



**Town of Southborough
Board of Appeals
Southborough, Massachusetts 01772**
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508-485-0710

Paul J. Berry
Town Clerk
Town House
Southborough, MA 01772

Book: 46124 Page: 22 – 9 Oak Hill Road
Book: 35238 Page: 392 – 11 Oak Hill Road

NOTICE OF DECISION

**APPLICATION FOR
A COMPREHENSIVE PERMIT**

**Woodland Meadows LLC
9-11 Oak Hill Road
(38-7) 9 Oak Hill Road
(38-6) 11 Oak Hill Road**

Project Name: Woodland Meadows
Property Address: 9-11 Oak Hill Road
Owner: Robert Heavey Trustee, 130 Lincoln Street Trust
Contract Purchaser: Woodland Meadows LLC

RE: Application of Robert Heavey, as Trustee of 130 Lincoln Street Trust of 186 South Main Street, Natick, MA 01760 (the "Applicant"), for Comprehensive Permit pursuant to M.G.L. c. 40B.

DATE: October 27, 2010

Sitting as a Board: Sam R. Stivers, Chairman
Matthew C. Hurley, Esq.
Regina McAuliffe
Leo F. Bartolini, Jr.

For Petitioner: Mark A. Kablack, Esq.
95A Turnpike Road, Third Floor
Westborough, MA 01581

PROCEDURAL HISTORY

1. On December 20, 2007, Woodland Meadows, LLC, with an address of 186 South Main Street, Natick, MA 01760, filed a petition for a Comprehensive Permit, pursuant to the provisions of M.G.L. c. 40B, Sections 20-22 (“Chapter 40B”) for a 44 unit project fronting on both Woodland Road and Oak Hill Road (the “Initial Project”).
2. Legal Notice of the commencement of Public Hearings on the Initial Project appeared in the MetroWest Daily News on December 31, 2007 and January 7, 2008.
3. The application for the Initial Project, filed in December, 2007, consisted of: (a) a single, 43-unit building on Woodland Road; and (b) a single unit building on 11 Oak Hill Road that would use the existing house at that location. The Initial Project proposed by the Applicant contained a total of 44 units, with 11 of these units being proposed as Affordable Units. This Initial Project structure was discussed and evaluated by the Board at the hearings from January, 2008, through August, 2009, at which point the Applicant decided to modify the Project significantly by reducing the Project’s size and location (the “Modified Project” or the “Project”). In the proposal for the Modified Project, the Applicant proposed using only property on Oak Hill Road (the original lot at 11 Oak Hill Road plus an additional lot at 9 Oak Hill Road). In contrast to the Initial Project, which proposed a large 43-unit building, the Modified Project would consist of seven townhouse-style buildings containing a total of 16 units (with 4 of these units being Affordable Units). The Modified Project would not use any of the property on Woodland Road that was part of the Initial Project. Subsequent to the August, 2009 hearing, this Modified Project has been considered by the Board.
4. The Comprehensive Permit Application was formally amended by letter dated August 14, 2009, providing for the construction of the Modified Project with sixteen (16) residential townhome condominium units, together with accessory structures, entrance drives, stormwater structures, and supportive infrastructure, all on a property commonly known as and numbered 9 and 11 Oak Hill Road, Southborough, MA (and using none of the formerly included property fronting on Woodland Road).
5. The Modified Project comprises two parcels: (i) a 1.09 acre parcel (9 Oak Hill Road, Tax Map 38, Parcel 7) and (ii) a 1.05 acre parcel (11 Oak Hill Road, Tax Map 38, Parcel 6) (collectively, the “Property” or the “Site”). The Property, currently owned by Robert Heavey as Trustee of the 130 Lincoln Street Trust, will be transferred in fee to the Applicant upon conclusion of the Comprehensive Permit process, together with all other permits and approvals necessary to construct the Project, pursuant to the Purchase and Sale Agreement. The Property is moderately sloped and partially wooded, and consists of residential dwellings and other related improvements that will be removed in conjunction with the Project. The Property is surrounded by a mix of residential and commercial uses. The Property is located predominately in the Residence A Zoning District, with a small portion located in the Business Village District. Both parcels are currently improved with dwelling structures for one and two-family use. As noted on the Plans, approximately one-half of the parcel at 9 Oak

Hill Road (the half of the parcel to the west, away from Oak Hill Road and identified on the Plans as “Open Space Restriction Area”) is the subject of a development restriction that the Applicant has been unable to get removed. This means that no structures may be built on this restricted part of the property and that all of the dwelling units must be built on approximately 1.5 acres of the Property.

6. Each of the condominium units consists of two bedroom units, and each will have access to one garage parking space and one external parking space, all with access via one common driveway to Oak Hill Road.
7. Public Hearings were held by the Southborough (the “Town”) Zoning Board of Appeals (the “Board”) on:
 - a. January 14, 2008
 - b. March 26, 2008
 - c. April 30, 2008
 - d. May 21, 2008
 - e. June 25, 2008
 - f. July 16, 2008
 - g. August 27, 2008
 - h. October 15, 2008
 - i. October 22, 2008
 - j. November 10, 2008
 - k. November 19, 2008
 - l. December 17, 2008
 - m. January 28, 2009
 - n. February 12, 2009
 - o. February 25, 2009
 - p. March 11, 2009
 - q. May 27, 2009
 - r. June 24, 2009
 - s. April 29, 2009
 - t. August 26, 2009 (Initial Project amended by Applicant to become the 16 unit Project)
 - u. September 23, 2009
 - v. October 28, 2009
 - w. November 16, 2009
 - x. December 9, 2009
 - y. January 27, 2010
 - z. April 28, 2010 (Time gap at Applicant’s request to prepare new plans)
 - aa. May 20, 2010
 - bb. May 24, 2010
 - cc. June 28, 2010
 - dd. July 28, 2010

- ee. September 22, 2010 (public hearing closed)
- ff. October 18, 2010
- gg. October 21, 2010 (Board vote to approve Project, with Conditions)

8. During the course of the above public hearings on the Application, the Board took testimony and received correspondence from various individuals, including representatives of the Board of Selectmen, Planning Board, Conservation Commission, Town Engineer, Department of Public Works, Fire Department, Southborough Housing Opportunity Partnership Committee, and the Board's consulting engineer, Fuss & O'Neill (with this correspondence related to the Modified Project as listed in Exhibit B hereto). The Applicant responded orally and in writing to the issues raised by the Board and other interested parties. There is a stenographic record of all hearings that involved substantive comments (i.e., excluding hearings that involved only continuation of the hearing without substantive comments), other than the initial hearings on 44-unit Initial Project. This stenographic record contains the details of extensive public comment, as well as comments from the Board and the Applicant.
9. The Applicant has expressed concern about the duration of the approval process in this matter. Such concern by the Applicant overlooks the fact that the Project changed dramatically in August, 2009, when the Applicant decided not to pursue the Initial Project containing 44 units (43 of them on Woodland Road) and instead proposed the Modified Project (16 townhouse-style units, all on Oak Hill Road). At that point, the Board needed to start over with what amounted to an entirely different project containing entirely new proposals, including new building designs, new engineering plans, new grading and drainage plans, new utilities plans and new landscape plans. The Board began reviewing the proposal currently at issue in August 2009 (and to be clear, not in January 2008).
10. It should also be noted that in the Fall of 2009 and early part of 2010, the applicant was engaged in protracted negotiations with the beneficiary of the Open Space Restriction Area on 9 Oak Hill Road. In the Board's opinion, the Project would be significantly improved (both from a safety standpoint and design standpoint, as discussed more fully below) if the proposed 16 units could be built over the entire 2+ acres of property at 9-11 Oak Hill Road – that is, if the parties were able to negotiate a release of the Open Space Restriction – as opposed to building the 16 units on just 1.5 acres. Indeed, the Board was prepared to approve a 16-unit project that used the entire 2+ acres of the Site and the Board encouraged the Applicant and the beneficiary of the Open Space Restriction Area (the "Two Parties") to reach an amicable resolution of the Open Space Restriction issue. The Two Parties, as well as numerous neighbors who attended Board hearings, also preferred use of the entire 2+ acre Site (which the Board and the parties referred to as "Plan A") rather than use of just 1.5 acres (referred to as "Plan B"). While the Two Parties were negotiating the details of a private transaction regarding the Open Space Restriction, the Board spent a considerable amount of time in late 2009 and early 2010 analyzing the Applicant's proposed plans for the "Plan A" Project but the Board could not approve that project until the Two Parties finalized the details of the Open Space Restriction. This placed the Board's review of the Project in a state of

limbo for several months. Eventually, for reasons that were never entirely clear to the Board, the Two Parties were unable to agree on a resolution of the Open Space Restriction issue. Beginning in April 2010, with “Plan A” unfortunately off the table, the Board concentrated on the Applicant’s “Plan B” proposal for 16 units on 1.5 acres.

11. Another factor that delayed the Board’s final decision in this matter was the Applicant’s failure to present the Board with a final set of plans for the Project until July of 2010. The factual record in this matter, including the transcripts of the various hearings, demonstrates the Board’s frustration with the changing and incomplete nature of the Applicant’s plans and drawings, which led the Board to request, on numerous occasions, that the Applicant present a final set of plans for the Board’s review and consideration. But these requests were largely ignored as the Applicant consistently presented new plans to the Board. For example, on April 28, 2010, the Applicant’s attorney, Mr. Kablack, acknowledged that the Applicant had just submitted a new set of plans “with a significant number of changes” and “plan iterations.” On June 28, 2010, Mr. Kablack acknowledged that the Applicant had “not submitted a full set of drainage plans” and that the Applicant “was moving this forward in incremental steps.” This incremental submission of plans did not end until July, 2010, when the Applicant finally submitted a complete and final set of plans to the Board for its consideration.
12. Despite the delay occasioned by the Applicant’s decision to completely revamp the project in August 2009, by the Applicant’s participation in negotiations over the “Plan A” proposal using the Open Space Restriction property and by the Applicant’s failure to submit a complete set of Plans until July, 2010, the record reflects the fact that the Board moved this Project along expeditiously by, among other things, scheduling special meetings and hearings for just this application. Although the Board normally meets once per month, the Board often met multiple times per month in order to accommodate the schedules of the Applicant and his representatives, and in order to move the process along in an efficient manner.
13. At the public hearing on July 28, 2010, the Board discussed with the Applicant the initial list of the Board’s proposed conditions for the Project. The Applicant responded that the expenses associated with these proposed conditions, and the possibility that the Board might approve the Project with 14 dwelling units in place of the 16 dwelling units proposed by the Applicant, would, in his opinion, make the Project uneconomic. The Board asked the Applicant to provide a financial pro forma for review by the Board and discussion at the next public hearing on September 22, 2010.
14. Prior to the public hearing on September 22, 2010, the Applicant provided two versions of a financial pro forma—an initial version dated August, 2010 and a revised version dated September 20, 2010. (The Applicant did not explain why he revised the pro forma from August to September.) These documents set forth the Applicant’s view that: (i) in the August, 2010 version of the pro forma, he expected a financial return of 10.5% on his investment in a 16 unit Project and a financial return of 5.0% on his investment in a 14-unit Project and (ii) in the September 20, 2010 version of the pro forma he expected a financial return of 9.7% on

his investment in a 16-unit Project and a financial return of 2.8% on his investment in a 14-unit Project. At the public hearing on September 22, 2010, the Board discussed these financial pro forma documents with the Applicant. The Board questioned the accuracy of a number of the figures in all of these financial pro forma documents, including the property acquisition costs, various soft costs and various elements of the construction costs. Board Members expressed the opinion that a number of the cost figures were too high, and that a more accurate representation of the costs would result in the Applicant generating a higher financial return on a 14-unit project than the 2.8% return he showed in the September pro forma or the 5% return he showed in the August pro forma. The Board also estimated that the total additional cost of the Conditions (i.e., costs beyond those that should be included in the normal planning for a project of this type) is in the range of \$10,000 to \$15,000—with this additional cost primarily associated with the additional landscaping required by the Conditions.

15. The public hearing was closed on September 22, 2010.
16. The Applicant's initial application for the Initial Project Comprehensive Permit, and as amended for the Modified Project, included the following materials:
 - a. Comprehensive Permit Application Form, as modified by letter dated August 14, 2009
 - b. Project Narrative, December, 2007, as amended by August 14, 2009 letter
 - c. Abutter's List
 - d. MassHousing Project Eligibility Letter, dated October 29, 2007 (and supporting documents), as amended by Notice of Project Eligibility (Site Approval) Substantial Change, dated July 2, 2009
 - i. Application Materials for Project Eligibility Approval
 - ii. Draft Regulatory Agreement
 - iii. CHAPA correspondence, January 31, 2008
 - e. Secretary of State Evidence of Applicant Existence, December 14, 2007
 - f. Purchase and Sale Agreement and Ownership Information
 - g. Developer's Resume
 - h. Project Data Summary
 - i. Administrative Fees
 - j. Review Fees
 - k. Site Plans, prepared by Mark Santora P.E., Inc.: July 2, 2010
 - (i) Title Page Site Plan of Woodland Meadows 07/02/2010
 - (ii) 1 of 4 Existing Condition Plan 08/15/2010
 - (iii) 2 of 4 Grading and Drainage Plan 08/15/2010
 - (iv) 3 of 4 Utilities Plan 08/15/2010
 - (v) 4 of 4 Details 08/15/2010
 - (vi) 1 of 2 Pre-Development Redline Plan 07/02/2010
 - (vii) 2 of 2 Post-Development Redline Plan 08/15/2010

- l. Elevations and Floor Plans, Cowen Associates Consulting Structural Engineers, 29 Vesta Road, Natick MA 01760, October 14, 2009, pages S-1 through S-6
 - m. Landscape Plan, prepared by Cosmos Associates
1 of 1 Planting Plan 4/1/2010
 - n. Lighting Plan, prepared by Cooper Lighting , July 2, 2010
 - o. CA Lighting Plan 07/02/2010
 - p. Color rendering of proposed buildings (showing building design and coloring), dated 7/21/09 and received 12/15/09, labeled “Sheet A3, Building B Renderings”
 - q. Traffic Impact and Access Study, Greenman-Pedersen, Inc., December, 2007, as supplemented by Supplemental Traffic Assessment, Greenman-Pedersen, Inc., June, 2008, and letter dated April 30, 2008, as further supplemented by Report, dated June 29, 2009, and letter dated July 29, 2009
 - r. Environmental Analysis, Sanford Ecological Services, Inc., December 17, 2007, as supplemented by letter dated October 27, 2009
 - s. Stormwater Management Analysis, last revised August 23, 2010
 - t. BMP Stormwater System Operation and Maintenance Plan, August 17, 2010
 - u. Stormwater Pollution Prevention Plan, last revised August 16, 2010
 - v. Subsurface Soil Data
 - w. Aerial and Site Photographs
 - x. Waiver List, last revised May 25, 2010
 - y. Development Pro Forma, dated September 20, 2010
17. Applicant Correspondence (see Exhibit B hereto)
18. Peer Review Correspondence and Miscellaneous Correspondence (see Exhibit B hereto)
19. Planting Plan, as modified by the Board, dated 10/21/10 and labeled “Board-Modified Planting Plan (based on Landscape Plan, prepared by Cosmos Associates labeled “Planting Plan” and dated 4/1/2010)
20. 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 22, 2010, are collectively referred to as the “Plans”. All of the Plans, plus any other submittals by or on behalf of the Applicant 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 22, 2010, will collectively be referred to as the “Plans and Submittals”.
21. Rather than engaging an outside engineer at the Applicant’s expense, the Board utilized the services of John Woodsmall, Town Engineer, to assist in the review of the application materials for the Project—particularly the engineering drawings and plans and stormwater calculations – which made the review process faster and more cost efficient for the Applicant. The Town Engineer provided comments indicating his opinion that the engineering aspects of this Project, with the Conditions set forth below, would not endanger public health or safety or the environment.

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. The Applicant has received a Project Eligibility (Site Approval) letter from MassHousing, indicating that the Project will be developed and implemented under the New England Fund subsidy program administered by MassHousing, a subsidizing program sponsored by the Federal Home Loan Bank of Boston and recognized by the Commonwealth of Massachusetts to assist in the construction of low or moderate income housing within the meaning of the Massachusetts Department of Housing and Community Development (“DHCD”) regulations at 760 CMR 56.00, et seq. (the “DHCD Regulations”); and
 - c. The Applicant has shown evidence of its interest in the Property, together with off-site easement areas, sufficient to qualify it as a recipient of a Comprehensive Permit for this site
3. The Board finds 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, as follows:
 - 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 approval of a 14-unit Project (as opposed to the 16-unit Modified Project as proposed by the Applicant) is appropriate for the following reasons:
 - a. As set forth in detail below, the Board is approving the application for a comprehensive permit with Conditions. The Board believes that these Conditions will make the Project a better and safer project for the Town of Southborough, for future residents of the Project, and for future visitors to the Project, while still providing the same number of affordable units (4) contemplated by the Applicant’s Modified Project proposal. One of the Conditions of the Board’s approval reduces the size of the Project from 16 units (12

Market Rate Units plus 4 Affordable Units) to 14 units (10 Market Rate Units plus 4 Affordable Units). The Board believes that this reduction in units is necessary in order to: (a) protect the health and safety of the occupants of the Project, the residents of Southborough, and the residents of other municipalities who may visit the Project or travel near it; and (b) promote better site and building design. In particular:

- i. **Safety Issues.** The Board is concerned that the 16-unit Modified Project, as proposed, would imperil the health and safety of the occupants of and visitors to the Project, as well as pedestrians and motorists traveling in or near the Site. The Applicant's proposal would include the construction of two substantial structures (containing proposed units 1, 2, 15, and 16) on Oak Hill Road with a minimum front yard setback of only four feet. In the Board's opinion, constructing these structures so close to Oak Hill Road – a busy north-south roadway that intersects with Rt. 9 just 300 feet from the Project site – would create a serious safety hazard for motorists leaving and entering the Project. In addition, the placement of these buildings so close to Oak Hill Road would endanger pedestrians (including children living in the Project and the surrounding area who will be getting on and off school buses on or near the Project) and motorists traveling on Oak Hill Road. The addition of snow banks and icy road conditions on Oak Hill Road during winter months will exacerbate these dangerous conditions due to the relatively steep grade of Oak Hill Road in front of the Project Site and the likelihood of increased stopping distances for vehicles moving downhill toward Route 9 during the winter months.

While it is true that the single-family houses currently located at 9-11 Oak Hill Road are also located close to Oak Hill Road, the Project will significantly increase the number of people living at the Site (including, presumably, a number of school-age children) and the traffic in and out of the Site. In addition, the only access road in and out of the Site would be between the two large structures located perilously close to Oak Hill Road, creating a dangerous condition for motorists and pedestrians alike due to reduced visibility from partially blocked sight lines.

As discussed above, the Board considered several options for moving these two structures farther away from Oak Hill Road while preserving the 16-unit proposal, including the "Plan A" proposal that would have used the entire 2+ acres of the Site, including the Open Space Restriction Area. Unfortunately, the parties were unable to negotiate a resolution of the Open Space Restriction issue, leaving only 1.5 acres of buildable area. Given the density of the proposed Project (16 units on just 1.5 acres of buildable land), the Board finds that the only feasible way of alleviating the dangerous condition described above is to reduce the number of units to 14. This reduction will allow the entire Project to move back several feet from Oak Hill Road, creating a front yard setback of at least 20 feet, which will significantly reduce the hazard caused by constructing two large structures containing a total of four housing units so close to Oak Hill Road.

The Board was also concerned that the proposed parking arrangements and traffic circulation associated with the 16-unit proposal would imperil the health and safety of the occupants of and visitors to the Project by making it difficult for emergency vehicles to get in and out of the Site. The Board is especially concerned with emergency access to the Site during the winter months when the only access road in and out of the Site may be narrowed by snow and ice and the number of vehicles parked at the Site may increase due to holiday parties and family gatherings. Visitors to the Site who cannot find a parking space on the Site may decide to park in prohibited areas despite the presence of “No Parking, Fire Lane” signs as required in the Conditions. Southborough Fire Chief, John D. Mauro, Jr., identified many of these same concerns in his Site Plan Review dated September 15, 2010, which he concluded with the following comment: “*I question whether the density of the project in a small area can accommodate the requisite parking, access, and functionality of the 16 unit proposal.*” Reducing the size of the Project by two units should alleviate these concerns somewhat by decreasing the number of residents, visitors, and vehicles on the Site, although it will still be incumbent on the residents and appropriate town authorities to ensure that emergency vehicles have access to the Site at all times. The lack of sprinkler systems in Project buildings adds to the Board’s concern about fire safety.

- ii. ***Design Issues and Density.*** Similarly, the Board finds that the design of the 16-unit proposal is seriously deficient and that reducing the number of units to 14, while not resulting in a perfect or ideal project from a site design perspective, will, at the very least, alleviate the serious deficiencies inherent in the 16-unit proposal. Once again, the Board’s primary concerns are the proximity of the Project to Oak Hill Road and the density of the overall Project, which, given its location, will essentially act as the gateway to the Oak Hill Road neighborhood. The Board has concluded that the placement of two of the seven proposed buildings so close to Oak Hill Road would cause the Project to visually dominate this historic neighborhood of single-family homes in a way that would make the Project itself, as well as the surrounding neighborhood, significantly less appealing. Reducing the number of units to 14 would increase the front setback to at least 20 feet and thereby allow the Project to assimilate much better with the surrounding area.

The Board was also concerned with the overall density of the Applicant’s Modified Project proposal, which would have resulted in 16 two-bedroom units on just 1.5 acres of buildable land. This intensity of use on such a small parcel of buildable land would lead to a number of serious deficiencies, including the safety and design deficiencies discussed above. In addition, the density associated with Applicant’s proposal (10.66 units per buildable acre) is wholly inconsistent with the existing character of the Oak Hill Road neighborhood and the Town of Southborough generally. While decreasing the number of units to 14 will not completely eliminate the Board’s concerns about density, the Board is attempting to strike the appropriate

balance between a number of factors, including the Town's obligation to promote affordable housing, the Applicant's right to a reasonable return on his investment, and Local Concerns (as specified by the DHCD Regulations), such as safety issues, the design of the site, and its consistency with the surrounding area. The Board finds that a 14-unit project strikes the appropriate balance between these considerations. In this regard, the Board notes that a 16-unit Project and 14-unit Project would each result in the creation of four Affordable Units – that is, the 14-unit project will promote the goal of affordable housing just as well as the 16-unit proposal.

5. The Board therefore finds that a modification of the proposed Project is appropriate, to reduce the number of dwelling units from the proposed number of 16 to a number of 14 units. Because of this reduction in the number of approved units, the Plans provided by the Applicant shall be modified as follows:
 - a. The unit currently labeled #3 on the Plans shall be removed, and the units currently labeled #4, #5, and #6 shall be combined into a single, three-unit building moved as far as practicable from Oak Hill Road. The building with units numbered 1 and 2 on Oak Hill Road shall be moved as far back from Oak Hill Road as practicable. This change results in the reduction of the number of units in these buildings by one and an increase in the front setback to at least 20 feet for the building containing units #1 and #2.
 - b. The building containing units 10, 11 and 12 will be reduced in size to contain only two units by removing unit #12. The building with units numbered 15 and 16 on Oak Hill Road and the building with units numbered 13 and 14 shall be moved as far back from Oak Hill Road as practicable. This change results in the reduction of the number of units in these buildings by one and an increase in the front setback to at least 20 feet for the building containing units #15 and #16.
6. The Board finds, as a result of the Board's review and analysis of the financial pro forma information provided by the Applicant, that the reduction in the number of units from 16 to 14 and the cost of complying with the Conditions will not make the Project uneconomic. The Board finds that due to various errors in the Applicant's financial pro forma information a 14 unit Project, with the associated Conditions herein, can provide a reasonable return on the Applicant's investment.
7. The Board finds that the Modified Project is consistent with local needs.
8. 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, the Board's concerns about public safety and site design deficiencies, the abutters' concerns about visual screening via landscaping and the aforementioned public safety and site design deficiencies and Town officials' concerns about public safety) have been adequately addressed by the Conditions that are part of this decision.

DECISION

1. The Board therefore, after Public Hearings and findings of fact included, but not limited to the facts stated herein, at the Board's meeting on October 27, 2020 on a motion duly made and seconded, grants, by a vote of 4-0 (with Board Members Stivers, McAuliffe, Hurley and Bartolini voting in favor and no Board Members opposed) a Comprehensive Permit to the Applicant under the provisions of Chapter 40B and the DHCD Regulations for the development of fourteen (14) condominium units (with four of these condominium units being Affordable Units), subject to and conditioned upon the following requirements captioned "Conditions of Approval" (the "Conditions"). The Board considered conditions it felt would best ameliorate the issues raised by the construction and operation of the Project, including concerns regarding health and safety of the occupants of the Project and of the health and safety of occupants of neighboring properties. The Board believes that the Conditions strike the appropriate balance between protecting the health, safety and welfare of the abutters to the Project and of residents of the Town, while meeting the housing needs supported by the Project.
2. The Board further approves waivers to the General By-Laws, Zoning By-Laws, and other local permitting and approval requirements, solely as described in Exhibit A hereto, entitled "Waivers Granted".

CONDITIONS OF APPROVAL

The Board's approval of the Comprehensive Permit for the Project is premised on and subject to the Applicant's and Project's compliance with the following Conditions. All requirements imposed by these Conditions shall be applicable, as specified, to the Condominium Association or other entity responsible for the administration of the Project regardless of whether the condition specifically identifies the Applicant, the Condominium Association, or no entity as having responsibility for a particular condition. References in the Conditions to specific Plans (e.g., the "Landscape Plan" or the "Lighting Plan") are to the most recent version of such plans that are included in the Plans and Submittals.

General

1. The Project shall be comprised of a total of fourteen (14) dwelling units, with no fewer than four (4) such units designated as Affordable Units. The remainder of the dwelling units in the Project shall be units designated for sale as Market Rate Units.
2. The Applicant, and 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 DHCD Regulations.
3. Each dwelling unit will be serviced by a public water supply and private on site communal septic system; the water supply will be tested and determined to be adequate to service all

units; and septic and wastewater treatment will be per system designed as approved by the Board of Health.

4. Except for the relief granted by the Board relative to specific waivers granted, the Applicant shall comply with all provisions of the Town's General By-Laws, Zoning By-Laws, 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 any such fees are otherwise expressly waived in this Decision.
5. 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.
6. 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 the Project as represented by the Plans and Submissions, and as approved by this Decision (including the Conditions), any such changes shall be governed by 760 CMR 56.05(11).
7. The Applicant shall obtain, prior to the issuance of any building permit, Final Approval from MassHousing in connection with the requirements set forth in the Project Eligibility (Site Approval) letter.
8. The Applicant shall execute or cause to be executed: (i) a Master Deed; (ii) Bylaws; and (iii) a Declaration of Trust (or other equivalent form of organizational document) for the Project (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 this Board prior to execution for review to ensure consistency with the Conditions contained herein. Prior to the issuance of a certificate of occupancy, the condominium buildings shall be organized as a condominium association in accordance with applicable law (the "Condominium Association"), and the Condominium Documents shall be recorded with the Worcester County Registry of Deeds (and evidence of such recording shall be provided to the Board).
9. The Condominium Documents shall specify any variations in fees for the Affordable Units. The Condominium Documents shall also specify the necessary operating requirements for the Condominium Association, including, but not limited to, maintenance schedules and responsibilities for such areas and activities as the entrance drive, common area lighting and landscaping, trash removal, snow removal and operation and maintenance of the stormwater management system. The stormwater management system operational requirements shall be specified in said documents in a manner consistent with the Conditions contained herein, referencing in particular the BMP Stormwater System Operation and Maintenance Plan.

10. 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 reasonable extensions to this Comprehensive Permit for good cause. The two (2) year time period shall be tolled for the time required to pursue or await the determination of any appeal of any other state, federal permit or other public approval required for the Project, provided in the case of any such appeal the Applicant diligently prosecutes or defends such appeal.
11. Prior to issuance of any building permit for the Project, final building plans shall be submitted to the Building Inspector for review as to their consistency with this Comprehensive Permit, with any material differences identified by the Building Inspector to be reviewed and approved by the Board in accordance with 760 CMR 56.05(11).
12. 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 14th occupancy permit.
 - b. As built drawings shall be submitted to the Town of Southborough Board of Health (for the septic system) and to the Building Inspector (for the remainder of the Project) prior to the issuance of the final (i.e., the 14th) occupancy permit.
13. The Project Site infrastructure (including binder course paving) shall be fully completed prior to the issuance of any Certificate of Occupancy for the Project.
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. Before obtaining a certificate of occupancy for the last (i.e., the 10th) Market Rate Unit in the Project, the Applicant shall complete the landscaping improvements located on the Site as depicted on the Plans. If seasonal weather conditions prevent this, Applicant shall post adequate bond, as determined by the Building Inspector, to ensure completion of such improvements.
16. 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.
17. No building permit shall be issued nor shall any site work and/or building construction commence until the Subsidizing Agency has granted Final Approval.
18. 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 shall not have, now or ever, any legal responsibility for operation or maintenance of same, including, but not limited to:

- 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 Project shall never be dedicated to or accepted by the Town as a public way.

19. Applicant shall comply with all applicable Chapter 40B cost certification requirements as determined by MassHousing.
20. The provisions of this Comprehensive Permit shall be binding upon the successors and assigns of Woodland Meadows LLC, 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, the provisions of this Comprehensive Permit shall be binding upon the purchaser, transferee or assignee and any subsequent purchaser, transferee or assignee. The provisions and limitation of the limited dividend corporation shall apply to the Project regardless of any sale, transfer or assignment of the Project.
21. Any sale or transfer of rights or interest in all or any part of the Site shall include a condition that successors are bound to the terms and conditions of this Decision. 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.
22. 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.
23. If, at any time after the date of this Decision but prior to the Subsidizing Agency's Final Approval, 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.

Affordability

24. There shall be four (4) affordable units, interspersed throughout the Project that will be sold to qualified households earning no more than eighty percent (80%) of the median family income, adjusted for household size, for residents of Eastern Worcester County MA, HMFA (the "Affordable Units") as determined by the United States Department of Housing and Urban Development ("HUD") or any successor thereto—the maximum allowable sales prices and eligibility requirements for the Affordable Units shall be established by MassHousing in accordance with Chapter 40B guidelines. The remaining ten (10) condominium units will be sold at market rate (the "Market Rate Units").

25. The Affordable Units shall not be situated so as to segregate the Affordable Units from the Market Rate Units.
26. In the event any handicapped persons are selected and qualify for Affordable Units; such units shall be made handicapped accessible in accordance with applicable federal and state requirements, at the Applicant's expense.
27. Prior to the issuance of any building permit, MassHousing's Regulatory Agreement with sample use restrictions attached shall have been executed and a copy submitted to the Town. Said Agreement shall have attached as exhibits a "Limited Dividend Monitoring Services Agreement" executed by the Applicant and MassHousing and as "Affordability Monitoring Services Agreement" executed by the Applicant, MassHousing and the MassHousing-approved monitoring firm. Prior to the issuance of any building permit, the executed Regulatory Agreement shall be recorded at the Worcester County Registry of Deeds. The Use Restriction shall be an Affordable Housing Restriction under MGL Ch. 184, §31, with the benefits of MGL Ch. 184, §32. The Restriction shall provide for permanent affordability and shall survive foreclosure. The Restriction shall be enforceable by the Town and the Affordability Monitoring Agent, and shall require that the Affordable Units shall remain affordable in perpetuity as approved by the Board for the full extent allowed by law.
28. The Applicant in conjunction with MassHousing shall establish the sale price for each Affordable Unit.
29. Prior to the advertisement of the Affordable Units for sale, the Applicant shall develop a Lottery Plan and resident selection plan for the Affordable Units. The Lottery Plan 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 Lottery Plan 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. The Lottery Plan and Lottery Agent shall be subject to the approval of the Subsidizing Agency.
30. Unless otherwise prohibited by a federal or state agency under a financing or other subsidy program, not less than seventy percent (70%) of the Affordable Units shall be initially offered to, in order of 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.

31. The Condominium Association fees for the Affordable Units shall be established in accordance with MGL Ch 183A and shall be consistent with the methodology used to establish the maximum allowable sales prices for the Affordable Units, as approved by MassHousing.
32. 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 Market Rate Units.
33. 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 right of first refusal to purchase an Affordable Unit on resale shall be granted to the Town, or its designee, in accordance with the standard MassHousing regulatory agreement and/or affordable housing restriction;
 - b. The Affordable Units shall be identified in the Regulatory Agreement; and
 - c. 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.

Design

34. Design and construction of the Project shall fully comply with all applicable federal and state laws and regulations, including, but not limited to, the Massachusetts State Building Code. This Project shall be designed and constructed on the Property in accordance with the Plans and Submittals, except as modified by this Decision (including the Conditions).
35. The unit types, sizes and mix of units will be in accordance with the Plans and Submittals.
36. Landscaping shall be in conformance with the Landscape Plan as submitted by the Applicant to the Board and as modified by the Board in the “Board-Modified Planting Plan”, attached hereto as Exhibit C and dated 10/21/10 and as may be further modified by these Conditions. For avoidance of doubt, the Board-Modified Planting Plan includes the following updates: (i) the addition of eight (8) Greenspire Linden trees (positioned as shown on the Board-Modified Planting Plan), (ii) the increase in the size of the 14 Greenspire Linden trees to a 3 1/2 inch caliper and (iii) the addition of the “60 foot screening line” on the Board-Modified Planting Plan (with other details associated with the “60 foot screening line” specified in another Condition). Such landscaping shall be maintained, repaired, or replaced by the Condominium Association as needed to maintain compliance with such Landscape Plan (as may be modified by these Conditions) and other applicable requirements. Dead or diseased plantings shall be replaced by the Condominium Association as soon as possible in accordance with growing and weather conditions.

37. With the written permission (the “Permission”) of the owner of the property at 15 Oak Hill Road (the “Direct Abutter”), the Applicant will plant evergreen screening at least six (6) feet tall and on four foot (4’) centers along the “60 foot screening line” on the Direct Abutter’s property as shown on the Board-Modified Planting Plan. Such planting will be completed by the Applicant within 60 days after the Permission is granted (or as soon thereafter as practicable in accordance with growing and weather conditions). The actual placement of the screening plants along the “60 foot screening line” will be as approved by the Direct Abutter. The Applicant will replace any of these screening plantings (as soon as practicable in accordance with growing and weather conditions) that are dead or diseased within twelve (12) months after they are planted. After this 12-month replacement period, the Direct Abutter shall have full responsibility for maintenance and replacement of these screening plantings. If the Direct Abutter has not provided the Permission for the planting of these screening plantings by a time three (3) months after the final (i.e., the 14th) Certificate of Occupancy for the Project has been issued, the Applicant’s obligation to plant such screening plantings shall no longer be in effect.
38. During the post-construction period, all parking for residents and guests shall be within the spaces provided on the Property, namely the driveway and garage parking spaces designated. There shall be no parking along or on any of the entrance drives, except in designated parking spaces. There shall be no parking in any of the areas marked as fire lanes on the Plans. These restrictions shall be the responsibility of the Condominium Association, and said responsibilities shall be described in the Condominium Documents.
39. Fire lanes denoted on the Project Plans shall be marked “No Parking, Fire Lane” by signs and by markings 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.
40. The Project shall conform to all requirements of the Southborough Water Department for utility connections unless waived hereunder.
41. Sidewalks, constructed according to Town standards for such sidewalks, will be installed by the Applicant to provide pedestrian access from the Project to Walgreens. Such access may be from the interior of the Project Site, and not necessarily along Oak Hill Road.
42. The Applicant shall cooperate with the Town’s Department of Public Works in the design and construction of the widening of the Oak Hill Road turning lanes in front of the site to improve traffic flow on Oak Hill Road. The Applicant shall be responsible for the cost of such work as is necessary on the Site (e.g., driveway paving) and the Town shall be responsible for the costs of such work in the Town roadway (e.g., curbing, roadway paving).
43. The Project shall be subject to the Town 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 the terms of DHCD Regulations (760 CMR 56.05(11)).

44. All turns, access, and cul-de-sacs shall be designed to accommodate emergency vehicles to the American Association of State Highway and Transportation Officials (AASHTO) BUS-45 design standard.
45. All drainage, culverts, septic system components, underground utilities and chambers shall be designed to AASHTO H-20 AND HS-20 weight loading standards.
46. Building address, numbering and address signage shall be as specified by the Town Fire Chief.

Wetlands and Stormwater

47. The Project shall be subject to the review and approval pursuant to the Massachusetts Wetlands Protection Act, and implementing regulations (310 CMR 10.00 et seq.), including the Massachusetts Department of Environmental Protection Stormwater Policy, to the extent applicable. 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.
48. The stormwater drainage system shall be operated and maintained in accordance with the Plans and Submittals and the stormwater drainage report and analysis submitted as part of the Comprehensive Permit application and noted herein, including the BMP Stormwater System Operation and Maintenance Plan.
49. The responsibility for operation and maintenance of the stormwater drainage system shall be the responsibility of the Condominium Association, and said responsibility shall be included in the Condominium Documents.
50. 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.
51. Prior to the 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 Condominium Association shall provide to the Town Conservation Commission an annual report regarding the maintenance items noted within said document.
52. Final stormwater calculations, consistent with final construction plans as provided for issuance of any Building Permit, will be provided by the Applicant and approved by the

Town Engineer and the Building Inspector before issuance of a building permit for any work on the Project site.

53. The Applicant has requested, and the Board has granted, a waiver relative to the specific limitation on stormwater volume runoff from the Site, as required in the Town By-Law.
54. The Applicant shall be responsible for the installation, operation, and maintenance of all aspects of the septic and stormwater management facility until the tenth (10th) 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 Condominium Association.
55. Snow removal activities on the site 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. These snow-related requirements shall be included in the Condominium Documents.

Marketing

56. 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. The model unit and sales office shall be subject to the standard requirements of the Building Inspector with respect to building and fire code compliance.
57. After a building permit has been issued for the Project the Applicant may display a temporary construction, marketing, or for-sale sign stating appropriate marketing information—with such temporary sign being in accordance with the sign requirements of the Town's Zoning By-Law.
58. After the Project is completed and a Certificate of Occupancy has been issued for the final (i.e., 14th) dwelling unit the Applicant may display a permanent sign identifying the Project in accordance with the sign requirements of the Town's Zoning By-Law.

Construction

59. During the period of construction, no vehicles of construction workers and no construction equipment shall be parked on Oak Hill Road, or any other public way of the Town.
60. 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, as may be determined by the Chief of Police.

61. Any portion of Oak Hill Road that is altered or disturbed during construction activities shall be repaired and repaved by the Applicant in a manner acceptable to the Superintendent of the Southborough Department of Public Works.
62. During all blasting and construction activities (including materials or equipment delivery activities) the Applicant shall comply with all local, state, and federal laws regarding noise, vibration, dust, sediment, and blocking of Town roads. The Applicant shall sweep that portion of Oak Hill Road adjacent to the Site whenever necessary. The Applicant shall at all times use all reasonable means to minimize inconvenience to residents in the general area of the Site. 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.
63. 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 Site.
64. 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 premises shall be removed and replaced with underground service.
65. The Board and the Applicant received a letter from the Town Engineer, dated September 14, 2010, indicating that the Town plans to pave Oak Hill Road in front of the Site during the Spring of 2011. As this letter explains, because the Town has a policy prohibiting cuts in the pavement of newly paved roadways for a period of five (5) years, the Applicant will install all utility services to the Site that involve cutting the pavement in Oak Hill Road from Oak Hill Road to at least the Site boundary before this paving of Oak Hill Road takes place, and according to a schedule acceptable to the Town Engineer.
66. During the period of construction, all deliveries of construction materials and equipment shall be made only on Monday through Friday no earlier than 7:00 a.m. and no later than 6:00 p.m. Construction operations shall be limited to the hours of 7:00 a.m. through 6:00 p.m. Monday through Friday, and 8:00 a.m. to 2:00 p.m. on Saturday. Except for emergency conditions, no construction work shall be allowed on Sundays or on any State or Federal holiday.
67. Construction of all units, utilities, pedestrian and vehicle areas, drainage structures and all related appurtenances shall be in accordance with the Plans and Submittals.
68. The Project's dwelling units will be constructed so as to meet at least the minimum applicable Energy Star requirements.
69. The Applicant shall use only controlled density fill for back filling any trenches dug on Oak Hill Road, to prevent settlement in accordance with the Town Department of Public Works requirements.

70. 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.
71. During the period of construction, the Applicant may locate one construction trailer of a size no greater than 8' wide by 26' long on the Property; provided, however, that such trailer shall not be located within any zoning-related setback area or within any setback area required to jurisdictional wetlands.
72. During the period of construction, the Property shall be secured in a manner approved by the Building Inspector so as to prevent personal injury or property damage.
73. 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.
74. During construction, the Applicant will install and maintain construction fencing along all borders of the limits of disturbance and will ensure that no construction activity occurs on any abutting property.
75. The Applicant shall provide on-Site sanitary facilities (e.g., Port-a-Potties) for use by workers during construction.
76. Construction of the Project shall be subject to on-site compliance inspections by the Building Department in the customary manner. The Board and its agents shall have authority to enter the Site during construction of the Project (subject to safety standard compliance, including hard hat, boots and safety glasses, as required) and until as-built plans are approved, to determine conformance with this Decision. After completion of construction, the Town's inspection officials shall have authority to enter the common areas of the Property for purposes of ensuring compliance with the conditions of this Comprehensive Permit and any other applicable permits, regulations, bylaws and statutes.
77. No garbage disposals shall be permitted in any of the condominium units and the Condominium Documents shall so provide.
78. If construction activity ceases for longer than 30 days, then written notice shall be provided by the Applicant to the Building Inspector at least 48 hours before restarting work. The Building Inspector may require that any foundation, trench, structure, equipment or other hazard be secured as necessary in his opinion, including but not limited to installation of fencing and/or filling of trenches.
79. Exterior lighting shall be located as shown on the Lighting Plan and as otherwise shown in the Plans, except as may be otherwise modified by the Conditions.

80. Prior to the issuance of a Certificate of Occupancy for the last (i.e., 14th) dwelling unit, 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.
81. Prior to the issuance of a Certificate of Occupancy for the last (i.e., 14th) dwelling unit, evergreen landscaping and fencing at least five feet (5') tall will be installed by the Applicant along the westerly property line and southerly property line to provide physical and visual separation from abutting properties—provided that such landscaping and fencing shall not be installed in any wetland areas.
82. 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.
83. Access along all streets and driveways that are part of the Project shall meet a minimum height clearance of fifteen feet (15') to allow for proper ingress/egress of emergency vehicles.
84. The driveway from Oak Hill Road shall have a minimum width of 24' from Oak Hill Road to the first set of condominium unit driveways (approximately 60' in length) and a minimum width of 18' elsewhere.
85. 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 Project, including the design and/or Conditions set forth in this Decision, and also including, but not limited to, all testing results, official filings and other permits issued for the Project.
86. The Applicant shall maintain a copy of the endorsed Plans and this Decision at the Site during construction.
87. 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.
88. 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 Department of Public Works, Fire Chief, and Police Chief, a initial projected construction activity plan (including expected timing of the included construction activities) (the "Construction Plan"). The Construction Plan will be updated by the Applicant at least every six (6) months during the construction process, with such updated Construction Plans distributed as above.
89. At least 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 initial Construction Plan.


90. Ninety-six (96) hours advance written notice shall be given by the Applicant to all affected parties before any water or other utility disruption related to the Project construction is to occur.

RECORD OF VOTE

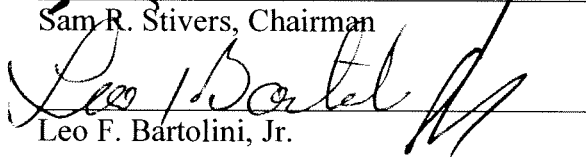
At its meeting on October 27, 2010, the Board of Appeals voted 4-0 to grant a Comprehensive Permit as described herein, subject to the Conditions herein, as attested by the signatures below.

Members in favor: Stivers, McAuliffe, Hurley, Bartolini

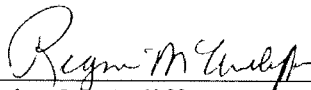
Members opposed: None



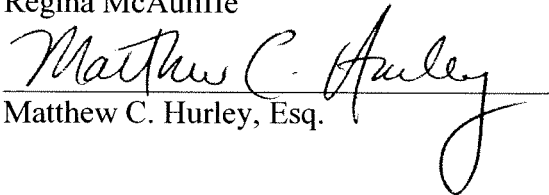
Sam R. Stivers, Chairman



Leo F. Bartolini, Jr.



Regina McAuliffe



Matthew C. Hurley, Esq.

Dated : October 27, 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.

Exhibit A
Waivers Granted

Regulation	Description	Reason
§ 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.	To allow the 14 Unit Townhouse Project as approved by the Board in its decision.
§ 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. 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	To allow the 14 Unit Townhouse Project as approved by the Board in its decision.
§174-8.2. RA Residence A 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.	To allow the 14 Unit Townhouse Project as approved by the Board in its decision.

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	<p>D. Development standards are as follows: (1) Minimum lot area: forty three thousand five hundred sixty (43,560) square feet</p> <p>D. Development standards are as follows: (3) Minimum setbacks: Front: thirty-five (35) feet Side: twenty-five (25) feet</p> <p>(4) Maximum height: thirty-five (35) feet, two and one-half (2 1/2) stories</p>	<p>To allow the 14 Unit Townhouse Project (as approved by the Board in its decision) on two lots comprising approx. 2.28 acres (9 and 11 Oak Hill Road).</p> <p>To allow 14 Unit Townhouse Project (as approved by the Board in its decision) with reduced front and side yard setback requirements, allowing the project to meet parking requirements and emergency vehicle access. Note that existing residential structures currently have dimensional non-conformities. Front: fifteen (15) feet Side: ten (10) feet</p> <p>To allow Townhouse buildings up to three stories high, approximately 38' in height.</p>
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Regulation	Description	Reason
§ 174-13. Landscaping	D. Side and rear line planting area. A landscape buffer strip a minimum of ten (10) feet in width shall about all side and rear property lines.	To waive the requirement of a landscape buffer in lieu of the proposed Landscape Plan
§ 174-13. Landscaping	Landscape Sizes: Shade Trees – 3" caliper Ornamental Trees – 8' tall Shrubs – 36" height – ultimate height 5'	To waive the requirement of specified plant dimensions and allow planting in accordance with the Landscape Plan: Trees – 2" – 2-1/2" caliper Ornamental Trees – 2" caliper Shrubs – varying heights This will allow a greater variety of plants, as well as a greater amount of plants (approximately 160 plants).
§ 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;	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	7.6.10.8 Location of existing and proposed area on site with the shortest distance between the surface and the maximum groundwater elevation.	To waive this requirement in lieu of the Stormwater Management Plan submitted with the Application.

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	7.6.13 Earth Removal/Fill Calculations	To waive the requirement for individual earth removal and fill calculations in lieu of the grading plan submitted with the Application, unless the Building Inspector requires such a calculation per the Conditions.
Regulation	Description	Reason
	7.6.16 Stormwater and Erosion Control Management Plan Contents	To waive any additional requirement in excess of the Stormwater Management Report and Plan submitted with the Application.
SOUTHBOROUGH BOARD OF HEALTH TITLE V MODIFICATIONS	15.227 Placement and Construction of Tees	To waive any requirement for outlet filter tees, in connection with the design of a Presby system.
	"Unwritten design-build rule"	To waive any prohibition on design build in accordance with the design and installation of the Presby system.

EXHIBIT B
Correspondence Received by the Board

The following correspondence relative to the Modified 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. Attorney Daniel Hill, September 28, 2010, clarifying comments from the 9/22/10 ZBA hearing – not distributed to ZBA or others because public input was closed at the 9/22/10 meeting. 2 pages
2. Attorney Daniel Hill, September 22, 2010, pro-forma review, 15 pages
3. Mr. Robert Heavey, September 22, 2010, response to proposed changes to Comp. Permit, 2 pages
4. Attorney Mark Kablack, September 21, 2010, clarification of the record, 7 pages
5. Southborough Fire Department, Fire Chief Mauro and Captain Mauro, reviewed engineering plans from Mark Santora on 8/15/10, 3 pages
6. Mr. Robert Heavey, Engineer Mark Santora, Stormwater Pollution Prevention Plan, dated 7/1/2010 and revised 8/16/10, 29 pages
7. Engineer Mark Santora, BMP Stormwater System Operation and Maintenance Plan, August 17, 2010, 5 pages
8. Attorney Mark Kablack, September 13, 2010, response to Town Eng, John Woodsmall, 71 pages, and the September 14, 2010 received existing plan, utilities, details and grading and drainage, 4 pages
9. Town Engineer, John Woodsmall, comments on Stormwater Management Analysis, site design, miscellaneous, September 14, 2010, 1 page
10. Mr. Robert Heavey, Engineer Mark Santora, Stormwater Management Analysis, last revised 8/23/10, 63 pages
11. Mr. Roger Challen, July 26, 2010, response to Attorney Mark Kablack’s letter dated July 2, 2010, 1 page
12. Mr. Roger Challen, July 26, 2010, can’t attend July 28, 2010 meeting sending Attorney Daniel Hill to represent him, 1 page
13. Southborough Planning Board, July 27, 2010, comments regarding the 16 units, 1 page
14. Attorney Mark Kablack, August 17, 2010, transcript from the July 28, 2010 ZBA meeting
15. Attorney Daniel Hill, July 27, 2010, proposed list of conditions for the comprehensive permit, 18 pages
16. Southborough Conservation Commission, July 27, 2010, comments to the revised material dated July 2, 2010, 2 pages
17. Town Engineer, John Woodsmall, July 20, 2010, comments to the revised material dated July 2, 2010, 5 pages

18. Engineer Mark Santora, P.E., last revised plans on August 15, 2010, Existing condition plan, Grading and Drainage, Utilities, Details, Pre-development redline plan, Post-Development Redline Plan, 6 pages
19. Engineer Mark Santora, P.E., last revised plans on July 2, 2010, Site Plan, existing condition plan, Grading and drainage plan, Utilities, Details, Pre-development redline plan, Post-Development Redline Plan, 6 pages
20. Attorney Mark Kablack, July 2, 2010, clarification from the June 28, 2010 meeting, 2 pages
21. Attorney Mark Kablack, July 21, 2010, transcript from the June 28, 2010 meeting,
22. Mr. Robert Heavey and Engineer Mark Santora, Stormwater Management Analysis last updated July 2, 2010, black notebook, estimated 90 pages
23. Mr. Robert Heavey and Engineer Mark Santora, Stormwater Management Analysis last updated June 8, 2010, received in the office on June 22, 2010, estimated 90 pages
24. Mr. and Mrs. Roger Challen, June 24, 2010, comments to the board, 2 pages
25. Town Engineer, John Woodsmall, June 28, 2010, reviewed materials, 3 pages
26. Attorney Mark Kablack, received on June 15, 2010, transcript from the May 24, 2010 Board meeting.
27. Attorney Mark Kablack, received on May 20, 2010, transcript from the April 28, 2010 Board meeting.
28. Conservation Scientist, Ellen Chagnon, April 21, 2010, reviewed plans – site plan, stormwater management analysis (March 2010), 2 pages
29. Attorney Mark Kablack, April 15, 2010, response to the Fire Department's memo of January 11, 2010, 3 pages
30. Southborough Fire Department, January 11, 2010, revised plans, 3 pages
31. Conservation Commission, March 10, 2010, revised plans reviewed, 5 pages
32. Attorney Mark Kablack, April 12, 2010, response to Conservation Commission's letter March 10, 2010, 7 pages
33. Mr. Lee Bartolini, Board Member, 14 color photos of other developments (Saxonville, MA) by Mr. Robert Heavey, March 15, 2010
34. Conservation Commission, March 10, 2010, reviewed plans from January 7, 2010, 5 pages.
35. Mr. Robert Heavey, February 5, 2010, received in the department on February 22, 2010, a letter to neighbors on Oak Hill Road explaining the conservation restriction and delay in his project along with transcript note, 20 pages

36. Mr. Roger Challen, (Received duplicate copy) - February 5, 2010, received in the department on February 22, 2010, a letter to neighbors on Oak Hill Road explaining the conservation restriction and delay in his project along with transcript note, 20 pages
37. Attorney Mark Kablack, February 2, 2010, received February 8, 2010, response to a memorandum sent by the ZBA on January 29, 2010, 1 page
38. Mr. Stephen G. Scott, 19 Oak Hill Road, Southborough, MA letter dated January 27, 2010 expressing concerns about the project, 2 pages
39. Mr. Paul Russell, 15 Oak Hill Road, Southborough, MA letter dated January 15, 2010 expressing concerns about the project, 1 page
40. Attorney Mark Kablack, January 22, 2010, response to John Woodsmall's letter dated January 20, 2010, 2 pages
41. Town Engineer, John Woodsmall, January 20, 2010, comments from the January 7, 2010 applicant's submittal, 12 pages
42. Southborough Fire Department, Fire Chief John Mauro, Jr. and Captain Joseph Mauro, January 11, 2010, review of revised plans from applicant's engineer Mark Santora on October 15, 2009, 3 pages
43. Attorney Mark Kablack, November 10, 2009, escrow account regarding conservation restriction agreement with Mr. Roger Challen and his counsel, William Pezzoni, 1 page
44. Town Planner, Vera Kalias, January 26, 2010, response to revised plans on October 15, 2009, 3 pages
45. Attorney Mark Kablack, February 17, 2010, copy of the transcript from January 27, 2010
46. Southborough Housing Opportunity Partnership Committee (SHOPC) January 26, 2010, comments on the project, 1 page
47. Attorney Barry Bachrach, December 21, 2009, addressing storm water drainage work on Lot B, a follow up to his first letter dated December 2, 2009, 2 pages
48. Attorney William Pezzoni, December 28, 2009, regarding conservation restriction and recent correspondences between attorneys, 2 pages
49. Attorney Mark Kablack, December 22, 2009, copy of transcript from November 16, 2009
50. Attorney Mark Kablack, December 24, 2009, conservation restriction, 1 page
51. Mr. Robert Heavey, December 10, 2009, letter stating his understanding of the agreement between himself and Mr. Roger Challen after the December 9, 2009 meeting, 1 page
52. Attorney Barry Bachrach, December 2, 2009, conservation restriction, 2 pages
53. Engineer Mark Santora, December 15, 2009, grading and drainage plan, page 2 of a set of 4
54. Attorney Mark Kablack, November 17, 2009, copy of transcript from October 28, 2009

55. Engineer Mark Santora, Received November 16 and last revised on October 15, 2009, set of 4 pages – site plan consisting of existing condition plan, grading and drainage, utilities, details
56. Attorney William Pezzoni, November 5, 2009, conservation restriction and waiver of conflict, 2 pages
57. Attorney Mark Kablack, November 5, 2009, conservation restriction, 1 page
58. Attorney William Pezzoni, November 6, 2009, response to Attorney Kablack's letter dated November 5, 2010, 2 pages
59. Attorney Mark Kablack, November 6, 2009, response to Attorney Pezzoni's letter dated November 5, 2010, 2 pages
60. Mr. Roger Challen, October 1, 2009, conservation restriction, 2 pages
61. Mr. Robert Heavey, October 19, 2009 received by the department October 21, 2009, further revisions to their formal amendment under letter dated August 14, 2009 – 2 page cover letter, response to Town Engineer, John Woodsmall's letter dated September 1, 2009, 2 page – Cowen Associates, site plan consisting of general structure notes, foundation plan, first floor framing, second floor framing, roof framing, building section last revised August 10, 2009, and October 15, 2009, set of 4 pages – site plan consisting of existing condition plan, grading and drainage, utilities, details by Engineer Mark Santora.
62. Town Engineer, John Woodsmall, September 1, 2009, response to traffic report, 6 pages
63. Attorney Mark Kablack, September 23, 2009, copy of transcript for August 26, 2009
64. Southborough Fire Department, Fire Chief John Mauro, response to the amendment to the application, 5 pages
65. Attorney Mark Kablack, August 14, 2009, amendment from a 43 unit project on Woodland Road to a 16 unit project on Oak Hill Road, 2 pages
66. Mr. Robert Heavey, August 19, 2009, contact list for Project Team, 1 page
67. Chairman Sam Stivers, July 28, 2009, Preparation for continued hearing on August 26, 2009, 2 pages
68. Mr. Robert Heavey, July 29, 2009, response to Chairman Stivers letter dated July 28, 2009, 1 page

Woodland Meadows LLC
9-11 Oak Hill Road (38-7 and 38-6)
Grant of Comprehensive Permit
October 27, 2010—Page 33

EXHIBIT C
Board-Modified Planting Plan (dated 10/21/10)
[Attached Hereto]



**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 27, 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: Woodland Meadows LLC
Address: 9-11 Oak Hill Road (38-7 and 38-6)
Town: Southborough, Massachusetts

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

9-11 Oak Hill 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 S", is written over a horizontal line.

Sam R. Stivers
Chairman

Town Clerk

09-2376

DATE	APPROVED BY	DATE	APPROVED BY

APPLICANT:
 Woodland Meadows LLC
 1000 Main Street
 North, MA 01760

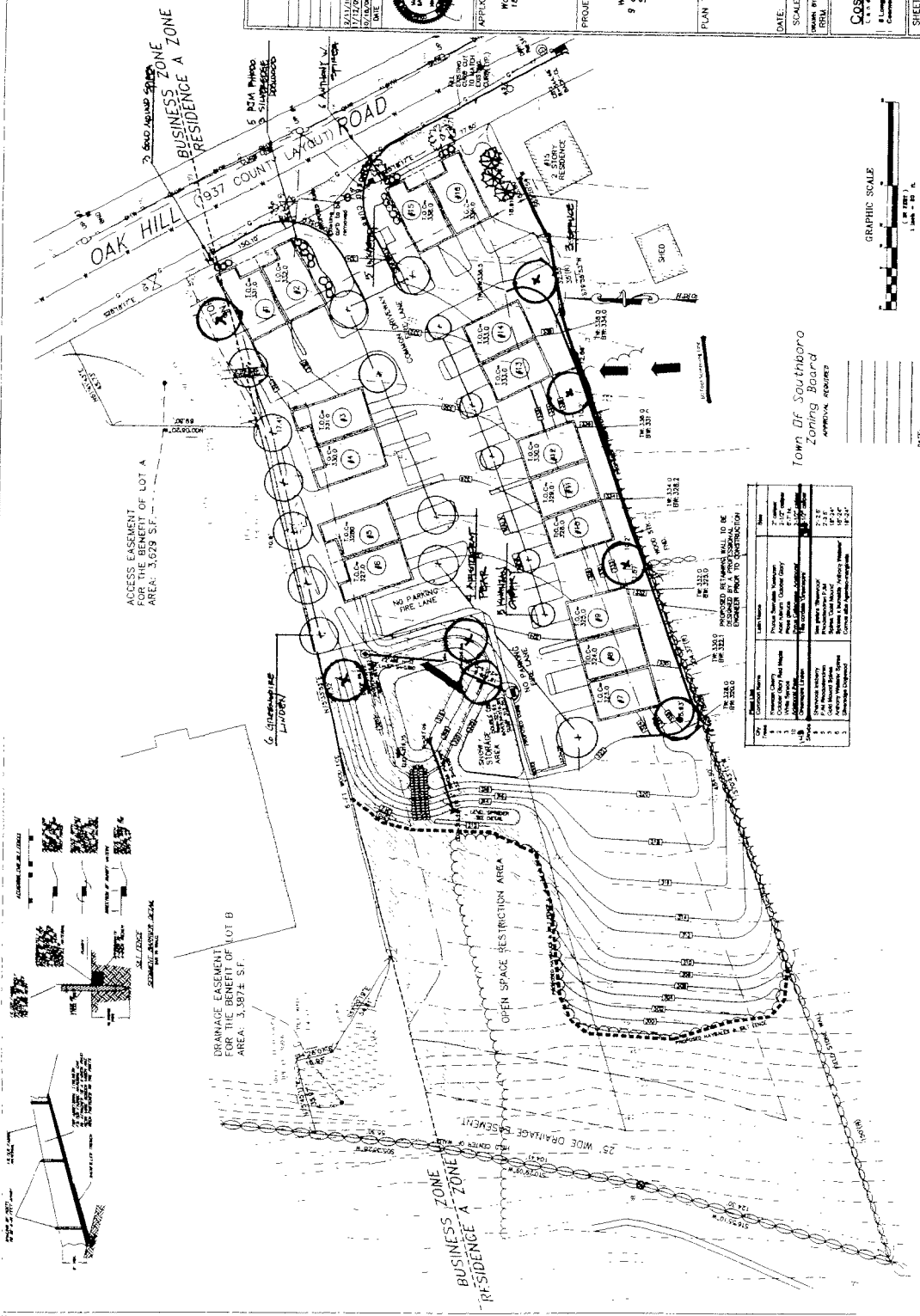
PROJECT TITLE:
 WOODLAND MEADOWS
 9 & 11 OAK HILL ROAD
 SOUTHBOROUGH, MA

PLAN TITLE:
PLANTING PLAN

DATE: April 1, 2010
 SCALE: 1" = 20'
 DRAWN BY: [Signature]
 CHECKED BY: [Signature]
 RM: [Signature]
 IAMS: [Signature]
 LMS: [Signature]

Cosmos Associates
 8 Longview Street
 North, MA 01760
 CosmosAssociates.com 948.633.3888

SHEET: **1 OF 1**



PROPOSED PLANTING SHALL BE PROVIDED BY A PROFESSIONAL LANDSCAPE ARCHITECT PRIOR TO CONSTRUCTION.

Item	Quantity	Notes
1. Planting	2' Caliper	
2. Planting	1 1/2' Caliper	
3. Planting	1' Caliper	
4. Planting	1' Caliper	
5. Planting	1' Caliper	
6. Planting	1' Caliper	
7. Planting	1' Caliper	
8. Planting	1' Caliper	
9. Planting	1' Caliper	
10. Planting	1' Caliper	

