

**COMMONWEALTH OF MASSACHUSETTS
HOUSING APPEALS COMMITTEE**

ROGER LEBLANC,)	
)	
)	
Appellant,)	
)	
v.)	No. 2006-08
)	
AMESBURY ZONING BOARD OF)	
APPEALS,)	
)	
Appellee.)	
)	

**RULING AND ORDER ON REQUEST FOR ENFORCEMENT
AND/OR APPEAL OF FINDING OF SUBSTANTIALITY
ON NOTICE OF PROJECT CHANGE**

I. INTRODUCTION AND PROCEDURAL BACKGROUND

In 2005, the Appellant Roger LeBlanc (LeBlanc or the Developer) applied to the Amesbury Zoning Board of Appeals (Board) for a comprehensive permit to construct 56 mixed-income, rental housing units on a 10-acre site off Clark's Road in Amesbury. In 2006, the Amesbury Zoning Board of Appeals (Board) granted a comprehensive permit for a 44-unit project, with numerous conditions. The Developer appealed the Board's decision, and the Committee decided that the Board's conditions rendered the project uneconomic and were not consistent with local needs. *LeBlanc v. Amesbury*, No. 2006-08 (Mass. Housing Appeals Committee May 12, 2008) (*2008 Decision*). The Committee directed the Board to issue an amended comprehensive permit for 56 units, such permit to be consistent with the *2008 Decision*. As is the Committee's practice, pursuant to 760 CMR 56.07(6)(a), the decision stated that if the Board failed to carry out that order within 30 days, the Committee's decision would be deemed the action of the Board. The Board appealed to the Superior Court which upheld the *2008 Decision* on June 2, 2009. Thereupon, the Board took no further action with respect to the decision. Accordingly, by its terms, the *2008 Decision* became the comprehensive permit for the project.

In 2013, following a subsequent appeal by the Developer seeking a constructive grant of an extension request, the Committee granted the request for an extension. At that time, LeBlanc also sought “clarification” of the permit conditions applicable to the project. The Committee stated then that “the conditions applicable to the project can be found within the four corners of the Board’s decision and the Committee’s decision” and that unless a dispute arises “about how particular conditions should be interpreted and applied to the project,” there was no need for the Committee to clarify its *2008 Decision*. *LeBlanc v. Amesbury*, No. 2006-08, slip op. at 14 (Mass. Housing Appeals Committee Jan. 14 2013 Ruling and Order on Comprehensive Permit Extension) (*2013 Ruling*).

On August 20, 2015, LeBlanc filed with the Board a Notice of Project Change under 760 CMR 56.05(11)(a), enclosing a proposed “Final Comprehensive Permit Conditions August 2015.” In the Notice, LeBlanc asserted that the submission sought clarification or at most insubstantial changes to the permit. On August 28, 2015, the Board determined that the Notice represented a substantial change of the permit under 760 CMR 56.05(11)(a). On September 11, 2015, LeBlanc filed with the Committee a “Request for Enforcement and/or Appeal of Finding of Substantiality on Notice of Project Change” enclosing the Notice of Project Change. LeBlanc asserted that the Notice of Project Change should have been determined insubstantial under 760 CMR 56.05(11) or, alternatively, this appeal should be treated as an enforcement action pursuant to 760 CMR 56.07(6) because the Notice did not request any changes to the project but rather approval of clarification of conditions in the Board’s original permit as modified by the *2008 Decision*.

After the preparation of a pre-hearing order and the filing of pre-filed testimony, the parties waived oral testimony and submitted the matter for decision on the written record. The Developer filed a post hearing memorandum; the Board moved for summary or directed decision.¹ The Committee issued a proposed ruling and order and requested the parties to submit any objections and comments with respect thereto. Both parties submitted responses. The Board’s response consisted of a general objection to the proposed ruling in its entirety. LeBlanc submitted specific suggested revisions to the proposed ruling, some of which we incorporate into this Ruling and Order.

1. The Board’s request for oral argument is denied.

LeBlanc objects to the Board's characterizing the posture of this matter as one for summary decision. However, the difference in characterization is not of import to the resolution of this matter, which requires us to decide the issues in this appeal based on the record, which consists of the pleadings, exhibits, pre-filed testimony, the parties' arguments and our prior decisions in this case. *See* 760 CMR 56.06(5)(d). To the extent necessary to clarify the *2008 Decision*, we have also considered the record of the prior proceedings in this case upon which the *2008 Decision* was based. Upon a review of the record, we agree that the resolution of the issues in dispute rests on the interpretation and application of the Comprehensive Permit Law and its implementing regulations to that record.

II. CLARIFICATION OF COMPREHENSIVE PERMIT DECISION

The Board challenges LeBlanc's request for an enforcement order and request for clarification of the decision, arguing that the only issue before us is the Notice of Project Change and the Board's determination that the proposed modification of the permit is substantial. It contends that the *2013 Ruling*, which declined to clarify the comprehensive permit, renders the issue of clarification *res judicata*.

However, as LeBlanc has argued, its Notice of Project Change sought a determination of whether the proposed conditions to the permit it submitted to the Board were consistent with the *2008 Decision* and represented an accurate clarification of that decision. Since the Board has not issued a modified permit, and the parties disagree about the provisions of the permit ordered by the *2008 Decision*, a dispute has arisen that requires clarification of the comprehensive permit, and this matter is not *res judicata*. The Committee expressly reserved clarifying the comprehensive permit if a dispute arose. *See 2013 Ruling* at 14. Clarification is necessary before proceeding to consideration of either enforcement, as requested by LeBlanc, or a determination of whether LeBlanc has proposed changes to the permit. The *2008 Decision* ordered that:

The development, consisting of 56 total units, including 14 affordable units and a manager's unit, shall be constructed substantially as shown on plans by Eastern Land Survey Assoc., Inc. (Site Development Permit Plan, March 28, 2005, rev'd Jan. 20, 2006 (Exhibit 5) and architectural plans by H.H. Morant & Co., Inc., Architects, April 17, 2001 (Exhibit 6), and shall be subject to those conditions imposed in the Board's decision filed with

the Amesbury Town Clerk on August 22, 2006 (Exhibit 1) that are not inconsistent with this decision.

2008 Decision at 22, § VII-2(a).² The decision struck conditions in the following categories: A) conditions exceeding the authority of the Board by invading the province of the subsidizing agency in violation of *Board of Appeals of Amesbury v. Housing Appeals Committee*, 457 Mass. 748 (2010); B) conditions that were inconsistent with the development approved by the Committee, including conditions that were not supported by local concerns; C) improper conditions subsequent, which require further submission of information to the Board for approval of aspects of the project, rather than simply for review for conformance to the comprehensive permit; D) conditions that were not applied equally to subsidized and unsubsidized housing; and E) conditions that were ambiguous, unnecessary or otherwise improper. Review of the prior pleadings and exhibits in this case is necessary to clarify the *2008 Decision*.

To aid in our analysis, the parties have provided for each condition in the Board's original permit an assessment of whether it was struck by the *2008 Decision*, it requires clarification or modification to be consistent with the *2008 Decision*, or whether LeBlanc's proposed modification or removal of a condition would constitute a change from the permit approved by the *2008 Decision*. Since the Board did not issue a decision in conformity with the *2008 Decision*, we have conducted our analysis of all of the conditions and granted waivers in the Board's decision in light of the *2008 Decision* to establish the provisions of the comprehensive permit. The Appendix hereto sets out, with respect to each condition and waiver determination made by the Board in its decision, our clarifications for consistency with the *2008 Decision*. The Appendix is hereby is incorporated into and made a part of this Ruling and Order.

A. Conditions That Exceed the Authority of the Board

The *2008 Decision* ruled that certain "provisions [in the Board's decision] improperly impinge upon the prerogatives of the subsidizing agency." *Id.* at 21, citing *Attitash Views, LLC v. Amesbury*, No. 2006-17 (Mass. Housing Appeals Committee

2. These exhibit references are to exhibits introduced in the original proceeding decided by the *2008 Decision*.

Summary Decision Oct. 15, 2007), *aff'd Zoning Board of Appeals of Amesbury v. Housing Appeals Committee*, 457 Mass. 748 (2010) (*Amesbury*). In *Amesbury*, the Supreme Judicial Court made clear that “the local zoning board’s power to impose conditions is not all encompassing, but is limited to the types of conditions that the various local boards in whose stead the local zoning board acts might impose, such as those concerning matters of building construction and design, siting, zoning, health, safety, environment, and the like.” *Id.* at 749. The *Amesbury* court also stated:

...insofar as the board’s ... conditions included requirements that went to matters such as, inter alia, project funding, regulatory documents, financial documents, and the timing of sale of affordable units in relation to market rate units, they were subject to challenge as ultra vires of the board’s authority under § 21.

Id. at 758. The *2008 Decision* specifically cited Condition 41 as violating this rule. The conditions challenged by LeBlanc as intruding on the authority of the subsidizing agency are: Conditions 24-29, 35-41, 42D-42G, 45, 47, 73 and 88. The Board disputes that these conditions violate the principles of *Amesbury*. The Board’s argument is largely without merit. Most of the conditions to which LeBlanc objects fall squarely within the category of project funding, regulatory documents, financial documents, the timing of the sale of affordable and market rate units, and the like. We have clarified or struck these conditions to conform to the *Amesbury* requirements. *See* Appendix.

B. Conditions Inconsistent with the Approved Project

Since we have approved the project proposed by LeBlanc, the Board’s conditions that require modifications to the project are inconsistent with the *2008 Decision* and must be struck or modified. We have struck or clarified conditions relating to wetlands, stormwater management, roadway access, recreation areas and a visual buffer for abutters, issues discussed in the *2008 Decision* at 12-19. Other conditions applicable to the project as approved by the Board we have similarly struck or modified for consistency with our approval of the project plans submitted by LeBlanc. *See 2008 Decision* at 20-22. *See also* Appendix.

Stormwater Management and Wetlands. The *2008 Decision* determined that all wetlands issues were addressed under the Wetlands Protection Act. While it noted that the Board “implicitly” granted any waivers of local wetlands requirements necessary for

the project, *2008 Decision* at 8, the decision stated that there was no evidence of local wetlands requirements that were any stricter than state requirements, finding the Board had not demonstrated a valid local concern regarding wetlands and stormwater management issues. The Committee stated that wetlands and stormwater management issues could be addressed during review of final plans under the state Wetlands Protection Act, and imposed a condition to address the only potentially local concern regarding maintenance vehicles in wetlands buffer zones. *2008 Decision* at 16-18, 22, § VII-2(c), (d) and (f). Given this ruling, LeBlanc asks us to determine that the Board's conditions relating to wetlands and stormwater are inconsistent with the *2008 Decision*. We agree with LeBlanc that the Board's stormwater management and wetlands conditions are generally inconsistent with the *2008 Decision* and have modified or struck them to be consistent with the *2008 Decision*.

Roadway, Recreational Facilities and Visual Buffer for Abutters. The Committee determined that Board's arguments regarding the access roadway, recreational facilities and the visual separation between the project and abutting neighbors were not supported by local concerns. The Committee imposed a condition regarding a screening buffer for abutting neighbors, *2008 Decision* at 22, § VII-2(e), and we have clarified conditions regarding roadways. The parties' agreed-upon language has modified conditions relating to recreation facilities.

Conservation Restriction. The Board's conditions that require LeBlanc to execute and record a conservation restriction pursuant to G. L. c. 184, § 31 for certain land area identified on the plans approved by the Board are inconsistent with the *2008 Decision*. See Conditions 42A [sic]³ and 52. The project proposed by the Developer did not include a conservation restriction, although the plans accepted by our decision provide for resource areas. *2008 Decision* at 22, § VII-2(b). Since we have not determined that a valid local concern supports the imposition of a conservation restriction that is not part of the plans approved by *2008 Decision*, Conditions 42A [sic] and 52 are struck. Condition

3. See Appendix, § III.B at 16. Some of the Board's conditions have duplicate numbers, which the parties have identified by characterizing them as "# [sic];" for clarity, we cite the page reference in the Appendix for these conditions.

42L, which also contains a reference to the conservation restriction is struck for this, as well as other reasons.⁴

Subdivision Requirements. In the comprehensive permit application, LeBlanc sought waivers of some provisions of the Amesbury Planning Board Subdivision Rules and Regulations suggesting that it believed the project was subject to them. Certain of the Board's conditions impose requirements of the Subdivision Rules and Regulations which by their terms apply to subdivisions. *See* Exh. 7, § 1.03.⁵ LeBlanc now requests that conditions applicable to subdivisions not govern this permit, as it claims that the project, although previously proposed as a subdivision, no longer is one. LeBlanc requests that we clarify that that the Planning Board Rules and Regulations and/or Subdivision Rules and Regulations are not applicable if a subdivision is not proposed by LeBlanc. We have addressed this by requiring the Developer to comply with subdivision rules and regulations that are applicable to the project. If the project is not a subdivision, it would not be required to comply with rules and regulations applicable only to subdivisions.

Design Review. Conditions 53 and 54 dictate architectural design standards for the project that are inconsistent with the plans approved by the *2008 Decision*. Additionally, as discussed in § II.E, below, the conditions are improperly vague and ambiguous. These conditions are struck.

C. Improper Conditions Subsequent

The *2008 Decision* ordered that certain conditions which were inappropriate conditions subsequent, undermining the purpose of a single, expeditious comprehensive permit, were to be struck or modified. The Board is permitted to designate individuals or municipal departments with expertise to review various aspects of the plans for consistency with the final comprehensive permit. The Board may even conduct that review itself, if it has the necessary expertise, as long as the review is for consistency with the permit. "Improper conditions subsequent" are conditions that reserve for

4. The Jain Testimony, ¶ 27, does not require a different result. *See* § II.D, below, discussing unequal treatment.

5. Exhibit numbers refer to exhibits identified in the April 26, 2016 Pre-Hearing Order, unless otherwise identified.

subsequent review matters that should have been resolved by the Board during the comprehensive permit proceeding. Such conditions include, for example, those requiring new test results or submissions for peer review, and those which may lead to disapproval of an aspect of a development project. *See Attitash, supra*, at 12; *Peppercorn Village Realty Trust v. Hopkinton*, No. 2002-02, slip op. at 22 (Mass. Housing Appeals Committee Jan. 26, 2004); *Hastings Village, Inc. v. Wellesley*, No. 1995-05, slip op. at 33-34 (Mass. Housing Appeals Committee Jan. 8, 1998), *aff'd* No. 00-P-245 (Mass. App. Ct. Apr. 25, 2002). Our precedents, as well as 760 CMR 56.05(10(b), “permit technical review of plans before construction, and routine inspection during construction, by all local boards or, more commonly, by their staff, e.g., the building inspector, the conservation administrator, the town engineer, or a consulting engineer hired for the purpose. Such review ensures compliance with the comprehensive permit, state codes, and undisputed local restrictions, as well as any conditions included in the final written approval issued by the subsidizing agency.” *See Attitash, supra*, at 12.

Here the Board has imposed several requirements that fall squarely within this prohibition, and for this reason they are struck. *See* Conditions 42Z, 42AA, 42BB, 42DD.⁶ However, we note that conditions calling for review of construction, stormwater, architectural, lighting, landscaping and other plans contain redundancies, and inconsistencies with the conditions imposed in the *2008 Decision*. Those conditions have been clarified, not as improper conditions subsequent, but for consistency with the *2008 Decision*.

D. Conditions That May Represent Unequal Treatment

The *2008 Decision* provided that the “demanding requirements imposed by the Board in conditions 42 through 44 [Conditions Precedent to Commencement of Project [and] ...Issuance of Building Permit] may be enforced only if they ‘are applied as equally as possible to both subsidized and unsubsidized housing. G.L. c. 40B, § 20.’ That is, any requirement that has not been imposed by the town of Amesbury on unsubsidized development is void.” *2008 Decision* at 21.

6. These conditions are also inconsistent with the Committee’s conditions regarding stormwater management.

The parties dispute who should bear the burden of proof on this issue. The pre-hearing order provides that the Developer bears the burden of proof of unequal treatment. *See* Pre-Hearing Order dated April 26, 2016, § III.D.1(c). *See also* 760 CMR 56.07(2)(a)4. LeBlanc argues that it met the burden of proof in the original proceeding and that the language of the *2008 Decision*, stating that a condition is void if it has not been imposed by Amesbury on unsubsidized development, has shifted the burden to the municipality. LeBlanc points out that Amesbury is in possession of the information regarding treatment of unsubsidized housing and that the Developer's efforts to obtain information were unsuccessful. *See* LeBlanc Testimony, ¶¶ 5-6 and Exhibit B thereto. While arguing that the burden rests on LeBlanc, the Board submitted the Jain Testimony, in which the planner asserted generally that many of the requirements in the conditions apply to unsubsidized projects, and that where there are differences, they exist because of the different natures of the projects. *See* Jain Testimony, ¶ 17.

In this instance, the equal treatment issue only arises if no other basis for striking or modifying a condition exists. We have identified other reasons why many of the disputed conditions contained in the range of Conditions 42-44 must be struck or modified. For example, we have struck the conservation restriction conditions on other grounds. We note, however, that the record indicates unequal treatment of this project in this regard. According to Mr. Jain's testimony, Amesbury has a practice of requiring open space restrictions in connection with cluster zoning. However, he did not testify that Amesbury routinely inserts requirements for conservation restrictions pursuant to G. L. c. 184, § 31 in its unsubsidized housing generally. Jain Testimony, ¶ 27.

Only a few conditions remain that would be considered solely on the basis of unequal treatment. Most of these pertain to the requirements for submission of plans and documents for review by the Board's designee for consistency with the comprehensive permit and if applicable, compliance with un-waived municipal bylaws and regulations, or with fees and surety requirements. While Mr. Jain's testimony generally indicates similar provisions exist in some instances for unsubsidized housing, we are mindful that the requirements imposed on LeBlanc include more copies of documentation and more detail, but we do not find unequal treatment here. On balance, however, we determine that the clarifying modifications we have made address most issues of concern, by

reducing duplication, removing specific standards that are inconsistent with the *2008 Decision*, and eliminating provisions in conflict with our regulations.

E. Ambiguous, Unnecessary or Improper Conditions

The Committee's decision also determined that some of the Board's conditions were ambiguous, unnecessary or improper and should not remain as part of the permit.

Matters of State and Federal Law. As noted in the *2008 Decision*, it is not the role of the Committee or the Board to determine compliance with state or federal requirements. Our decision requires the Applicant to comply with "all applicable state and federal requirements." *2008 Decision* at 23, § VII-4(d). Therefore the request by LeBlanc to modify Conditions 9 [sic]⁷ and 10, and 12 through 17 to provide that the Developer will comply with *applicable* state and federal requirements is consistent with the *2008 Decision*. In any event, these conditions are superfluous since applicable state and federal requirements must be followed regardless of whether the Board includes them as conditions, and we have ordered compliance with all applicable state and federal requirements. We have clarified these conditions to make clear that "applicable" state and federal requirements apply.

Imposition of Fees and Expenses. Conditions 67 and 68, addressing fees and expenses require modification to the extent that these require LeBlanc to pay legal fees, to comply with 760 CMR 56.05(5)(a) ("Legal fees for general representation of the Board or other Local Boards shall not be imposed on the Applicant"). See *Sugarbush Meadow, LLC v. Sunderland*, No. 2008-02, slip op. at 22-24 (Mass. Housing Appeals Committee June 21, 2010), and cases cited. With regard to other fees and expenses, these conditions are modified to provide that such other fees are imposed if in compliance with municipal bylaws or regulations. In order to charge a particular fee, the Board is required to produce to LeBlanc the local bylaw or regulation that authorizes charging such fee in this context.

Design Review. Conditions 53 and 54, which require LeBlanc to comply with an undefined "architectural character of Amesbury" are improperly ambiguous and vague. These conditions are struck.

7. See Appendix, § III.B at 9.

Effective Date. Certain conditions set improper applicable effective dates for local rules and regulations in violation of 760 CMR 56.02 (Local Requirements and Regulations), *see Hollis Hills, LLC v. Lunenburg*, No. 2007-13, slip op. at 2 (Post-Decision Ruling and Order regarding Applicable Sewer Fees Mar. 25, 2013). Therefore, to comply with the comprehensive permit regulations, these conditions are modified to provide that the applicable local requirements are those in effect on the date of LeBlanc's comprehensive permit application to the Board. This ruling clarifies that the general reference to rules "presently applicable" in the *2008 Decision* is to be consistent with the regulations. *See Appendix, § I.4 at 2-3.*

Lapse of Comprehensive Permit. The Board's decision also required that the comprehensive permit would lapse if construction had not begun within 12 months of the day the permit becomes final. *See Exh. 1, Board Decision, p. 1.* This provision conflicts with 760 CMR 56.05(12), which provides that a permit would lapse if construction had not begun within three years. Therefore, we have clarified this provision for consistency with the regulation. *See Appendix, § II.A at 3-4.*

Redundant and Inapplicable Conditions. Numerous conditions duplicate each other, as well as conditions specifically imposed by the *2008 Decision*. Where possible, the comprehensive permit has been clarified to remove redundancy. The Board's decision also contains conditions that are evidently inapplicable to the Project, including Condition 20 requiring Board of Health certification for private wells, although the units will be connected to public water; Condition 42E requiring deed riders for this rental development, and Condition 55 requiring soil testing for septic systems, although the project will be connected to the municipal sewer system.⁸

III. REQUESTED MODIFICATIONS OF COMPREHENSIVE PERMIT

The comprehensive permit in the Appendix contains the provisions that are consistent with the *2008 Decision*. Additional provisions that LeBlanc sought to modify or remove have not been addressed because these would constitute changes to the permit, rather than clarifications. We will not modify the permit with regard to those proposed

8. The Board did not acknowledge the inapplicability of these provisions.

changes at this time. If LeBlanc chooses to seek further modifications of the comprehensive permit, the Developer may file with both the Board and the Committee an amended notification pursuant to 760 CMR 56.05(11)(a) identifying any such changes, and, if so, this matter will be remanded to the Board to reconsider its determination of substantiality in light of the comprehensive permit set out in the Appendix in accordance with the Comprehensive Permit regulations and our precedents.

The question of whether proposed modifications to a comprehensive permit are “substantial” or “insubstantial” is not established prescriptively in the Committee’s regulations, 760 CMR 56.05(11) and 56.07(4). In viewing proposed changes under 760 CMR 56.07(4), we have said that the specific changes proposed must be examined in relation to the original project, taking into consideration the adverse impacts, if any, the changes could have on residents or on the surrounding area. *See Lever Development, LLC v. West Boylston*, No. 2004-10, slip op. at 2 (Mass. Housing Appeals Committee Ruling on Notice of Change Dec. 16, 2005) (noting importance of effect of proposed changes on local concerns). Changes that lessen the impact of a project will not be considered substantial, or reason to remand a case to the local board. *Id.*, citing *Cloverleaf Apts. v. Natick*, No. 2001-21, slip op. at 5 (Mass. Housing Appeals Committee Dec. 23, 2002). Mr. Jain’s opinion testimony regarding substantiality, a legal conclusion, is accorded no weight.

As we noted in *VIF II/JMC Riverview Commons Investment Partners, LLC v. Andover*, No. 2012-02 (Mass. Housing Appeals Committee Feb. 27, 2013), the regulations provide “guidance on the kinds of changes that ‘generally’ should be deemed substantial, as well as the kinds of changes that ordinarily should be deemed insubstantial.” *Id.* at 15. In addition, whether the modification is requested after issuance of the permit, as is the case here, or during the course of a pending appeal before the Committee, has bearing on whether a condition should be considered substantial. In *Riverview Commons*, we stated that we may be more amenable to finding a change insubstantial under 760 CMR 56.07(4) because a review of the insubstantial change will still occur before the Committee even if no remand to the board is ordered. *Id.* at 16. By contrast, if a change to an already final comprehensive permit is deemed insubstantial, it will undergo no further review.

If LeBlanc files a notification pursuant to 760 CMR 56.05(11)(a), and the matter is remanded to the Board, it shall follow the procedure in 760 CMR 56.05(11) for determining whether those changes are substantial. That review should happen in the context of comparison to the now-clarified comprehensive permit. If the Board determines the changes to be substantial, it shall hold a hearing on the proposed changes pursuant to 760 CMR 56.05(11)(c).

IV. ENFORCEMENT

The Board's argument that the Committee only may seek enforcement of comprehensive permits in the courts is misplaced. Our regulations state that "[a]fter the issuance of a Comprehensive Permit, the Committee may issue such orders as may aid in the enforcement of its decision." 760 CMR 56.07(6)(d). *See 2013 Ruling* at 4. The regulations also specifically provide that "[t]he Board shall carry out an order of the Committee within 30 days of its entry, and, upon failure to do so, the order of the Committee shall for all purposes be deemed the action of the Board." 760 CMR 56.07(6)(a). Since the Board failed to issue a modified comprehensive permit consistent with the Committee's *2008 Decision*, it is appropriate for the Committee to issue the comprehensive permit.

This matter is remanded to the Board only in the event that, within 30 days of this Ruling and Order, LeBlanc seeks any of the requested changes not made to the comprehensive permit by this Ruling and Order. If LeBlanc does not notify the Board and the Committee of a request for modification within 30 days of this Ruling and Order, this comprehensive permit shall be final and shall take effect as the Comprehensive Permit for this project.


V. CONCLUSION AND ORDER

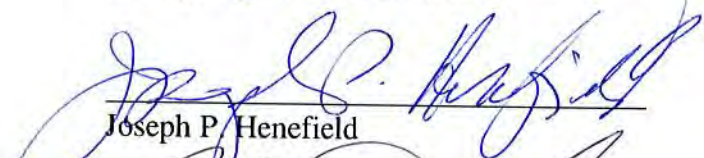
For the reasons set forth above, the Committee orders that this Ruling and Order, and the Appendix hereto, constitute the Comprehensive Permit for the project. In the event that LeBlanc files with the Board and the Committee a notification pursuant to 760 CMR

56.05(11)(a) requesting modification of this Comprehensive Permit within 30 days, this matter will be remanded to the Board pursuant to 760 CMR 56.05(11) for further proceedings on that request. Otherwise, after 30 days from the date of this Ruling and Order, this Comprehensive Permit shall be the final Comprehensive Permit for this project.

HOUSING APPEALS COMMITTEE

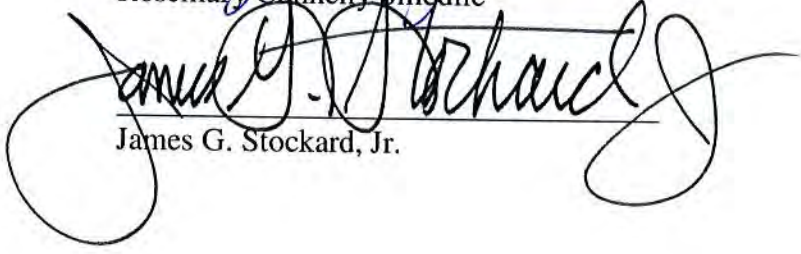
Issued: September 27, 2017


Shelagh A. Ellman-Pearl, Chair


Joseph P. Henefield


Marc Laplante


Rosemary Connelly Smellie


James G. Stockard, Jr.

APPENDIX COMPREHENSIVE PERMIT

In accordance with the Ruling and Order on Request for Enforcement and/or Appeal of Finding of Substantiality on Notice of Project Change (Ruling and Order), the following are the terms of the clarified Comprehensive Permit for the project pursuant to the *2008 Decision*, which modified the Board's comprehensive permit. The Comprehensive Permit is accompanied by commentary and rulings regarding the conditions and waivers in the Board's decision. Since the Board did not issue an amended comprehensive permit as required by the *2008 Decision*, this constitutes the Comprehensive Permit. Any specific reference made to the "Board's Decision," "this Decision" or "this comprehensive permit" shall mean this Comprehensive Permit as clarified in this Ruling and Order, including the Appendix. Any references below to submission of materials to the Board for approval shall mean submission to the Board's designee with expertise to determine whether the submission is consistent with the Comprehensive Permit, such determination not to be unreasonably withheld. Additionally, any reference to review or approval pursuant to the Comprehensive Permit by the Board, its designee or another entity or person shall mean review for confirmation of consistency with the Comprehensive Permit and approval on that basis, which shall not be unreasonably withheld.

I. CONDITIONS IMPOSED BY COMMITTEE IN *2008 DECISION*¹

1. The project ~~comprehensive permit~~ shall conform to the application submitted to the Board ~~and the Board's decision~~ except as provided in this Comprehensive Permit~~decision~~.

2. The comprehensive permit shall be subject to the following conditions:

(a) The development, consisting of 56 total units, including 14 affordable units and a manager's unit, shall be constructed substantially as shown on plans by Eastern Land Survey Assoc., Inc. (Site Development Permit Plan, March 28, 2005, rev'd Jan. 20, 2006 (Exhibit 5) and architectural plans by H.H. Morant & Co., Inc., Architects, April 17, 2001 (Exhibit 6), and shall be subject to those conditions imposed in the Board's decision filed with the Amesbury Town Clerk on August 22, 2006 (Exhibit 1) that are not inconsistent with this decision.

1. Certain changes to these provisions from the *2008 Decision* are shown in redline.

(b) Final construction plans for all buildings, roadways, and elements of the stormwater management system shall be submitted for final comprehensive permit review and approval to the Board's engineering consultants or such other agent as the Board may designate for final review pursuant to 760 CMR ~~31.09(3)~~, 56.05(10)(b).

(c) Final construction plans for all elements of the stormwater management system shall be approved under the Wetlands Protection Act., G.L. c. 131, § 40.

(d) During routine maintenance of infiltration basins, no motorized vehicles shall be permitted on unpaved surfaces in the 100-foot wetlands buffer zone. That is, maintenance shall be performed either by hose extensions from vehicles or by hand.

(e) A visual buffer not less than seventy feet long and six feet high shall be constructed and maintained between the six parking spaces near housing units 51, 52, and 53 and the property line of the development. The Birchwood Condominium Trust may choose whether it shall consist of a wooden fence or evergreen trees or shrubbery, though the Trust may not select the exact type of building materials or evergreen vegetation.

(f) The developer shall prepare a maintenance plan for the stormwater management system, which shall address routine and non-routine maintenance of all drainage facilities and roadways. Prior to commencement of construction, this plan shall be submitted to and approved by the Amesbury conservation agent, town engineer, consulting engineer, or such other official as may be determined by the Board. Such agent shall apply standards consistent with town practices with regard to non-subsidized housing.

3. Should the Board fail to carry out this order within thirty days, then, pursuant to G.L. c. 40B, § 23 and 760 CMR ~~31.09(1)~~, 56.07(6)(a), this decision shall for all purposes be deemed the action of the Board.

4. Because the Housing Appeals Committee has resolved only those issues placed before it by the parties, the comprehensive permit shall be subject to the following further conditions:

(a) Construction in all particulars shall be in accordance with all **presently** applicable local zoning and other by-laws and regulations in effect on the date of LeBlanc's application to the Board for a comprehensive permit except those waived by

this decision or in prior proceedings in this case.²

(b) The subsidizing agency or project administrator may impose additional requirements for site and building design so long as they do not result in less protection of local concerns than provided in the original design or by conditions imposed by this decision.

(c) If anything in this decision should seem to permit the construction or operation of housing in accordance with standards less safe than the applicable building and site plan requirements of the subsidizing agency, the standards of such agency shall control.

(d) Construction and marketing in all particulars shall be in accordance with all presently applicable state and federal requirements, including, without limitation, fair housing requirements.

(e) This comprehensive permit is subject to the cost certification requirements of ~~679760~~ CMR 56.00 and DHCD guidelines issued pursuant thereto.

(f) No construction shall commence until detailed construction plans and specifications have been reviewed and have received final approval from the subsidizing agency, until such agency has granted or approved construction financing, and until subsidy funding for the project has been committed.

(g) The Board shall take whatever steps are necessary to insure that a building permit is issued to the applicant, without undue delay, upon presentation of construction plans, which conform to the comprehensive permit and the Massachusetts Uniform Building Code.

II. BOARD DECISION, INTRODUCTION

A. Unheaded Section

The Board's statement on p. 1 of its decision that "if construction (including site clearing and grading) authorized by this Decision has not begun within twelve (12) months of the date on which the Permit becomes final, the Permit granted by this Decision shall lapse and become void *ab initio*, and shall be considered without force or effect" is struck. This is inconsistent with 760

2. See Ruling and Order, § II.E, *supra* at 11.

CMR 56.05(12) (permit shall lapse if construction has not begun within three years). See Ruling and Order, § II.E at 11.

B. Section II, Requested Waivers and Exemptions

LeBlanc challenged ¶¶ 1-7 under this heading of the Board’s decision. The Committee previously explicitly struck ¶ 7 and ruled that the Board’s waiver decisions are upheld only to the extent they are consistent with the approved plans (Exhs. 5 and 6) to the extent necessary to construct the plans approved by the Committee. *See 2008 Decision* at 20, 22, § VII-2(b). Paragraphs 1, 2, 4 and 5 incorrectly interpret Chapter 40B and are struck. Paragraph 3, which denies a request for a “blanket waiver and exemption to all by-laws and regulations promulgated by the City and its boards, including, but not limited to those of the Board, Board of Health, Planning Board and Conservation Commission,” Exh. 1, Board Decision, p. 2, is modified to state: “The blanket request for waivers and exemptions to all by-laws and regulations promulgated by the City and its boards, including, but not limited to those of the Board, Board of Health, Planning Board and Conservation Commission from fees is granted to the extent provided in this Comprehensive Permit and is denied with respect to waivers from local bylaws and regulations that are consistent with the Comprehensive Permit and applicable to the project as approved. Paragraph 6, which refers to the Decision on Waivers, is struck. The Decision on Waivers granted certain waiver requests, which we hereby modify as follows to: 1) provide that the waivers previously granted by the Board are granted to the extent necessary to construct the project consistent with the Comprehensive Permit; and 2) grant the following additional requested waivers:

Waivers Requested from:	Section(s) of Rule, Regulation or Ordinance	Decision of the Board of Appeals
Amesbury Zoning Bylaw	Section V Use Regulations Sections D (Table of Use Regulations), E (Building Permit allocation system) and allowance of multi-family housing	Granted to the extent necessary to construct the project <u>consistent with the plans as approved in the Comprehensive Permit.</u>
	Section VI Dimensional and Density Regulations relating to minimum lot size, maximum setbacks and building height.	Front, side and rear setback waiver gGranted to the extent necessary to construct the project <u>consistent with the plans as approved in the Comprehensive Permits per Site</u>

		Plan approved and attached as Exhibit "A". Further no waiver is granted for the building height.
	Section VII Signs: Placement of signs	<u>To the extent necessary to construct the project consistent with the plans as approved in the Comprehensive Permit, G</u> ground sign at entrance from Clarks Road to be no more than 1.5 square feet in area and installed in a landscaping stone wall, no more than 30 inches in height from finished grade and including total height of wall.
	Section VIII Off Street Parking and Loading relating to use of bituminous cape cod curbing.	Granted to the extent necessary to construct the project <u>consistent with the plans as approved in the Comprehensive Permit.</u>
	Section X Administration and Enforcement relating to time for validity of building permits and excuse from meeting with Design Review Committee.	<u>Granted, except that A</u> architectural Drawings shall be submitted to the Zoning Board of Appeals for review and approval <u>for consistency with the Comprehensive Permit.</u>
	Section XI Site Plan Review relating to the Board of Appeals performing site plan review functions.	The Zoning Board of Appeals' <u>designee</u> shall perform site plan review functions <u>pursuant to the Comprehensive Permit.</u>

Waivers Requested from:	Section(s) of Rule, Regulation or Ordinance	Decision of the Board of Appeals
Subdivision Rules and Regulations	Section 3.02 limiting lots to one dwelling unit.	Granted.
	Section 6.04 relating to waiver from the preparation of an environmental and community impact analysis	Granted.
	<u>Section 6.10, LeBlanc to retain title to the fee of the right of way (street) and easements)</u>	<u>Granted.</u>
	Section 7.09.	<p>The following waivers are granted:</p> <p>From Section D.3 (permitting a street greater than 750' in length <u>to the extent necessary to construct the project consistent with the plans as approved in the Comprehensive Permit but not to exceed 1300 feet as per Exhibit A</u>).</p> <p><u>From Section D.4 (permitting a 90' diameter turnaround to the extent necessary to construct the project consistent with the plans as approved in the Comprehensive Permit).</u></p> <p>From Section F (permitting a 40' right of way for a minor street).</p> <p><u>To the extent necessary to construct the project consistent with the plans approved in the Comprehensive Permit, F</u>rom Section G (permitting bituminous asphalt cape cod curbing except at all turning radii and in sections extending five (5) feet on either side of the ends of the turning radii. The turning radii and 5 feet sections shall be vertical granite).</p> <p>From Section H.1 (permitting a sidewalk on one side of street).</p> <p><u>To the extent necessary to construct the project according to</u></p>

		<u>the plans approved in the Comprehensive Permit, from Section J (permitting retaining walls to be constructed with Shea retaining blocks).</u>
	<u>Section 8.04 A.1 Hi density plastic may be used for drainage pipes</u>	<u>Granted to the extent necessary to construct the project according to the plans approved in the Comprehensive Permit.</u>
	Section 8.05 Sidewalks relating to construction materials and width.	<u>To the extent necessary to construct the project according to the plans approved in the Comprehensive Permit, sidewalks in front of all dwelling units and recreational areas shall be aggregate concrete. All other locations it may be bituminous asphalt. Sidewalks shall be five (5) in width.</u>

See Exh. 1, Board Decision, pp. 26-27.

III. GRANT OF PERMIT AND CONDITIONS THERETO

A. Introductory Section

This section of the permit is struck and replaced with the provision that assignment and transfer of the Comprehensive Permit is subject to 760 CMR 56.05(12).

B. Numbered Conditions³

The following conditions, where applicable have been modified in redline representing changes to the text of the Board's conditions.

General

1. The Comprehensive Permit application was based on a project eligibility letter issued to the Applicant on February 9, 2005 from the Massachusetts Housing Partnership (MHP) under the Permanent Rental Financing Program (Program). This Permit is conditional upon the execution of a Regulatory Agreement for this Permit by MHP. Execution of such Regulatory Agreement is a condition precedent to any grading, land disturbance, construction of any structure or infrastructure, or issuance of any building permit.

Condition retained by agreement.

3. See Exh. 1, p. 3.

2. The Applicant shall comply with the terms of the Regulatory Agreement and the project eligibility letter of February 9, 2005, to the extent applicable, prior to any grading, land disturbance, construction of any structure or infrastructure, or issuance of any building permit. No building permit shall be granted until the terms and conditions of the Regulatory Agreement and project eligibility letter have been complied with in full, except those terms and conditions that concern exclusively post-construction matters.

Condition modified as indicated by agreement.

3. The Decision is based on, and this Permit is issued based on, the real property identified on the "Eagle Point" Comprehensive Permit Plans, described below (hereinafter referred to as the "locus" or the "site").

Condition retained by agreement.

4. This Decision is based on the Comprehensive Permit Plans entitled "Site Development Permit Plan, Eagle Point Amesbury, MA prepared by Eastern Land Survey Assoc., Inc., for Roger LeBlanc, (hereinafter referred to as the "Plans") dated March 28, 2005 consisting of 12 Sheets and revised on: Sept 07, 2005, Nov 07, 2005, Nov 28, 2005, Jan 20, 2006 and July 26, 2006.

Condition retained by agreement.

5. Except as otherwise specified in this Comprehensive Permit Decision, the Project must substantially conform to ~~the revised Site Plan sketch dated August 7, 2006 and attached with this decision as Exhibit "A." The Plan shown in Exhibit "A" is the approved Site Layout Plan. The Applicant shall be required to modify the Plans last submitted to the Board to substantially conform to the plan shown in Exhibit A the plans approved by the Comprehensive Permit~~ with regards to maintaining buffers to wetlands, setbacks, location of structures, unit density, road layout, on-site parking and site amenities and recreational areas. The plan by Eastern Land Survey Assoc., Inc. (Site Development Permit Plan, March 28, 2005, rev'd Jan. 20, 2006 is the approved Site Layout Plan. prior to submitting final plans for review and endorsement by the Board and before commencement of construction;

Condition modified by agreement.

Ruling: This condition is clarified to provide that the requirements are all set out in this Comprehensive Permit.

6. Substantive revisions to the Project or the Plans, such as relocation (except relocation within the building "envelopes" as proposed) or deletion of dwellings (except as specified in this Decision), material changes in unit architecture, style or materials, relocations of more than one property line, relocation of the right of way or other substantive changes from the approved Plans shall not be permitted without the written approval of the Board. If, between the date that this decision is filed with the Office of the City Clerk and the completion of the Project, Applicant desires to change any details

of the Project (as set forth in the Plans, or as required by the terms of this Decision) the Applicant shall promptly inform the Board in writing of the change requested. Changes will be administered or addressed pursuant to 760 CMR ~~31.03-56.05(11)~~.

Condition modified as indicated by agreement.

7. Except as otherwise specifically provided herein, where this Decision provides for the submission of plans or other documents to the Board, the Board shall review and provide a written response as to whether such plans or other documents are consistent with this Decision within forty-five (45) days of the Board's receipt of such plans or other documents.

Condition retained by agreement.

8. ~~Nothing in this Decision permits t~~The removal of sand or gravel from the locus is subject to or waives or modifies any applicable non-waived local by-laws, rules, regulations or requirements with respect to ~~the~~ removal of sand or gravel, except to the extent that such removal of sand or gravel is reasonably necessary in the normal course of construction of the project.

Ruling: This condition is clarified to provide for the ordinary construction practice consistent with the 2008 Decision.

Compliance With Other Requirements

State and Federal Requirements

9. The Project, and all construction, dwelling units, utilities, roads, drainage, earth removal or relocation of structures and all related appurtenances with respect to the Project, shall comply with all applicable state and federal regulations. The Applicant shall promptly provide the Board with copies of all permitting requests and other correspondence directed to any applicable state or federal agency and of all correspondence, approvals or disapprovals received from any such agency.

Condition retained by agreement.

9. [sic] The Project shall comply with all applicable rules, regulations, filing and permit requirements and certifications pertaining to regulations governing the disturbance, crossing and/or restoration/replication of wetlands on the site required by the U.S. Army Corps of Engineers, Section 404 of the Clean Water Act and, as applicable, Section 404(b)(1) guidelines that are established by the U.S. EPA to demonstrate that no less environmentally damaging, practicable alternatives exist.
10. The Project shall comply with all applicable rules, regulations, filing and permit requirements and certifications required by the regulations governing the Massachusetts Endangered Species Act, G. L. c. 131, § 23, 321 CMR 10.00.

11. The Project shall comply with the Massachusetts Wetlands Protection Act and related regulations, G. L. c. 131, § 40-40A, 310 CMR 10.00.

Condition 11 retained by agreement.

12. The Project shall comply with all applicable rules, regulations, permit and filing requirements, and certifications of the Department of Environmental Protection with respect to wastewater disposal, storm water disposal, resource protection, water supply, and low impact development best management practices.
13. ~~The project shall comply with applicable state and federal requirements with respect to Dwelling floor plans and bedroom restrictions shall be provided for review and acceptance by the Board of Health and for ADA compliance by the Building Inspector.~~
14. The Project shall comply with all applicable rules, regulations, filing and permit requirements and certifications required by the regulations adopted by the Executive Office of Environmental Affairs pursuant to the Massachusetts Environmental Policy Act (G. L. c. 30, § 61-62H).
15. The Project shall comply with the Massachusetts Public Shade Tree Act (G. L. c. 87), as applicable.
16. The Project shall comply with the Massachusetts Scenic Roads Act as adopted by the City of Amesbury, G.L. c. 40, §15c, as applicable.
17. The Project shall comply with all applicable rules, regulations, filing and permit requirements and certifications required by the regulations governing the Massachusetts Historical Commission.

Ruling: Conditions 9 [sic], 10 and 12-17 are clarified for consistency with the Committee's 2008 Decision which requires LeBlanc to comply with "all applicable state and federal requirements." 2008 Decision, § VII-4(d). In any event, these conditions are superfluous since the state and federal requirements exist regardless of whether the Board includes them as conditions and the 2008 Decision has ordered compliance with all applicable state and federal requirements.

Local Requirements

18. Except as expressly waived by this Decision:
 - A. The development of this Project, including the construction of all dwelling units, utilities, roads, drainage structures and other appurtenances, shall comply with the Amesbury Zoning By-Law in effect on the date of the Project's application to the Board for a comprehensive permit at the time of this Decision and Permit.

Ruling: Although the parties agreed to retain this condition, it is modified for consistency with 760 CMR 56.02. *See* Ruling and Order, § II.E, *supra* at 11.

- B. The development of this Project, including the construction of all dwelling units, utilities, roads, drainage structures, and other appurtenances, shall comply with ~~the non-waived provisions of the Amesbury Planning Board Subdivision Rules and Regulations in effect at the time of this Decision and Permit on the date of the comprehensive permit application, if any, that apply to this Project, to the extent these are not inconsistent with the Comprehensive Permit.~~

Ruling: This condition is modified to clarify that compliance is required only with the non-waived provisions of the Planning Board Subdivision Rules and Regulations that by their terms apply to this project, and further clarified for consistency with 760 CMR 56.02. *See* Ruling and Order, § II.E, *supra* at 11.

19. ~~Except as waived by this Decision or a decision of the Amesbury Conservation Commission, the development of this Project shall comply with the Amesbury Wetlands Bylaw and Amesbury Conservation Commission Regulations in effect at the time any building permit is sought for a dwelling unit or for any jurisdiction for roadway-associated construction, and with all rules, regulations, filing and permit requirements and certifications of the Amesbury Conservation Commission with respect to natural resource protection, construction of storm water management structures within the Buffer zone and their disposal, construction of other structures including retaining walls within the Buffer Zone, and wastewater disposal.~~

Ruling: This condition is struck as inconsistent with the *2008 Decision* with respect to wetlands and stormwater management.

20. Except as waived by this Decision or a decision of the Amesbury Board of Health, the Project shall comply, in all respects, with ~~the applicable~~ rules, regulations, filing and permit requirements and certifications of the Amesbury Board of Health governing ~~private wells, storm water disposal~~ and wastewater disposal.

Ruling: This condition is clarified for consistency with the *2008 Decision*. The Project will use the municipal water supply.

21. Slow release or organic nitrogen lawn fertilizers shall be used by the Applicant throughout the project to help limit the inputs of nitrogen to the groundwater.

Condition Retained by agreement

Density; Dwelling Units

22. The total number of dwelling units, each of which shall be rental dwelling units, shall not exceed ~~forty four (44)~~ fifty-six (56).

Condition modified as indicated by agreement.

23. ~~The Project will provide no less than two (2) parking places for each dwelling unit. shall provide parking as shown on the plans approved by the Comprehensive Permit, § I.2(a).~~

Ruling: This condition is clarified for consistency with the *2008 Decision*.

24. All dwelling units shall be used, and offered, for rental purposes only, subject to the requirements of the subsidizing agency ~~except as described herein. No dwelling unit shall at any time be made available for sale.~~

Affordable Units

25. Not less than twenty-five (25%) percent of the total number of dwelling units approved, i.e., no fewer than ~~eleven-fourteen~~ (14) units, shall be affordable to individuals and/or families earning no more than eighty (80%) percent of the Area median income subject to the requirements of the subsidizing agency. ~~of current residents of Amesbury. The calculation of what constitutes the median income of the current residents of Amesbury shall be based on formulas or the methodology published by the Department of Housing and Community Development (DHCD), as revised in this Decision, such dwelling units are referred to as the "affordable units."~~
26. The initial affordable units will be evenly distributed within the locus, and all affordable units ~~and~~ shall be indistinguishable in architectural style, exterior finish materials, and exterior appearance from market units, subject to the requirements of the subsidizing agency.

Ruling: Conditions 24-26 are clarified for consistency with *Zoning Board of Appeals of Amesbury v. Housing Appeals Committee*, 457 Mass. 758 (2010) (*Amesbury*). See *2008 Decision* at 21.

27. ~~Each affordable unit shall be rented pursuant to a restriction ensuring that only qualified tenants are occupying the dwelling unit.~~
28. ~~An affordable housing restriction enforceable by the City of Amesbury, requiring that the affordable units remain affordable in perpetuity and in a form approved by Counsel for the Town, shall be recorded senior to any liens on any land or dwelling unit within the limits of the Project to protect the requirement for the affordable units in the event of any foreclosure, bankruptcy, refinancing or sale. Should the Applicant after diligent efforts be unable to obtain any reasonable financing due to the aforementioned requirement that the affordable housing restriction be senior to any liens, then the Applicant may request the Board to waive or modify the affordable housing restriction. Upon a showing that the Applicant has been unable to obtain any reasonable financing despite diligent efforts because of the affordable housing restriction, then the Board shall waive or modify the same to the extent necessary to permit the Applicant to obtain reasonable financing.~~

~~29. Each affordable unit rental agreement shall provide that the premises subject to such agreement are subject to the terms and provisions of the affordable housing restriction and that any amendment purporting to alter, amend or delete the restriction shall be void and of no effect.~~

Ruling: Consistent with *Amesbury, supra*, Conditions 27-29 are struck.

Management Documents

~~30. The Applicant shall prepare documents in a form that conforms to this Decision and applicable law.~~

~~31. The Applicant proposes to assume responsibility to maintain and repair the dwelling units and all common areas and associated infrastructure, including the stormwater management system, landscaping, ways, and other improvements within the locus. The Applicant shall prepare and submit for the Board's review and approval documents that set forth his obligations for the operation and maintenance of the dwelling units and all common areas and improvements. Prior to the issuance of any Certificate of Occupancy, the Applicant shall provide the documents establishing his obligations to the Board for approval by legal counsel as to form and for verification that such documents are in conformance with this Decision. Such documents shall provide for and include a comprehensive set of rules and regulations governing conduct of tenants, residents, and their invitees upon the site, without limitation, a) noise control rules, b) prohibition on parking of resident or visitor owned commercial vehicles, c) prohibition on i) parking or storing of motor vehicles, boats, trailers, or other property on the main roadway and ii) on parking or storing such vehicles, boats, trailers, or other property in any other parking space, unless fully contained with such space.~~

~~32. The Applicant's documents shall contain the following terms and conditions:~~

~~A. A specific plan to maintain the dwelling unit's exterior facades and the dwelling unit's interior (including appliance replacement and routine maintenance such as painting).~~

~~B. A specific plan to maintain drainage facilities, stormwater basins and appurtenances.~~

~~C. A specific plan to maintain roads, including snow removal, spring clean up, repair of road surface and resurfacing as needed.~~

~~D. The road and roadway infrastructure excluding the water system and private utility company systems, are to be privately owned by the Project in perpetuity and recorded in the Essex County Registry of Deeds.~~

33. ~~The Applicant's documents shall provide that he or his successor is responsible for, and that the City of Amesbury shall never have any legal or financial responsibility for, operation or maintenance of roadways, driveways, parking areas, storm water management systems, snow plowing, landscaping, trash disposal or pick up, street lighting or other illumination, or other street infrastructure (excluding the water system and connection to the wastewater treatment system).~~
34. ~~The Applicant's documents shall be in the form of an instrument executed by the Applicant and suitable for recording with the Registry of Deeds; shall recite that such rules and regulations are binding upon the Applicant and all tenants, residents, and invitees, and constitute covenants running with the land in perpetuity (subject only to amendment or modification approved in advance by the City and recorded in manner, and subject to the provisions, provided for herein); A copy of the recorded rules and regulations, as the same may be amended or modified in the manner provided above, shall be attached to and incorporated in every lease or tenancy agreement for all dwelling units of the Project.~~

Ruling: Conditions 30-34 were struck by the *2008 Decision* at 21.

Profitability

35. ~~The Board requires a full compilation and certification of total development costs and total revenues on a federal income tax basis according to generally accepted accounting standards within 30 days after the end of each tax year (or such other period as the Regulatory Agreement may require).~~
36. ~~The Project shall be limited to the profit allowed under the Regulatory Agreement (the "allowable profit").~~
37. ~~Any profit that is above the allowable profit pursuant to the Regulatory Agreement shall be returned to the City of Amesbury for use in the development of the Town's affordable housing inventory.~~
38. ~~The allowable profit must reflect a land value based upon appraised fair market value as of the effective date of this Permit under existing zoning regulations without a comprehensive permit in place.~~
39. ~~The Applicant will provide the Board with a copy of all financial documentation provided under the Regulatory Agreement. The above noted profit limitation also may be enforced by a certified cost accounting by a Certified Public Accountant, hired by the City of Amesbury at the completion (or cessation of six months or more) of development by the Applicant.~~

Marketing

40. ~~No construction of any dwelling under this Permit shall commence until the Applicant has submitted to the Board and any and all other relevant public agencies for review and final acknowledgment of consistency with this Decision a marketing plan for the affordable dwellings, such plan to conform to all affirmative action requirements or other requirements as imposed by federal or state regulations.~~
41. ~~No dwelling or other structure that is part of the Project shall be sold or advertised or offered for rent until the Applicant has entered into a Monitoring Services Agreement, similar in form to the Monitoring Agreement published by MassHousing but revised in content as required for consistency with this Decision, with a monitoring agent approved by the Board. The Board hereby disapproves of the Applicant's use of CHAPA as the monitoring agent with respect to the rental of the affordable units. The monitoring agent shall agree to be bound by the terms of this approval and shall certify in writing to the Board or its designee, on an annual basis, that the affordable units approved herein continue to be occupied by income qualified persons.~~

Ruling: Consistent with *Amesbury, supra*, Conditions 35-41 are struck.

Conditions Precedent to Commencement of Project

42. The conditions below are conditions precedent to site disturbance. In particular, and without limitation, no grading, land disturbance, or construction of any structure or infrastructure shall commence until:
- A. Final Review -- Prior to construction and granting of any permits on the Project, the Applicant has submitted detailed construction drawings to the Board to ensure that said drawings are consistent with this Permit, with local requirements not waived in the Permit, and with state and federal codes. Copies of the detailed, approved construction drawings (the "Final Plans") should also be filed in hard copy (20 full-scale sets) and in digital form with the Board and the Building Department for record keeping purposes. The Applicant must secure Board approval as consistent with the Comprehensive Permit prior to construction and allow the Board forty-five (45) days to review the detailed construction drawings. The Final Plans shall include a Building Code review. The Final Plans shall include the following information:
- 1) ~~Each unit shall have its own w~~Water and sanitary sewer service;
 - 2) Pipe size, rim and invert elevation shall be noted on the drawings for proposed sewer and drain layouts;
 - 3) Details shall be provided for proposed Duplex Grinder Pump for review and approval by the Engineering Department;
 - 4) Connection of Bbuilding services ~~shall not be connected directly to sewer manholes. Wye connections to the main line sewer are preferred;~~

- 5) ~~Details provided showing the A minimum of 6 feet depth of cover, with 7 feet preferred shall be provided for all sewers in paved roadways and . Sewers in off road areas and for shall have a minimum of 4 feet depth of cover. Force mains shall have at least 5 feet of cover maintained;~~
- 6) Design basis for proposed pump station shall be provided for review and approval by the Engineering Department;
- 7) Concrete encasement shall be provided for the 3" force main where it crosses below or above the proposed box culverts;
- 8) Details shall be provided showing ~~h~~ow the proposed force main discharge connection will be made to the sewer manhole and how the 1-1/4" discharge from the grinder pump station will connect to the 3" force main;
- 9) Details for the ~~wye~~ connections to new sewers shall be provided;
- 10) Flow drains and maintenance garage shall not be tied to sewer or storm drain, but must be tied to separate containment tank;

Ruling: Consistent with the *2008 Decision*, this condition has been modified to conform to the plans approved by the *2008 Decision*, § VII-2(b).

- A. ~~[sic] The Applicant has executed and caused to be recorded at the Essex County Registry of Deeds a Conservation Restriction pursuant to G. L. c. 184, s. 31, clearly identifying the land areas noted on the approved plans to be left in their natural vegetative state with no provisions for site alteration, including but not limited to a prohibition on tree removal, land clearing and site grading of these areas.~~

Ruling: This condition is struck as inconsistent with the *2008 Decision*.

- B. Subject to the requirements of the subsidizing agency, and to the extent required by non-waived applicable municipal bylaws and regulations, ~~The Applicant has posted with the Amesbury City Clerk or an entity designated by the Board, a bond or surety in the amount needed to complete the ways, utilities, any pedestrian/bike paths, drainage, shade trees in the right of way, and site as-built plans of the Project as approved (or, as appropriate, any phase thereof), plus a ten percent margin of error plus an appropriate rate of inflation over a five year period. The performance bond or surety shall contain the following provision: "If the Principal shall fully and satisfactorily observe and perform in accordance with the qualifications and time schedule set forth herein as specified in all the covenants, agreements, terms and provisions as set forth in the Decision of the Board in this matter, as attached hereto, then this obligation shall be void, otherwise it shall remain in full force and effect, and, in the absence of completion of the above work, the aforesaid sum shall be paid to the City of Amesbury in order to complete the construction in accordance with the plans and specifications."~~ Alternatively, prior to the issuance of any Certificate of Occupancy permit, the Applicant, after approval of the Final Plans, may construct and install the ways, utilities, pedestrian/bike paths, drainage, shade trees, hydrants

and lights, and submit as-built plans for same, in accordance with the inspection and testing schedules and standards set forth in the Planning Board Rules and Regulations, as applicable. Such construction and installation may be done in phases, subject to the prior approval of the Board, or may be completed in part and bonded in part as approved by the Board. The City of Amesbury agrees to partially release the performance bond in increments of \$100,000 or more upon completion of work required as approved by the Board.

Ruling: Consistent with the *2008 Decision*, this condition, is clarified to conform to *Amesbury, supra*.

- C. The Final Plans, including phasing plans, way and underground utilities plans (water system, stormwater system, gas, telephone, electric and cable systems), entrance/intersection streetlights and signs, have been reviewed and have received approval as consistent with this ~~Decision-Comprehensive Permit~~ by the Board's designee with relevant expertise, -such approval not to be unreasonably withheld, -and consistent with their respective jurisdictions by the Amesbury Conservation Commission and the Amesbury Board of Health, subject to this Comprehensive Permit, and by any and all relevant federal and state agencies, departments, boards or commissions for matters subject to state or federal review-not otherwise approved or waived by this Decision.

Ruling: Consistent with the *2008 Decision*, this condition is clarified to provide that local officials may review these plans for consistency with the Comprehensive Permit with respect to matters within their jurisdiction. This condition duplicates the *2008 Decision*, § VII-2(b).

- D. ~~The subsidizing agency~~ The subsidizing agency MHP has supplied the Board with written confirmation of final approval pursuant to 760 CMR 56.04(7). ~~correspondence indicating that it will provide the funds necessary to complete the Project and that MHP understands and will assure compliance with the terms and conditions of this approval. The responsibilities of this condition are non-transferable and non-assignable. A commitment of financing will be forwarded to the Board from MHP.~~

Ruling: This condition is clarified for consistency with *Amesbury, supra*. It also duplicates the *2008 Decision*, § VII-4(f).

- E. ~~The Applicant, the Board and the DHCD have executed a Deed Rider, similar in form to that published by MassHousing but revised in content as required for consistency with this Decision. The Deed Rider shall be subject to review and approval by the Board and its legal counsel as to form and consistency with this Decision, said approval not to be unreasonably withheld. The Deed Rider shall be executed and recorded to ensure that the terms of this Decision are perpetually enforced.~~

Ruling: Consistent with *Amesbury, supra*, this condition is struck. Moreover, since this is a rental, not ownership Project, the deed rider requirement is inapplicable.

- F. ~~The Applicant, the Board and DHCD have executed a Monitoring Agreement, similar in form to the Monitoring Agreement published by MassHousing but revised in content as required for consistency with this Decision. The Monitoring Agreement shall be subject to review and approval by the Board and its legal counsel as to form and consistency with this Decision, said approval not to be unreasonably withheld.~~
- G. ~~A Regulatory Agreement, similar in form to that published by MassHousing or DHCD but revised in content as required for consistency with this Decision and subject to the terms and conditions of this Decision, has been executed by the Applicant and DHCD and has been recorded with this Decision. These documents shall contain, at a minimum, the following terms:~~
- ~~i. The affordable units shall be restricted as affordable in perpetuity to households with less than 80% of the applicable area median income.~~
 - ~~ii. The Monitoring Agent for this Project. The Board specifically disapproves of the use of Citizens Housing and Planning Association (CHAPA) as the monitoring agent for this project.~~
 - ~~iii. An identification of the affordable units.~~

~~The Regulatory Agreement shall be subject to review and approval by the Board and its legal counsel as to form and consistency with this Decision, said approval to not be unreasonably withheld.~~

Ruling: Conditions 42F-42G are struck, consistent with *Amesbury, supra*.

- H. ~~A NPDES Storm Water Pollution Prevention Plan, erosion control plan and stormwater management systems operations and maintenance plan has been submitted to the Amesbury Conservation Commission together with a Notice of Intent, and an Order of Conditions has been obtained (under 310 CMR 15.00 and the local wetlands protection bylaw except as waived by this Decision) from the Commission for the final design plans has been recorded.~~
- I. ~~The Applicant has submitted to the Board, the Massachusetts Department of Environmental Protection (DEP), the Amesbury Conservation Commission, and all other relevant public agencies, for review and final acknowledgement of consistency with this Decision, final and detailed stormwater management plans and improvements in accordance with the standards set forth in the Amesbury Subdivision Rules and Regulations not waived by this Decision, and with DEP's Storm Water Management standards, policy and handbooks, to the detail required for use as on-site construction drawings and to obtain approval under the Massachusetts Wetlands Act and the local wetlands protection bylaw except as waived by this~~

~~Decision. These plans and improvements shall address the effect on abutters and assure that there will be no detrimental drainage or erosion impact on the abutting properties.~~

Ruling: Conditions 42H-42I are struck as duplicative of and superseded by the *2008 Decision*, §§ VII-2(b) and 2(c).

- J. Final and detailed landscaping improvements and plans prepared by a Landscape Architect registered in the Commonwealth of Massachusetts to the detail required for use as on-site construction and planting drawings and/or to obtain a building permit in accordance with the State Building Code, whichever requirement is more detailed, have been submitted to the Board and all other relevant public agencies for review and approval ~~for, including acknowledgment of~~ consistency with this ~~Decision~~ Comprehensive Permit. Such plans shall ~~include~~ open areas, limit of construction activity, edge of clearing, sedimentation and erosion controls, a soil stockpiling area, and construction staging, refueling and storage area(s), shade trees along streets, and shall specify the types, number, size and location of all proposed landscaping plants, trees and shrubs at maturity, the location and type of fence or other screening materials, plans and profiles of all planting and screening materials and details of any and all other proposed landscape materials. ~~A landscaped screen at least five (5) feet in width planted with evergreen trees and shrubs shall be provided at all abutting property lines. Wooden fences no less than five (5) feet in height shall be installed along property lines where the structure on the abutting property is less than twenty (20) feet from the applicant's property. Any removal of trees, shrubs, and natural ground cover on the site shall be minimized to the extent reasonably practicable to preserve the natural environment.~~ Such plans indicate the specific types of active/passive recreational equipment to be installed within the open space and recreational areas located on the approved plans. Such plans shall also indicate the location of mailboxes, dumpsters and other appurtenant structures to be located within or integral to, the project.

Ruling: Condition 42J and Condition 42N contain duplication with each other and are both duplicative of and inconsistent with the *2008 Decision*, § VII-2(e). Condition N has been incorporated into Condition J as clarified for consistency with the *2008 Decision*, § VII-2(e).

- K. Outdoor Lighting Plan showing street lighting to be installed in a manner and using acceptable fixtures such that it avoids spillage onto abutting properties. An exterior lighting plan for the project shall be submitted to the Board's designee with relevant expertise for review for consistency with this Comprehensive Permit prior to the issuance of any building permit. Lighting fixtures shall be no more than fifteen (15) feet in height from the finished grade around the base of the light fixture. Confirmation of consistency with the comprehensive permit shall not be unreasonably withheld.

Ruling: Consistent with the *2008 Decision*, this condition is clarified to require review for consistency with the Comprehensive Permit by an individual with expertise to conduct the review.

- ~~L. Documentation and proof of recording (including, e.g., covenants, conservation restrictions) restricting, for the longest period allowable by law, the land noted on the above noted plans as not to be developed has been submitted to the Board for review and approval by legal counsel, said restricted areas to be shown on the Final Plan, and restrictions to be noted on such site plan.~~

Ruling: This condition is struck as inconsistent with the *2008 Decision*.

- M. Identification of all areas of the site proposed for vegetative clearing.

Condition retained by agreement

- ~~N. A detailed plan showing landscaping improvements, open areas, limit of construction activity, edge of clearing, sedimentation and erosion controls, a soil stockpiling area, and construction staging, refueling and storage area(s), for verification that such plan conforms with this Decision. Any removal of trees, shrubs, and natural ground cover on the site shall be minimized to preserve the natural environment to the highest degree possible.~~

Ruling: This condition is struck, and its provisions have been combined with Condition 42J for consistency with *2008 Decision*, § VII-2(e).

- O. Consistent with the Comprehensive Permit, § I.2(f), a maintenance plan for the stormwater management system ~~An Infrastructure Operations and Maintenance Plan~~ has been submitted for review and approval by the Board's designee with relevant expertise for consistency with the Comprehensive Permit. The ~~P~~plan shall include, at a minimum, maintenance during and post construction as well as perpetual maintenance and monitoring of the roadway, roadway infrastructure and drainage systems (routine and seasonal). The ~~Operation and Maintenance P~~plan shall bind the Applicant. The ~~Stormwater Operation and Maintenance P~~plan shall include specific tasks and time lines associated with inspection and maintenance of all proposed stormwater management structural and non-structural measures, a repair and replacement plan for the system with estimated costs as well as identify the owner and party responsible for inspection, operation, maintenance, repair, and replacement including certification of acceptance of legal responsibility for the afore mentioned.

Ruling: This condition is clarified for consistency with *2008 Decision*, § VII-2(f).

- P. A construction schedule identifying the sequence and approximate dates of all key stages of construction has been submitted to the Board. This submission also will include:

- i. Identification of all contractors, field engineers, construction managers, surveyors, wetland and biology specialists, and other professionals that will be involved in the implementation of the Project;
- ii. Staking driveways, dwelling foundations, parking areas, drainage basins and other drainage structures, and well(s) location(s);
- iii. Placement of sediment and erosion controls and limit of construction fencing;
- iv. Identification and approval of significant trees to be cut on the site and/or in the buffer zone and the easement area;
- v. Removal of vegetation and top soil;
- vi. Drainage system construction;
- vii. Major stages of roadway construction;
- viii. Excavating dates for building foundations;
- ix. Sewer line installation; and
- x. Inspection dates.

Condition retained by agreement.

- Q. The Applicant has provided the City of Amesbury, in form and substance approved by counsel for the City of Amesbury, Applicant's agreement that the City of Amesbury shall be free of any liability for any act, omission or negligence caused by the Applicant, its employees, agents, subcontractors, beneficiaries or trustees with relation to this Project, and that Applicant on behalf of itself and its successors and assigns has consented and agreed to indemnify the Town, its employees and officials for any harm, damage or injury caused by the Applicant, its employees, agents, subcontractors, beneficiaries or trustees with regard to this Project.

Ruling: Consistent with the *2008 Decision*, this condition is retained.

- R. The Applicant has filed with MEPA unit of the Massachusetts Executive Office of Environmental Affairs an Environmental Notification Form or Notice of Project Change adequately describing the Project as permitted by this Decision and has received all necessary permission from the Office of Environmental Affairs.

Condition retained by agreement.

- S. The Applicant has granted to the Town easements giving the Town the right to enter the locus to repair and maintain ways, water lines and drainage systems as necessary

to ensure the health and safety of the residents therein. The easements shall be shown on a site plan provided to the Board and shall be recorded by the Applicant.

Condition retained by agreement.

- T. Cuts and fills have been designed to preserve the existing land elevations to the extent reasonably possible based on the Final Plans as approved, and the use of retaining walls is optimized to preserve existing vegetation wherever practicable.

Condition retained by agreement.

- U. The Final Plan has addressed constructability with regard to infrastructure damage due to settlement in substantial fill areas.

Condition retained by agreement.

- V. All local zoning lines have been identified on the Final Plan for reference purposes.

Condition retained by agreement.

- W. To the extent consistent with the plans approved in the Comprehensive Permit, § I.(2)(b), and the grant of a waiver to permit a 90' turnaround, Any and all dead-end drives and parking areas have been reviewed designed to provide a cul-de-sac or adequately sized hammerhead T turn around, approved by the Fire Chief for consistency with this Comprehensive Permit, to facilitate emergency access and increase fire safety.

Ruling: This condition has been clarified for consistency with the *2008 Decision*.

- X. Easements have been provided on the Final Plan to facilitate utility installation and slope maintenance outside the rights-of-way.

Condition retained by agreement.

- Y. The Final Plans indicate that roadway construction materials and thicknesses conform to town standards as set forth in the Planning Board Rules and Regulations, as applicable, consistent with the plans approved in the Comprehensive Permit, § I.(2)(b).

Ruling: This condition has been clarified for consistency with the *2008 Decision*.

~~Z. Hydrologic calculations up to the 100-year storm have been provided which separately analyze each location where stormwater runoff may exit the property under pre or post development conditions; and calculations have been approved which show that the final design of the stormwater management system is adequately sized and does not increase the runoff rate or volume to offsite areas in any storm event up to and including the 100-yr storm event.~~

AA. — Soil lithology, infiltrative capacity and groundwater conditions have been demonstrated as needed to assure proper design and function of the stormwater retention basins, and to the extent possible a four foot/ two foot separation of the basin bottoms from seasonal high groundwater has been demonstrated.

BB. — Drain piping sizing calculations and supporting documentation have been provided by the Applicant to demonstrate the adequacy of the street drainage system for the 25 year storm, and that any by pass of the bypass/overflow of the storm sewers in the 100 year storm will not cause adverse impacts off site.

Ruling: Consistent with the *2008 Decision*, Conditions 42Z, 42AA and 42BB are struck as improper conditions subsequent, and inconsistent with the *2008 Decision's* conditions regarding stormwater management.

CC. — The Final Plans shall include limitations on lawn areas, and limitations on regrading of areas tributary to wetlands. The Final Plans also shall include the use of bio retention areas at any down gradient lawn limits within the 100' wetland buffer, for nutrient and sediment uptake prior to discharge to wetland areas.

Ruling: Consistent with the *2008 Decision*, and its stormwater management conditions and prohibition of improper conditions subsequent, this condition is struck.

DD. The final site plan submission has included an ~~acceptable~~ snow management plan consistent with DEP Stormwater Management Policy.~~protective of the resource areas.~~

Ruling: This condition is clarified to be consistent with the *2008 Decision*, and its stormwater management conditions, and prohibition of improper conditions subsequent.

EE. The Final Plans have been reviewed and accepted by the Fire Chief and/or the Water Department for hydrant and valve locations for consistency with the Comprehensive Permit; ~~hydrant locations shall provide a 10-foot minimum separation from storm drains or other approved means of protecting the water supply from storm drains.~~

Ruling: This condition is modified for consistency with the *2008 Decision*.

FF. The Applicant has obtained all necessary private utility permits and final designs but not limited to gas pipeline, electric, telephone and cable service required by the respective utilities prior to the commencement of construction. Documentation of all Permits/approvals issued by private utilities pertaining to the development of the Project shall be provided to the Board prior to any construction.

Condition retained by agreement.

GG. The Applicant has submitted to the Board and all other relevant public agencies for review and final acknowledgement of consistency with this Decision, all requests for approval, and upon receipt of all approvals, has provided to the Board copies of all necessary approvals from all local, state and federal agencies, departments or commissions pertaining to this Project.

Condition retained by agreement.

Conditions Precedent to Issuance of Building Permit

41. [sic] Not later than the date on which the first request for a building permit is filed, and before any building permit is issued, the Applicant shall file with the Board and all other relevant public agencies for review and for consistency with this ~~Decision~~Comprehensive Permit.

A. A copy of the request for a building permit. The building permit application must include a complete set of engineering drawings, plans and specifications (hereinafter "Complete Plans") for use by contractors, inspectors, and permit compliance officers ~~and purchasers of the proposed dwelling units~~. These drawings, plans and specifications shall be stamped by a Registered Architect or Professional Engineer, as appropriate, licensed in the Commonwealth of Massachusetts, and contain, at a minimum, the following information: an existing conditions plan that shows and labels all easements related to, and wetlands located ~~on abutting property or located on~~, the subject property. The Board's designee with relevant expertise shall review the Complete Plans for conformance with this Decision. The Building Department shall not issue a building permit until receipt of the Board's report that the Complete Plans conform to this ~~Decision~~Comprehensive Permit.

Ruling: This condition is clarified, for consistency with the *2008 Decision*, and to reflect that the dwelling units are not ownership units.

B. A copy of site layout plans and profiles, shown at scales considered adequate for review purposes, of all private roads and parking areas. The Board's designee with relevant expertise shall review the layouts and profiles for conformance with this ~~Decision~~ Comprehensive Permit. The Building Department shall not issue a building permit until receipt of the Board's report that there is conformance with this ~~Decision~~Comprehensive Permit. Roadway layouts shall include properly labeled horizontal and vertical curves and stationing. The location of these facilities shall be as identified in the above-noted layout plans.

Ruling: This condition is clarified for consistency with the *2008 Decision*.

C. A copy of site layout plans, and final and detailed architectural drawings (including plans and elevations) shown at scales considered adequate for review purposes, of all structures containing dwelling units as approved by this ~~Decision~~Comprehensive Permit, including interior floor plans, current and finished elevations, construction

type and exterior finishes to the detail required for use as on-site construction drawings and/or to obtain a building permit in accordance with the State Building Code, whichever requirement is more detailed (hereinafter "Structure Plans"). The location of these dwelling units shall be as identified on the Structure Plans. No structures (as defined by the Amesbury Zoning Bylaw) other than the approved 44-56 dwelling units are allowed on the Site. The Board's designee with relevant expertise shall review the Structure Plans for conformance with ~~this Decision~~ the Comprehensive Permit and so notify the Building Department. The Building Department shall not issue a building permit until receipt of an affirmative report from the Board. Housing plans for dwelling units shall also be submitted to the Building Department in accordance with the State Building Code.

Ruling: This condition is clarified for consistency with the *2008 Decision*.

- D. To the extent consistent with the Comprehensive Permit, final and detailed utilities plans and profiles including properly labeled drainage components and all site utilities including electric, gas, water supply lines, wetland delineation, wastewater disposal connections and appurtenances and dwelling unit connections thereto indicating that all utilities servicing this Project shall be underground within the locus of the Project and to the detail required for use as on-site construction drawings and/or to obtain a building permit in accordance with the State Building Code, whichever requirement is more detailed.

Ruling: This condition is clarified for consistency with the *2008 Decision*.

- E. Submit/Provide to the Board and all other relevant municipal public agencies ~~for review and final acknowledgement of consistency with this Decision~~ a copy of the property management plan provided to the subsidizing agency. ~~long term property management plan for the entire development~~ The purpose of the property management plan is to ensure that the Applicant has developed a sound and long-term strategy to ensure that the Project remains viable, attractive and safe to the tenants living within the Project and the City of Amesbury in general. The Board requires that the property management plan identify, at a minimum, who the day-to-day responsible parties will be in case of an on-site emergency, detailed contingency plans in the event of an emergency, including, but not limited to fire, flood or vehicular accident, and plans and contingencies for day-to-day and periodic on-site maintenance.

Ruling: This condition is modified to conform to *Amesbury, supra* consistent with *2008 Decision*. It is also duplicative of Condition 31, which was struck by the Committee.

- F. Submit to the Board plans and elevations of all proposed signs, including the entranceway sign, sufficient to determine their consistency with this Comprehensive Permit ~~compliance with the Amesbury Zoning By Law~~, and the design, size and location of any intersection lighting.

Ruling: This condition is clarified for consistency with the *2008 Decision*.

Conditions Precedent to Building Construction

42. [sic] For each phase of the Project, prior to the start of construction of any building, roads to and within that phase of the Project will have at least the first course of pavement, all hydrants in that phase of the Project will be operational, street signs will be in place and dwelling unit numbers will be provided at the building site to avoid conflict with building and lot numbers. Street names and house numbers shall be approved by the Amesbury Fire Department.

Ruling: Consistent with the *2008 Decision*, this condition is retained.

43. Prior to the commencement of any work at the site, an erosion control barrier (hay bales staked end to end and siltation fence firmly anchored with six (6) inches of soil on the uphill side) shall be installed in a location reasonably acceptable to the Amesbury Conservation Administrator. The erosion control barrier shall be inspected by the Conservation Administrator prior to work commencing on the site and shall be maintained until all disturbed areas have been stabilized.

Condition retained by agreement.

44. Limit-of-work construction fencing shall be installed in accordance with the Final Plan locations for the particular building phase.

Condition retained by agreement.

Conditions Relating to Construction

45. All dwelling units shall be built by the Applicant, and its agents or contractors over it will exercise supervision and control and the acts of which for which it will be responsible, in accordance with this Permit and subject to the requirements of the subsidizing agency~~the Regulatory Agreement~~. During construction, the name and mobile telephone number of the site manager or clerk of works employed by the Applicant shall be filed with the Building Department, the Board, and the Amesbury Police Department, and such name and mobile telephone number shall be kept current.

Ruling: This condition is modified to conform to *Amesbury, supra*, consistent with *2008 Decision*.

46. During construction, the Applicant and its agents and employees shall conform to all local, state and federal laws regarding noise, vibration, dust and use of City roads and utilities. The Applicant shall at all times use all reasonable means to minimize inconvenience to residents in the general area. Construction shall not commence on any day Monday through Friday before 7:00AM or on Saturday before 9:00AM. Construction activities shall cease by 6:00PM on all days. No construction or activity whatsoever (except for interior finishing) shall take place on Sunday.

Condition retained by agreement.

47. Affordable housing units shall be constructed coincident with the development of market rate units, subject to the requirements of the subsidizing agency. ~~In no event shall the number of affordable units built relative to the number of market rate units built be less than that set forth in the schedule below:~~

~~**[CHART IS OMITTED]**~~

- ~~For the purposes of this section, "built" means constructed to a degree sufficient for issuance of a certificate of occupancy. Prior to the issuance of the certificate of occupancy for the last to be rented market rate dwelling unit in any phase of the Project, the Applicant shall complete construction, obtain certificates of occupancy for, and rent all of the affordable dwelling units in that phase.~~

Ruling: This condition is modified to conform to *Amesbury, supra*, consistent with 2008 Decision.

48. ~~The Applicant shall submit to the Board, the Building Department and the Fire Chief, for review and final acknowledgement of consistency with this Decision, final and detailed scaled architectural drawings for all structures as approved by this Decision, including interior floor plans, current and finished elevations, construction type and exterior finishes to the detail required for use as on-site construction drawings and/or to obtain a building permit in accordance with the State Building Code, whichever requirement is more detailed.~~

Ruling: This condition is duplicative of Conditions 41C. It is therefore struck.

49. With the exception of land clearing, grading and site disturbances minimally necessary to construct the ~~proposed entranceway to the~~ Project, no land clearing, grading or site disturbance of any kind shall occur within 50 feet of any property boundary of land not owned by the Applicant or existing dwelling unit on any adjacent property, whichever is farther, except as shown on the site plans approved by the Comprehensive Permit.

Ruling: This condition is clarified for consistency with the 2008 Decision.

50. ~~**Change to read:**~~ All setbacks for various residential structures shown on the plan shall not be less than those shown on the ~~{Site Layout Plan attached as Exhibit "A"}{site plans approved by the Comprehensive Permit~~HAC Decision unless otherwise allowed by the Board.

Ruling: This condition is clarified for consistency with the 2008 Decision.

51. To the extent consistent with the plans approved by the Comprehensive Permit, regrading of the site shall not result in any finished slope exceeding 25 percent in fill: (4:1) or 33 percent in cut (3:1). Slope stabilization methods in addition to grass shall be utilized to the extent feasible. Design of the development shall preserve existing natural features to the maximum extent possible-practicable.

Ruling: This condition is clarified for consistency with the *2008 Decision*.

~~52. All land areas not developed as shown on plans approved by this Decision shall be left in their current natural, undisturbed vegetated conditions and shall be subject to a conservation restriction pursuant to G. L. c. 184, s. 31.~~

Ruling: Consistent with the Committee's *2008 Decision*, this condition is struck. See also Conditions 42A [sic], 42L.

~~53. The Project shall be designed to retain and reflect the architectural character of Amesbury. Exterior materials and trim elements shall be wood or an alternative approved by the Board. The "manager's unit" as shown on the plans shall be constructed so as to replicate in architectural character and building materials, the existing dwelling unit on the locus.~~

~~54. A design theme has been stated in writing and submitted to the Board for approval. The theme shall include descriptions of exterior building materials, architectural design, street furniture, fencing, and a statement of the means of assuring that the affordable dwelling units are compatible with the design theme and are indistinguishable in architectural style and finish materials from the market rate units.~~

Ruling: Conditions 53 and 54 are struck as inconsistent with *Amesbury, supra*, and the *2008 Decision*, or duplicative of other conditions. See Comprehensive Permit, § 1.4(a), *supra*, which requires construction to be in accordance with all applicable non-waived local zoning and other by-laws and regulations in effect on the date of LeBlanc's comprehensive permit application to the Board.

~~55. The Applicant shall provide soil examination and testing as needed to ascertain the suitability of the parcel for development, prior to Board's approval of Final Plans. Soil testing for septic systems will be conducted and submitted as individual lot site plans are developed.~~

Ruling: Consistent with the *2008 Decision*, this condition is struck as an improper condition subsequent. Additionally, since the Project will connect to the municipal sewer system, the condition is inapplicable.

56. Stormwater management systems ~~shall meet the design and performance requirements of the Amesbury Subdivision Rules and Regulations unless otherwise waived by this Decision, and~~ shall meet the requirements of the DEP Storm Water Management Policy and Handbook (Vols. 1 & 2).

Ruling: This condition is clarified to be consistent with the *2008 Decision*. However, it is duplicative of the conditions imposed by the *2008 Decision*.

57. Streets - Roadway design plans and construction details (inclusive with the Final Plans) shall be provided for approval by the Board's designee with relevant expertise to review for consistency with this Comprehensive Permit. Except as otherwise provided by this ~~Decision-Comprehensive Permit~~, roadway design and construction standards shall conform to ~~the applicable non-waived~~ requirements of the Amesbury Planning Board Subdivision Rules and Regulations. ~~All proposed roadway and utility construction, grading and appurtenant work shall be described in complete detail to readily enable peer review and construction. A note shall be placed on each pertinent sheet of the Plans stating that the Project is the subject of a comprehensive permit under G.L. c. 40B § 22-23, that the roads and ways within the Project in some cases may and in other cases may not, conform to the standards and requirements of the Amesbury Subdivision Rules and Regulations. Sidewalks are required on one side within the project and the sidewalk that is proposed to be removed at the project's entrance shall be replaced and joined with the existing sidewalk to form a smooth and consistent path surface. The roadway cross section shall include Cape Cod berms, except at all turning radii where it shall be vertical granite and continue as vertical granite five (5) feet on either side of the end of the turning radii, and five (5) foot grassed stabilized shoulders on each side. Complete development roadway profiles shall be provided for existing centerline and sideline grades, and proposed centerline grade. The Applicant may submit plans for pedestrian paths on one side of the ways, and any such paths shall be separate from the stabilized shoulders and shall respect existing trees. Street parking shall be prohibited except in striped parallel parking stalls as identified on the Final Plans. No vehicle parking shall be permitted on Clark's Road at any time.~~

Ruling: This condition is clarified for consistency with the 2008 Decision, including striking improper conditions subsequent.

58. Utilities - All electric, cable and telephone utilities shall be underground, and shall conform to the private utility companies' requirements.

Condition retained by agreement.

59. Proposed underground gas, electric, cable, and telephone service, shall be shown in cross-section on the way; utilities plan and construction details shall be provided.

Condition retained by agreement.

60. Normal water service pressure within the Project shall be a minimum thirty-five (35) psi under all conditions except fire flow. Available service pressure under peak water demand and fire flow conditions, including any additional development currently anticipated in the vicinity shall be demonstrated by use of the Town's computerized hydraulic model.

Condition retained by agreement.

61. ~~The Applicant shall replace the existing water main along Clark's Road from Main Street, to include Macy Street (Route 110) to the entrance of the proposed development with a twelve (12") inch line. Any and all dwelling services along said replacement route shall be reconnected and fire hydrants, valves and laterals replaced where the new pipe is installed. Water system design and construction shall meet the requirements, standards and regulations; of the Amesbury Department of Public Works (DPW) and the Massachusetts Department of Environmental Protection's Guidelines and Policies for Public Water Supplies. If requested by DPW, the Applicant shall grant a utility easement to the City of Amesbury, in form satisfactory to the Department of Public Works and City Counsel.~~

Ruling: Consistent with the *2008 Decision*, this condition is struck.

62. All stumps, brush, and other debris resulting from any clearing or grading shall be removed from the locus. No stumps or other debris shall be buried on the locus.

Condition retained by agreement.

63. A written submission shall be submitted to the Board describing all easements and covenants affecting the use of the subject Amesbury site, referring to such covenants and locating such easements on a site plan. The Applicant also shall submit to the Board any written or recorded instruments granting or agreeing to such easements and covenants.

Condition retained by agreement.

64. To ensure compliance with the terms and conditions of this ~~Decision-Comprehensive Permit~~ and any approval or order by any federal ~~or~~, state agency, the Applicant shall, within ~~five (5)-sixty (60) days, as may be extended for good cause,~~ of the request for Certificate of Occupancies for any of the structures approved in this ~~Decision Comprehensive Permit~~, submit to the Board a complete and detailed "As-Built" Plans of the roadway and associated infrastructure, ~~as set forth in the Amesbury Planning Board Subdivision Rules and Regulations consistent with this Comprehensive Permit and approved by the Amesbury Building Department~~ together with a certification from a Professional Engineer or Architect registered in the Commonwealth of Massachusetts that the Project "As Built Plan" complies in all substantive respects with this Decision and any other approval or order by any federal, state agency. Progress as-built plans may be submitted for the extent of roadway and associated infrastructure serving those dwellings for which certificates of occupancy are sought. Any damage to public roads and walkways shall be repaired and/or replaced as per directive of and to the satisfaction of the Director of Public Works.

Ruling: This condition has been clarified for consistency with the *2008 Decision*.

65. All dwelling units shall contain automatic fire detection sprinklers, installed in accordance with the State Building Code for multi-family structures.

Condition retained by agreement.

66. Temporary certificates of occupancy will not be permitted. The Fire Department will not sign the occupancy permit until all required fire prevention and detection systems are installed and operating, carbon monoxide detectors are installed and operating, street signs and house numbers are in place and all required inspections have been completed by the Fire Department.

Condition retained by agreement.

Administrative

67. Within fourteen (14) days of receipt of a statement of costs, other than legal fees, incurred by the Town prior to the date of this Decision in connection with reviewing the application for a Permit (including costs of the services of Woodard and Curran incurred and outstanding as of the date of the filing of this Decision), the Applicant shall submit a certified check made payable to the City of Amesbury in an amount to compensate the City of Amesbury for such costs.

Ruling: Consistent with the *2008 Decision*, this condition is clarified to provide, consistent with 760 CMR 56.05(5)(a) and the Committee's precedent, that legal fees are not recoverable.

68. To the extent authorized by municipal bylaws or regulations applicable to the Project, ~~The~~ Applicant shall pay the expenses incurred by the Board and Town in evaluating the plans required by this ~~Decision-Comprehensive Permit~~ and in evaluating monitoring construction for this Project. These expenses will be deducted from the special account established by the Town Treasurer for Eagle Point. Prior to any clearing, grading or construction, the Applicant must pay to the Town, by certified check, \$22,000 as an advance deposit to cover at least a portion of these expenses. ~~This estimated initial payment is based on 44 units at \$500 per unit.~~ Applicant will pay any additional costs to the Town as ~~required~~ allowed; and if at any time the amount of the advance deposit is reduced below \$5,000 Applicant, upon request, shall within five (5) business days pay to the town an amount sufficient to increase the amount of the deposit to \$5,000, and if the Applicant fails to pay such amount within such period all work on the project shall cease until such amount has been paid. Any excess remaining at the completion of the Project will be returned to Applicant.

Ruling: Consistent with the Committee's *2008 Decision*, this condition has been modified to comply with 760 CMR 56.05(5).

69. The Applicant must post a performance guarantee for each phase of work to be undertaken, satisfactory to and reviewed by the Board and City Counsel to be noted on the Plan to ensure that any construction related damage to adjacent roads is repaired by the Applicant in a manner satisfactory to the Board. This performance guarantee is to be received by the Board prior to the commencement of any of the improvements approved in the Plan and will be required until the Board decides that the Applicant has completed all of the improvements approved in the Plan. The form of the performance guarantee,

adequacy and or amount may be varied from time to time by the Applicant subject to an agreement satisfactory to the Board and reviewed by City counsel.

Condition retained by agreement.

70. The Applicant has proposed and the Board requires, that the following aspects of the Project shall be and shall remain forever private and that the City of Amesbury shall not have, now or ever, any legal or financial responsibility for operation or maintenance of:
- A. Roadways, driveways or parking areas
 - B. Stormwater management system and appurtenances
 - C. Snow plowing or removal
 - D. Landscaping
 - E. Trash disposal or pickup
 - F. Street lighting or other illumination
 - G. Maintenance requirements of easements, access and appurtenances associated with any of the above.

Condition retained by agreement (all subsections).

71. The roadway and driveways within the development shall not be dedicated or accepted by the City of Amesbury. The water system shall be constructed by the Applicant, and granted to the City of Amesbury upon the City's acceptance of the installed water main and appurtenances and all required testing results.

Condition retained by agreement.

72. The Applicant shall be responsible for the installation, operation, and maintenance of all aspects of the Project.

Condition retained by agreement.

- ~~73. The Applicant shall provide the Board with proof that an appropriate budget has been established and funded to maintain the systems, dwelling units, ways and improvements in the Project consistent with that required by the subsidizing agency.~~

Ruling: This condition is struck pursuant to *Amesbury, supra* and the *2008 Decision*.

74. Inspections and testing during the construction of ways and installation of utilities and the stormwater management system in accordance with the schedule set forth in the

Amesbury Planning Board Subdivision Rules and Regulations shall be conducted at the expense of the Applicant. The Board may appoint an agent to conduct such inspections.

Condition retained by agreement.

75. No building shall be occupied until the improvements specified in this Decision and set forth on the plans of record are constructed and installed so as to adequately serve said building or adequate security has been provided, acceptable to the Board, to ensure such completion. Any such performance guarantee shall be approved as to form and amount by the Board.

Condition retained by agreement.

76. At least forty-eight (48) hours prior to any initial site work, a pre-construction meeting shall be held with the Applicant, Applicant's contractor, a representative of the Board of Appeals, its consulting engineer, and representatives of the City departments having an interest in the plan. Said meeting shall be for the purpose of familiarization with the project, the conditions of approval, and the project's construction sequence and timetable.

Condition retained by agreement.

77. Time limit to build: The Applicant shall complete construction within five (5) years from the date this Permit becomes final, unless such time shall be extended in writing by the Board, which approval shall not be unreasonably withheld. If construction under this Permit has not been completed by that date, the Applicant may submit an extension of time request to the Board pursuant to 760 CMR 56.05(12), which shall constitute a substantial change and, therefore, require a public hearing.

Ruling: This condition is modified for consistency with the 2008 Decision and the Committee's regulations.

78. The Applicant has provided to the City of Amesbury, in form and substance approved by counsel for the City of Amesbury, Applicant's agreement that the City of Amesbury shall be free of any liability for any act omission or negligence caused by the Applicant, its employees, agents, subcontractors, beneficiaries or trustees with relation to this Project, and that Applicant on behalf of itself and its successors and assigns has consented and agreed to indemnify the City, its employees, agents and officials for any harm; damage or injury caused by the Applicant, its employees, agents, subcontractors, beneficiaries or trustees with regard to this Project.

Condition retained by agreement.

79. To the extent provided in municipal bylaws and regulations, the fees for ~~the~~ engineering and legal reviews and the town's construction oversight shall be the obligation of the Applicant. Prior to the commencement of work by a particular consultant, the Applicant shall pay the estimated fees for the required work. No ground disturbance or clearing shall commence until all past and estimated future fees are paid.

Ruling: This condition is modified for consistency with the *2008 Decision*.

80. Prior to commencement of construction, the Applicant shall provide to the Board:
- The name, address, e-mail and business telephone number of the individual responsible for all activities on Site;
 - A copy of a municipal lien certificate indicating that all taxes, assessments and charges due on the Site have been paid;
 - Proof that all required federal, state and local licenses and permits have been obtained;
 - Proof that the Applicant has fulfilled notification requirements of "Dig Safe", prior to commencement of any on-site work. If work activity on site ceases for a period of more than one month, appropriate notification must be given prior to restarting work.

Condition retained by agreement (all subsections).

81. The Applicant shall keep the site and the adjoining existing roadway area clean during construction. Upon completion of all work on the Site and prior to As-Built approval, all debris and construction materials shall be removed and disposed of in accordance with state laws and regulations and the Board shall be notified in writing of the final disposition of the materials.

Condition retained by agreement.

82. Construction, once commenced, shall progress through to completion as continuously and expeditiously as possible and in accordance with the construction sequence and timetable approved.

Condition retained by agreement.

83. Construction equipment shall not be parked or stored within fifty feet (50') of any drainage channel, drainage inlet, or wetland area. Maintenance of construction equipment involving transfer of fluids and fuels shall be conducted in areas away from drainage channels and inlets and wetland buffer areas. Contractor's on-site personnel shall immediately notify the City of any hazardous material spill, regardless of size.

Condition retained by agreement.

84. The applicant or the applicant's site contractor shall be required to carry a certificate of liability insurance and shall provide a copy of the same to the Building Inspector. The certificate shall remain effective for the period the comprehensive permit remains in effect.

Condition retained by agreement.

85. All earth stockpiles shall be established in locations greater than fifty (50') feet from the wetlands as approved by the Board or its designee. Earth material stockpiles shall not be allowed immediately adjacent to perimeter siltation barriers or drain inlets. Long term stockpiles over 30 days shall be shaped stabilized and circled by siltation fence and hay bales and shall be stabilized by temporary seeding, sheeting or netting.

Condition retained by agreement.

86. Prior to beginning construction on any phase of the Project, the Applicant will submit to the Board for its approval a plan showing the location of all construction storage and stockpiling areas for that phase, together with details of the planned use of such areas.

Condition retained by agreement.

87. All areas to be protected from encroachment from construction shall be marked on the ground as shown on the approved construction plans and these barriers shall be maintained by the Applicant throughout the construction phase of the project.

Condition retained by agreement.

88. Subject to the requirements of the subsidizing agency, There shall be a qualified on-site manager ~~at all times~~, with power, authority, and responsibility to enforce the rules and regulations and to implement maintenance and repair obligations of the Applicant under this comprehensive permit. ~~The on-site manager shall be retained subject to a written contract with the Applicant under which the Applicant shall be responsible for timely payment of the salary or other compensation due to the on-site manager, and for payment of all costs or expenses incurred by the on-site manager in carrying out such manager's obligations. The on-site manager for the Project shall be in residence on the project site prior to Certificate of Occupancy being issued for any additional units after the first ten (10) units.~~

Ruling: This condition is clarified for consistency with *Amesbury, supra*, and the *2008 Decision*.

- ~~89. Excavation dewatering shall be in a workman like manner and such water shall be free of suspended solids before being discharged into either a wetland or any storm water drainage system. This condition applies to all forms of dewatering including pumping and trenching. No direct discharge to the wetlands is allowed. Such discharge shall be consistent with the Applicant's NPDES Notice of Intent.~~

Ruling: This condition is struck as redundant. State law requirements are already mandated consistent with the *2008 Decision*.

90. ~~The infiltration rate for any infiltration system proposed on site shall not exceed that recommended by Schuler et al. and by the Stormwater Management Policy, based upon~~

~~soil observations and permeability testing. Soil infiltration rate shall be correlated from the percolation rate from the most restrictive soil horizon in each of the stormwater disposal areas.~~ The design of any infiltration system shall comply with DEP Stormwater Management Policy.

Ruling: This condition is clarified for consistency with the *2008 Decision*.

91. Prior to the issuance of any Certificate of Occupancy for any dwelling unit as to which the proposed pump station will service, the Applicant shall deliver to the Board of Health a copy of the maintenance contract for the on-site pump station, and a copy of the Project budget showing line items for the cost of the contract as well as the establishment of a reserve fund for purposes of maintenance, repair and replacement of such pump station.

Condition retained by agreement.

Performance Guarantees

92. Prior to full surety release, satisfactory as-built Plans shall be provided to the Board as required under the Amesbury Planning Board Regulations.

Condition retained by agreement.

93. No building shall be occupied until the building utilities specified in this Decision and set forth on the plans of record are constructed and installed so as to adequately serve said building or surety provided by the Applicant, subject to approval by the Board.

Condition retained by agreement.

94. The Board may withhold the final release of any security deposited by the Applicant until the Board is informed by the agents of the Town that they are satisfied that the pavement has maintained its integrity after one winter, and that the planting areas are healthy and sufficiently established. The required time period for the landscaping shall be one year from the time of planting to the next July 1st for grassed areas and two years from the time of planting to the next July 1st for shrubs and trees.

Condition retained by agreement.

95. In determining the amount of any surety, the Board shall be guided by the following formula in setting the sum of the security:
- A. An estimate of the cost to complete the work that is satisfactory to the Board; plus
 - B. A ten percent margin of error; plus an appropriate rate of inflation over a five-year period.

Condition retained by agreement.

~~96. This Decision shall not substitute for compliance with the Subdivision Control Law, G.L. c. 41, s. 81 L, et seq. regarding the division of land into two or more lots nor shall this Decision substitute for the recording requirement of the Subdivision Control Law found at G.L. c. 41, s. 81 X.~~

Ruling: Consistent with the *2008 Decision*, this decision is struck. The Comprehensive Permit already requires compliance with all applicable state laws.

97. All sureties shall contain the following provision:

"The Principal shall fully and satisfactorily observe and perform in accordance with the qualifications and time schedule set forth herein specified all the covenants, conditions, agreements, terms and provisions set forth in the Comprehensive Permit Decision of the Amesbury Board of Appeals dated August 21, 2006."

Ruling: This condition has been clarified for consistency with the *2008 Decision*.