed within twenty (20) days after the filing of this notice in the Office of the Town Clerk, Town Hall, Southborough, Massachusetts.

William Depietri, as Trustee of Absolut Realty Trust
0 Oregon Road (15-16)
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EXHIBIT 1

Project Eligibility Letter



Massachusetts Housing Finance Agency
One Beane Street, Boston, MA 02108
Tel: 617.754.1100 Fax: 617.754.1101
Web: 660.758.1436 Fax: 660.758.1437

CAPITAL GROUP PROPERTIES
PROJ NO: Stonebrook Village
FILE NO: 160
MAIL TO: _____
FAX TO: _____
CC: _____

June 30, 2009

Capital Group Properties
259 Turnpike Road
Southborough, MA 01772
Attention: Mr. William Depietri

Re: Stonebrook Village
Southborough, MA
PE-491
Project Eligibility (Site Approval) Application

Dear Mr. Depietri:

This letter is in response to your application for a determination of Project Eligibility (Site Approval) pursuant to Massachusetts General Laws Chapter 40B, 760 CMR 56.00, and the Comprehensive Permit Guidelines issued by the Department of Housing and Community Development ("DHCD") (the "Guidelines" and, collectively, the "Comprehensive Permit Rules") under the following programs (collectively, the "Programs"):

- Housing Starts Program of the Massachusetts Housing Finance Agency ("MassHousing")
- New England Fund Program ("NEF") of the Federal Home Loan Bank of Boston.

The proposal is to build 16 condominium units (the "Project") on approximately 6.5 acres of land located on Oregon Road (the "Site") in Southborough (the "Municipality").

This letter is intended to be a written determination of Project Eligibility (Site Approval) in accordance with the Comprehensive Permit Rules, establishing fundability by a subsidizing agency under a low- and moderate-income housing subsidy program. To the extent that Project funding is provided by a non-governmental entity (NEF), this letter is also intended to be a determination of Project Eligibility ("Site Approval") by MassHousing acting as Subsidizing Agency (formerly, "Project Administrator") under the Guidelines.

MassHousing staff has performed an on-site inspection of the Site, which local officials were invited to attend, and reviewed the pertinent information for the Project submitted by the applicant, the Municipality and others in accordance with the Comprehensive Permit Rules. As a result of our review, we have made the following findings: (1) the site of the proposed Project is generally appropriate for residential development, taking into consideration information provided

David J. Patrick, Director
Executive Director, Mr. Greenstein

Michael J. Lutzke, Executive
Vice President

Thomas K. Blanton, Executive Director
Robert W. Rizzo, Deputy Director

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by the Municipality regarding actions previously taken to meet affordable housing needs; (2) the conceptual project design is generally appropriate for the site on which it is located; (3) the proposed Project appears financially feasible within the housing market in which it will be situated (based on comparable sales figures); (4) an initial pro forma, including a land valuation consistent with DHCD guidelines, has been reviewed and the Project appears financially feasible on the basis of estimated development costs; (5) the applicant would be eligible to apply as a limited dividend organization in connection with an application for financing under the Programs, and meets the general eligibility standards of the Programs; (6) the applicant controls the site. Each such finding, with supporting reasoning, is set forth in further detail on Attachment I hereto.

Staff has also determined that the Project appears generally eligible under the requirements of the Programs, subject to final review of eligibility and to final approval. These requirements include the following:

1. The applicant must offer a minimum of 25% of the units for sale to households earning no more than 80% of the area median income, adjusted for household size, as published by the U.S. Department of Housing and Urban Development (HUD). The most recent HUD income limits indicate that 80% of the current median family income for a 4-person household for the Municipality is \$66,150. Note, however, that in order to attract a sufficient number of qualified buyers for the affordable units, the initial maximum sales price for the affordable units will be calculated by MassHousing to enable a household earning not more than 70% of area median income of an appropriate size household (appropriate size equals number of bedrooms in the unit plus one) to qualify to purchase the unit under generally accepted mortgage loan underwriting standards.
2. An Affordable Housing Restriction ensuring the units remain affordable to future buyers in perpetuity will govern the affordable units.
3. The applicant must be a limited dividend organization and agree to limit the profit on the development to not more than 20% of the project's total development costs as determined by MassHousing.
4. The applicant must comply with the Land Value Policy, described in section IV(B)(1) of the Guidelines.
5. The applicant must enter into a Regulatory Agreement with MassHousing stating specific requirements, which must be met to comply with the applicable Program, the Comprehensive Permit Rules.
6. In order to satisfy the Program requirements, financing for the Project must originate from a subsidizing lender such as MassHousing or a bank that is a member of the Federal Home Loan Bank of Boston (FHLLBB). Should you choose to finance the Project through

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a member bank of the FHLBB, a minimum of 25 percent of the construction financing must be obtained from the NEF program. Evidence of financing for the Project must be provided during your request to MassHousing for Final Approval. The Regulatory Agreement shall provide that any transfer of all or a portion of the NEF lender's interest (including participations or sale of servicing rights) during the entire term of the construction financing shall be subject to the approval of the Project Administrator.

7. The Project must comply with the Commonwealth's Sustainable Development Principles (formerly implemented by MassHousing by its use of the Smart Growth Criteria).

Based on MassHousing's site and design review, and its review and consideration of comments received from the Municipality, the following issues should be addressed in your application to the Zoning Board of Appeals ("ZBA") for a comprehensive permit and fully explored in the public hearing process:

1. Compliance with all statutory and regulatory restrictions and conditions relating to protection of drainage, wetlands, vernal pools and wildlife habitats and nearby conservation areas, if applicable to this Site. The comprehensive permit must include a condition that you provide evidence of such compliance prior to issuance of the building permit for the Project.
2. Compliance with Title V regulations regarding the design and construction of individual wells, septic systems and wastewater treatment plants, if applicable to this site, except to the extent waived pursuant to Title V. The comprehensive permit must include a condition that you provide evidence of such compliance prior to issuance of the building permit for the Project.
3. The Southborough Planning Board notes that your site abuts open space owned by the Southborough Open Land Foundation. The Municipality and MassHousing recommend that you connect to this resource for the benefit of the development's residents. Please be prepared to discuss this opportunity with Municipal officials during the public hearing.
4. The Municipality requests that you utilize low impact development techniques due to the fact that there are over two acres of wetlands on site. Please be prepared to discuss with Municipal officials during the public hearing.

This approval is expressly limited to the development of no more than 16 homeownership units under the terms of either of the Programs, with not less than 4 of such units restricted as affordable homeownership units for low- and moderate-income persons or families as required under the terms of the Housing Starts Program or the Guidelines, as applicable. It is not a commitment or guarantee of MassHousing or NEF financing and does not constitute a site plan or building design approval. Should you consider the use of any other housing subsidy programs

William Depietri, as Trustee of Absolut Realty Trust
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or the construction of additional units, you will be required to submit a new Project Eligibility (Site Approval) application for review by MassHousing.

This approval will be effective for a period of two years from the date of this letter. Should the applicant not apply for a comprehensive permit within this period or should MassHousing not extend the effective period of this letter in writing, the letter shall be considered to have expired and no longer be in effect. In addition, we are requiring that MassHousing be notified at the following times throughout this two year period: (1) when the applicant applies to the local ZBA for a comprehensive permit, (2) when the ZBA issues a decision, and if applicable, (3) when any appeals are filed.

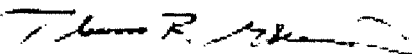
Please note that, should a comprehensive permit be issued, prior to construction the developer shall submit to MassHousing a request for Final Approval of the Project, as it may have been amended, in accordance with the Comprehensive Permit Rules (760 CMR 56.04(7)). Final Approval will not be issued unless MassHousing is able to make the same findings as required at site approval at the time of issuing Final Approval.

Further Opportunities for Assistance from MassHousing: Please note that MassHousing is not able to issue Final Approval if the comprehensive permit contains any conditions that are inconsistent with the regulatory requirements of the applicable housing subsidy program (MassHousing's Housing Starts Program or the New England Fund of the FHLBB, for which MassHousing serves as Project Administrator), as reflected in the applicable regulatory documents (see www.masshousing.com for forms). In the interest of providing for an efficient review process and in order to avoid the potential lapse of certain appeal rights, the applicant may wish to submit a "final draft" of the comprehensive permit to MassHousing for review. Applicants who avail themselves of this opportunity may avoid significant procedural delays that can result from the need to seek modification of the comprehensive permit after its initial issuance.

Notice Regarding Monitoring Agent: Under current procedures, MassHousing intends to delegate responsibility for monitoring compliance with the minimum affordability requirement to an entity MassHousing deems qualified to perform the services required. Please contact MassHousing to discuss the selection of a Monitoring Agent

If you have any questions concerning this letter, please contact Michael Busby at 617-854-1219 or Greg Watson at 617-854-1880.

Sincerely,



Thomas R. Gleason
Executive Director

William Depietri, as Trustee of Absolut Realty Trust
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cc: Ms. Tina Brooks, Undersecretary, Department of Housing and Community Development
Mr. William J. Boland, Chairman, Southborough Board of Selectmen
Mr. Sam R. Stivers, Chairman, Southborough Zoning Board of Appeals
Ms. Jean Kitchen, Southborough Town Administrator

Attachment 1.

760 CMR 56.04 Project Eligibility: Other Responsibilities of Subsidizing Agency
Section (4) Findings in Determination

Stonebrook Village, Southborough, MA PE-491

After the close of a 30-day review period and extension, if any, MassHousing hereby makes the following findings, based upon its review of the application, and taking into account information received during the site visit and from written comments:

(a) MassHousing finds that the proposed Project appears generally eligible under the requirements of the housing subsidy program, subject to final approval under 760 CMR 56.04(7).

The Project is eligible under the NEF housing subsidy program and provides 25% of low-income units for households earning at or below 80% of the Area Median Income.

(b) MassHousing finds that the site of the proposed Project is generally appropriate for residential development, taking into consideration information provided by the municipality or other parties regarding municipal actions previously taken to meet affordable housing needs, such as inclusionary zoning, multifamily districts adopted under c.40A, and overlay districts adopted under c.40R, (such finding, with supporting reasoning, to be set forth in reasonable detail).

Southborough does not have a DHCD approved Housing Production Plan. Southborough has 105 Subsidized Housing Inventory (SHI) units (3.5% of its housing inventory) and needs an additional 194 SHI units to meet the 10% SHI threshold for 40B developments. The existing neighborhood is primarily residential housing of similar size and use making this site generally appropriate for residential use and development.

(c) MassHousing finds that the conceptual project design is generally appropriate for the site on which it is located, taking into consideration factors that may include proposed use, conceptual site plan and building massing, topography, environmental resources, and integration into existing development patterns (such finding, with supporting reasoning, to be set forth in reasonable detail).

Relationship to Adjacent Building Typology

The design proposed is to build 16 condominiums in 10 buildings. 4 of the buildings will be single units and the other 6 buildings will be 2 units each. The buildings will be 1.5 stories high in line with the majority of residential homes in the surrounding neighborhood. The maximum building height for the area is 2.5 stories high.

Building Massing

The proposed units are to be built in one unit and two unit buildings. This design is consistent with many of the single family homes in the neighborhood. In addition, the massing of the homes is appropriate given the limitations of the site in terms of buildable space.

Relationship to Adjacent Streets/Integration into Existing Development Patterns

The subject neighborhood is situated on the south side of the Mass. Turnpike within easy access to Route 85, which is the primary access route that links the neighborhood with the center of town. The neighborhood is in the Residence B Zone where single family development is permitted. Minimum lot size is 25,000 SF and allowable frontage is 125 feet. The proposed building design does not overwhelm the site and the housing design is similar to the single family homes that abut the site and that are found in the neighborhood.

Density

The design proposes 16 condominiums on a parcel that is said to be approximately 6.5 acres, 4.5 buildable. The resulting density is 3.5 units per acre. This is below the range deemed acceptable by the published guidelines.

Site Plan

The site plan proposed is appropriate for the site given the low density and the fact that the surrounding architectural makeup is single-family homes. In addition, the site will be serviced by town water, underground cable utilities and an on-site septic system. The development will also include recreational area for the use and enjoyment of the residents. The main section of the development will be set back over 450 feet from the entry way on Oregon Road with most of the units hidden from abutter views.

Environmental Resources

This project will connect to town water and have access to an open space walking trail owned by the Municipality.

Topography

The site is irregularly shaped with a slight slope down from the proposed entry way. It is narrow at the opening of the site and opens up quite considerably for the majority of the development to be built.

Proposed Use

Based on my site inspection, discussions, and application review, I recommend that the site is suitable for residential use and development.

(d) MassHousing finds that the proposed Project appears financially feasible within the housing market in which it will be situated (based on comparable rentals or sales figures).

The Project appears financially feasible based on a comparable sales letter submitted by Realtor Judi Feller of Berkshire Realty Group in Southborough.

(e) MassHousing finds that an initial pro forma has been reviewed, including a land valuation determination consistent with the Department's guidelines, and the Project appears financially feasible and consistent with the Department's guidelines for Cost Examination and Limitations on Profits and Distributions (if applicable) on the basis of estimated development costs.

The initial pro forma has been reviewed for the proposed residential use and it appears financially feasible with a profit margin of 12%. In addition, a third party appraisal commissioned by MassHousing has determined that the "As Is" land value for the site of the proposed Project is \$375,000.

(f) MassHousing finds that the Applicant is a public agency, a non-profit organization, or a Limited Dividend Organization, and it meets the general eligibility standards of the housing program.

The Applicant will be organized as a Limited Dividend Organization and it will meet the general eligibility standards of the NEF housing program.

(g) MassHousing finds that the Applicant controls the site, based on evidence that the Applicant or a related entity owns the site, or holds an option or contract to acquire such interest in the site, or has such other interest in the site as is deemed by the Subsidizing Agency to be sufficient to control the site.

The Applicant controls the entire 6.5-acre site under deeded ownership.

William Depietri, as Trustee of Absolut Realty Trust
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EXHIBIT 2
List of Waivers Granted

| # | Regulation | Description | Reason for Granting Waiver |
|---|--------------------------------------|---|--|
| 1 | § 174-6. Applicability. | No land in any district shall hereafter be used or occupied and no building or structure shall hereafter be occupied, used or erected or the use of buildings and land altered except as set forth in the following Schedule of Use Regulations or as specifically regulated or provided otherwise under other sections hereof, provided that the accessory uses and buildings not enumerated in the schedule but necessarily or customarily incidental to a principal use, including the signs otherwise allowed, shall be deemed to fall into the same category as such principal use. Streets and easements for public services are a permitted use in all districts, except the Wetland and Floodplain Districts. | Waiver granted to allow the 15 Unit Project as proposed per the Plans and Submittals, subject to the Conditions. |
| 2 | § 174-8. Schedule of Use Regulations | A. No building or structure shall be constructed and no building, structure or land or part thereof shall be used for any purpose or in any manner other than for one (1) or more of the uses hereinafter set forth as permitted in the district in which such building, structure or land is located or set forth as permissible by special permit in said district and so authorized. | Waiver granted to allow the 15 Unit Project as proposed per the Plans and Submittals, subject to the Conditions. |
| 3 | | B. Further, no building shall be constructed and no building, structure or land or any part thereof shall be used and no lot shall be changed in size or shape unless in conformity with the regulations set forth for each district | Waiver granted to allow the 15 Unit Project as proposed per the Plans and Submittals, subject to the Conditions. |
| 4 | §174-8.3. RB Residence B District | C. Prohibited uses. All uses which are not listed above, legally nonconforming or otherwise allowable by the provisions of the zoning regulations are prohibited. | Waiver granted to allow the 15 Unit Project as proposed per the Plans and Submittals, subject to the Conditions. |
| 5 | | D. Development standards are as follows: (1) Minimum lot area for a house: twenty five thousand square feet (25,000) sq ft | Waiver granted to allow the 15 Unit Project per the Plans and Submittals on property comprising approx. 6.6 acres. |

William Depietri, as Trustee of Absolut Realty Trust
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| | | | |
|----|------------------------------------|--|--|
| 6 | | D. Development standards are as follows: (3) Minimum setbacks: Rear: thirty-five (35) feet Side: twenty-five (15) feet | Waiver granted to allow 15 Unit Project with reduced front and side yard setback requirements per the Plans and Submittals, allowing the project to meet parking requirements and emergency vehicle access. |
| 7 | | (4) Frontage: 125 feet | Waiver granted to allow 15 Unit Project per the Plans and Submittals with reduced frontage requirements. |
| 8 | [TBD] | Approximately fifty linear feet (50') of 8' high screening fence along East side of drive from Oregon Road, abutting the property at 17 Oregon Road. | Waiver granted to allow agreed-to screening per the Conditions. |
| 9 | Sections, 174-8; 174-8.3 A and B.) | Permitted Use: Single Family or Multifamily if within major residential development. | Waiver granted to allow proposed multifamily use in multiple structures per the Plans and Submittals. Project is not proceeding as a major residential development (see below). |
| 10 | Section 174-8.3 D. | Lot Area: 25,000 sq. ft. | Waiver granted to allow proposed 15 residential units, per the Plans and Submittals, on a 6.56 undivided parcel. |
| 11 | Section 174-8.3 D. | Frontage: 125' | Waiver granted to allow Project to be serviced by private road with access through 50.26 feet of frontage on Oregon Road, per the Plans and Submittals, and to allow units not to be located on individual lots. |
| 12 | Section 174-8.3 D. | Setbacks: Front: 30' Rear: 35' | Waiver granted to allow the front of certain Units, per the Plans and Submittals, to be located less than 30 feet from proposed private road and/or common driveway. Waiver granted to allow Unit 15 to be 10 feet from the rear boundary line of the premises, per the Plans and Submittals. |

| | | | |
|----|-----------------------------------|---|---|
| 13 | Section 174-13.2 | <p>Major Residential Development. Section 174-13.2 of the Zoning By-Laws requires special permit from the Planning Board for the creation of eight or more lots or the construction of eight or more dwelling units within eight year period. The special permit process requires compliance with numerous standards including subdivision rules and regulations and site plan approval</p> | <p>Waiver granted from compliance with the by-law <i>in its entirety</i></p> |
| 14 | <p>Wetlands: Section 3.23</p> | <p>Wetlands/Stormwater/Conservation Commission Regulations Section 3.23 General Performance Standards of the Town of Southborough Wetlands Regulations provide for a 20' No Disturb Buffer. Project otherwise complies with the applicable provisions of the Massachusetts Wetland Protection Act. G. L. c. 131.</p> | <p>Waiver is granted to allow for the following work, per the Plans, within the twenty-foot (20') "No Disturb Buffer":</p> <ol style="list-style-type: none"> 1. Outlet FES and Rip Rap channel to the detention basin – 200 square feet; 2. The southwest corner of Unit 6 with grading and foundation drain – 122 square feet and disturbance of 70 square feet for the Unit 6 Deck 3. The construction and grading for deck for Unit 5 – disturbance 10 square feet 4. Outlet Rip Rap for Bioretention Basin #A – 10 square feet 5. The Unit 13 and 14 decks are close to the 20' buffer zone. There may be some inadvertent disturbance. |

William Depietri, as Trustee of Absolut Realty Trust
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| 15 | <p>Section 174-13.2 Planning Board (Subdivision Rules and Regulations) Major Residential Development. Section 174-13.2 of the Zoning By-Laws requires special permit from the Planning Board for the creation of eight or more lots or the construction of eight or more dwelling units within eight-year period. The special permit process requires compliance with numerous standards including subdivision rules and regulations and site plan approval</p> <ol style="list-style-type: none"> 1. One dwelling per lot. (Section 244-6) 2. Filing and Processing fee. (Section 244-7) 3. Definitive Plan. Adjacent streets with scale of 1" = 800' (Section 244-10) 4. Performance Guaranty. (Section 244-11) 5. Open Space. (Section 244-14). 10% of gross project area. 6. General Requirements (Section 244-19) 7. Sidewalks. Required for all residential subdivisions. (Section 244-21) 8. Curbing and berms. Either granite or bituminous curbing or berms are required in all residential subdivisions. (Sec 244-22) 9. Grass Plots. (Section 244-23) 10. Shade Trees (Section 244-24). 11. Monuments. Granite bounds or reinforced concrete are required. (Section 244-26) | <p>Waiver of Compliance with the entirety of the Subdivision Rules and Regulations is granted. Specific instances as below:</p> <ol style="list-style-type: none"> 1. Waiver granted; Project proposes 8 buildings containing 15 dwelling units. 2. Waiver granted 3. Waiver granted. Cover sheet of Plan has cover sheet with scale of 1" = 100' 4. Waiver granted. 5. Waiver granted. Project includes approximately 21,000 square foot "play area" which is 7.5% of total project. 6. Waiver granted. Other than curbing and modification of crowning proposed private road will comply with standard cross section. 7. Waiver granted. Project will not provide any sidewalks. A 3' wide pedestrian/bike lane will be provided. 8. Waiver granted. Project will not have any curbing or berms 9. Waiver granted. Variations in grading are shown on proposed plan. 10. Waiver granted. Landscape Plan provides for tree plantings except area of six parking spaces and drainage swale which abuts the Arsenault property at 17 Oregon Road. 11. Waiver granted. No bounds are proposed. |
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William Depietri, as Trustee of Absolut Realty Trust
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| Regulation | Description | Reason for Granting Waiver |
|--|---|---|
| § 174-13. Landscaping | D. Side and rear line planting area. A landscape buffer strip a minimum of ten (10) feet in width shall abut all side and rear property lines. | Waiver granted for the requirement of a landscape buffer in lieu of the proposed Landscape Plan as modified by the Decision Conditions |
| § 174-13. Landscaping | Landscape Sizes: Shade Trees – 3" caliper Ornamental Trees – 8' tall Shrubs – 36" height – ultimate height 5' | Waiver granted for the requirement of specified plant dimensions and allow planting in accordance with the Landscape Plan as modified by the Decision Conditions: |
| § 174-13.5 STORMWATER and EROSION CONTROL | I. Findings and Conditions of Approval (e) There shall be no net increase in the volume of runoff across the boundaries of the site unless...the Commission has determined that all reasonable provisions have been made to minimize any changes in stormwater runoff from the site; | Waiver granted to allow for a net increase in volume of runoff in accordance with the Stormwater Management Plan, but not rate of runoff. |
| Stormwater and Erosion Control Regulations, Town of Southborough Conservation Commission | 7.6.13 Earth Removal/Fill Calculations | Waiver granted for the requirement for individual earth removal and fill calculations unless requested by the Building Inspector, per the Conditions. |

In addition to the above-listed waivers to Town regulations, should there be other waivers necessary to build the Project according to the Plans and Submittals and consistent with the Conditions specified in this Decision, the Board grants such waivers. This grant of additional necessary waivers specifically does not apply to waivers required by material future changes to the Plans and Submittals and consequent material modifications to the Project. Any waivers made necessary by such material changes and/or modifications must be approved by the Board.

EXHIBIT 3
Correspondence Received by the Board

The following correspondence relative to the Project was received by the Board (Note that some of the items below are also listed in the “Procedural History” part of the Decision):

1. Engineering Documentation for Stonebrook Village in Southborough Massachusetts, Prepared for : Capital Group Properties, Prepared by Connorstone Engineering, 10 Southwest Cutoff, Suite 7, Northborough, MA 01532 – June 27, 2009 and revised December 31, 2009
2. Mr. Paul Barlow, 33 Edgewood Road, Southborough, September 27, 2010, email correspondence after the public hearing was closed regarding the Board’s ability to request the Pro-Forma for review – includes 1 page response from Administrative Assistant, Jeanne Survell - 8 pages
3. Mr. Martin Loiselle, October 6, 2010, project eligibility letter from Mass Housing dated June 30, 2009, 8 pages
4. Attorney Angelo Catanzaro, September 23, 2010, copy of transcript for September 7, 2010
5. Attorney Angelo Catanzaro, September 23, 2010, a copy of transcript for September 21, 2010
6. Attorney Peter M. Mirageas, September 20, 2010, introduction letter representing Mary Ellen Arsenault, owner of First Steps Daycare, 2 pages
7. Mr. Martin Loiselle, September 16, 2010, collection of documents – Lisa Braccio letter regarding landscape screening, revised Erosion Control and Construction sequencing plan, revised NPDES Stormwater Pollution Prevention plan, energy star qualified homes standards, copy of revised “Typical Travel Way Section, Copy of DEP wetlands map and the Estimated Project Completion Schedule, 17 pages
8. Mrs. Lisa M. Braccio, 13 Oregon Road, Southborough, MA, September 15, 2010, stating her concerns regarding the project, 2 pages
9. Mr. and Mrs. Kevin and Meme Luttrell, 19 Oregon Road, Southborough, MA, stating concerns about the impact of the development on the neighborhood, 2 pages
10. Southborough Conservation Commission, September 13, 2010, Stormwater Management Permit decision and Order of Conditions, 25 pages
11. Attorney Angelo Catanzaro, September 3, 2010, Revised Finding and Decision incorporating the August 30 2010 comments of Chairman Stivers, 28 pages
12. Attorney Angelo Catanzaro, September 3, 2010, motion for recusal of the Zoning Board Chairman Sam Stivers, 3 pages
13. Building Inspector, David Gusmini, September 7, 2010, zoning opinion request letter inquiring about who oversees and acts as the enforcement authority during construction, 1 page
14. William Fleming Associates, 5 Central Square, Third Floor, Stoneham, MA 02180, Landscape Plan and Landscape Details of Stonebrook Village as prepared by Connerstone

- Engineering, Consulting Civil Engineers and Land Surveyors, 10 Southwest Cutoff, Suite 7, Northborough, MA 01532
15. Mr. Martin Loiselle, September 2, 2010, Landscape Plan of Stonebrook Village by Connorstone Engineering, 10 Southwest Cutoff, Suite 7, Northborough, MA 01532 dated June 30, 2009 and “Revised Per Owners Comments June 30, 2010”. 1 page
 16. Mr. Martin Loiselle, September 1, 2010, Status report on the progress to complete the Comprehensive Permit, 26 pages
 17. Mr. Martin Loiselle, August 17, 2010, copy of the transcript from July 19, 2010
 18. Chairman Sam Stivers, July 19, 2010, Discussion List of Conditions to the Comprehensive Permit, 8 pages
 19. Attorney Angelo Catanzaro, August 24, 2010, Revised draft of proposed Findings and Decision, earlier drafts submitted July 12, and July 15, 75 pages
 20. Mr. Martin Loiselle, July 28, 2010, revised project plan and Operation and Management Plan as requested by the Commission on July 22, 2010, 9 pages
 21. Conservation Commission Administrator, Beth Rosenblum, August 3, 2010, comments on Stonebrook Village, 1 page
 22. Attorney Peter Mirageas, July 27, 2010, comment for daycare owner, Mary Ellen Arsenault regarding the project, 3 pages
 23. Ms. Nancy Buck, July 22, 2010, attended the July 20, 2010 meeting and submitted comments, 2 pages
 24. Mr. Martin Loiselle, Capital Group, July 16, 2010, addressed comments from various Boards: Fire Chief, Town Engineer, Kevin and Meme Luttrell, Southborough Open Land Foundation, Lisa Braccio, 12 pages
 25. Mrs. Lisa M. Braccio, 13 Oregon Road, Southborough, MA, July 14, 2010, list of concerns regarding the project after attending the public hearings, 6 pages
 26. Town Engineer, John Woodsmall, July 21, 2010, final comments on project after receiving the applicant’s letter dated July 16, 2010, 1 page
 27. Attorney Angelo Catanzaro, July 19, 2010, revised draft of the Findings and Decision, 11 pages
 28. Attorney Angelo Catanzaro, July 13, 2010, submitted the following material, a copy of the transcript from the May 26, 2010 meeting, draft decision and list of regulatory waivers.
 29. Town Engineer, John Woodsmall, June 10, 2010, comments on revised engineering documents dated May 24, 2010 and revised plans dated May 25, 2010, 1 page
 30. Town Engineer, John Woodsmall, June 17, 2010, additional comments to the ZBA’s letter dated May 24, 2010, 1 page
 31. Capital Group, March 29, 2010, the original cover letter from William A. Depietri, President of Capital Group Properties for a proposed 15 unit 40B Comprehensive Permit application submitted to the Zoning Board of Appeals on March 29, 2010 and scheduled for a public hearing on Wednesday, April 28, 2010.

- Included in this submission are the large and small sets of a Locus Plan of Stonebrook Village prepared by Connorstone Engineering dated December 31, 2009; the large and small sets of plans of the Landscape Plans prepared by Connorstone Engineering dated January 5, 2010; an engineering document prepared by Connorstone Engineering and signed by civil engineer, Richard M. Mainville on December 31, 2009; an overview of the project and supporting document bound and titled “Stonebrook Village: A Townhouse Condominium Project” developed by Capital Group Properties.
32. Mr. William A. Depietri, President, Capital Group, request for Board Member, Ed Estella’s questions he stated he had at the April 28, 2010 meeting, 1 page
 33. Conservation Commission Administrator, Beth Rosenblum, May 3, 2010, approved Conservation Commission meeting minutes from December 3, 2009 and January 14, 2010. Included is a memorandum from Conservation scientist, Ellen Chagnon, regarding the Notice of Intent and the Application for a Stormwater Management Permit, 15 pages
 34. Southborough Housing Opportunity Partnership Committee, May 19, 2010, letter informing the ZBA they met with Capital Group on May 17, 2010 to discuss concerns, 1 page
 35. Andre Mehta and Pamela Saitta, 2 Brookside road, Southborough, MA 01772, submitted a list of concerns regarding the project, 2 pages
 36. Southborough Open Land Foundation, Post Office Box 345, Southborough, MA 01772, May 18, 2010, comments to the ZBA regarding their concerns about the project and its impact on the SOLF’s properties, 3 pages
 37. Mr. William A. Depietri, President, Capital Group, May 19, 2010, submission for the Board’s review which included; specification sheets for proposed outdoor lighting, support letter from the Southborough housing Opportunity Partnership Committee, 5 lot subdivision plan originally submitted to MassHousing, DEP wetlands map showing the project area and neighboring SOLF land, Aerial photo showing the distance from the house at 2 Brookside Road to the nearest unit in the proposed development, 11” X 17” plan showing a 3’ wide pedestrian/bike lane and 6 grass guest parking spaces with Grasscrete pavers, or equal, Grasscrete paver specification sheets, 21 pages
 38. Board Member, Lee Bartolini, April 29, 2010, disclosure statement, 1 page
 39. Alternate Board Member, George Piandes, April 29, 2010, disclosure statement, 1 page
 40. Town Engineer, John Woodsmall, April 21, 2010, comments on application dated March 23, 2010, 1 page – attached is a copy of the Town Engineer’s comments submitted to the Conservation Commission on January 12, 2010 when he reviewed the plans for them, 2 page



**Town of Southborough
Board of Appeals
Southborough, Massachusetts 01772
17 Common Street
P.O. Box 9109
Southborough, MA 01772-9109
508-485-0710**

Date: October 21, 2010

**Certificate of Granting of Comprehensive Permit
(General Laws Chapter 40B)**

The Board of Appeals of the Town of Southborough hereby certifies that a Comprehensive Permit has been granted:

To: William Depietri, as Trustee of Absolut Realty Trust

Address: 0 Oregon Road (15-16)

Town: Southborough, Massachusetts

affecting the rights of the owner with respect to land or buildings at:

0 Oregon Road, Southborough, MA

And the said Board of Appeals further certifies that the decision attached hereto is a true and correct copy of its decision granting said comprehensive permit, and that copies of said decision, and of all plans referred to in the decision, have been filed with the Planning Board and the Town Clerk.

The Board of Appeals also calls to the attention of the owner or applicant that General Laws, Chapter 40A, Section 11 (last paragraph) provides that no permit, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the Town Clerk that twenty days have elapsed after the decision has been filed in the Office of the Town Clerk and no appeal has been filed or that, if such appeal has been filed, that it has been dismissed or denied, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The fee for such recording or registering shall be paid by the owner or applicant.

A handwritten signature in black ink, appearing to read "S. R. Stivers", is written over a horizontal line.

**Sam R. Stivers
Chairman**

Town Clerk