

COMMONWEALTH OF MASSACHUSETTS  
HOUSING APPEALS COMMITTEE

**WEBSTER STREET GREEN, LLC**

v.

**NEEDHAM BOARD OF APPEALS**

No. 05-20

DECISION

September 18, 2007

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COMMONWEALTH OF MASSACHUSETTS  
HOUSING APPEALS COMMITTEE

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WEBSTER STREET GREEN, LLC,  
Appellant

v.

NEEDHAM BOARD OF APPEALS  
Appellee

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No. 05-20

**DECISION**

**I. PROCEDURAL HISTORY**

On March 31, 2005, Webster Street Green, LLC submitted an application for a comprehensive permit pursuant to G.L. c. 40B, §§ 20-23 to build ten units of affordable condominium housing on a one-acre site at 28 Webster Street in Needham. The housing is to be financed under the New England Fund (NEF) of the Federal Home Loan Bank of Boston (FHLBB). In a decision filed with the Needham Town Clerk on November 4, 2005, the Board granted the permit subject to certain conditions, notably conditions limiting the new construction to eight units. The decision was appealed to this Committee, and the developer filed a motion pursuant to 760 CMR 30.07(2)(f) requesting a determination that the decision of the Board in fact constituted a denial of a permit. That motion was denied by the presiding officer.<sup>1</sup> The Committee then conducted a *de novo* hearing, receiving prefiled testimony from seven witnesses, conducting a site visit,

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1. The question of whether the action of the Board is a grant with conditions or a *de facto* denial is one of a number of matters that the presiding officer has the authority to rule upon without consultation with the full Committee. See 760 CMR 30.07(2), 30.09(5)(b).

and holding two days of hearings in January and February 2007 to permit cross-examination.<sup>2</sup> Following the presentation of evidence, counsel submitted post-hearing briefs.<sup>3</sup>

## II. FACTUAL OVERVIEW

The development site is an irregularly shaped one-acre parcel of land with 160 feet of frontage at 28 Webster Street. Exh. 3, 14, 15. Webster Street is a collector street that carries over 5,000 vehicles per weekday. Exh. 4, p.1; 4, fig. 6-9. A single-family house that is currently on the site will be razed, and two buildings will be built. Eight of the proposed condominium units will be clustered in two buildings near the center of the site, and two units will be in a smaller building on an oddly shaped portion of the site at the right rear corner of the lot. Exh. 14,15.

Confusion arose during the hearing as to the level of affordability proposed and approved. The original application was for ten condominium units, of which 25%, or three units, were to be affordable. Exh. 1, second page. The application did not specify income levels for owners of the affordable units, though typically ownership housing is made available to households whose income is below 80% of median income. The developer agreed, however, to change its proposal so that the affordable units would be affordable to households with incomes at 50% of median or below, but that only 20%, or two of the ten units, would be affordable. Exh. 2, p. 8, ¶¶ 6, 8. Based upon that, the Board's decision was understood to approve a total of eight units, of which two would be affordable to households at 50% of median income. Exh. 2, p. 10 (unnumbered ¶). But the Board amended its decision, and therefore for the purposes of this appeal the *development approved by the Board* is for a total of eight units, of which 25%, or two units, are to be affordable to households

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2. The presiding officer issued a joint Pre-Hearing Order, agreed to by the parties. In it, the parties stipulated that the developer satisfies the three requirements contained in 760 CMR 31.01(1). Pre-Hearing Order, §§ II-3, II-4, II-5 (Nov. 6, 2006).

3. Two abutters to the site, Dennis Carothers and Eric Anderson requested and were granted permission to participate in the hearing as interested persons pursuant to 760 CMR 30.04(4).

whose income does not exceed 80% of median. Exh. 29. With regard to development proposed by the developer, the parties stipulated in the Pre-Hearing Order that the level of affordability was to be the original 25% of the units reserved for households at 80% of median income, that is, of a total of ten units, three were to be affordable. Pre-Hearing Order, § II-6 (Nov. 6, 2006). But the developer moved to amend the Pre-Hearing Order, and that motion was granted. Therefore, the *development proposed by the developer* that is currently before the Committee is for a total of ten units, of which 20%, or two units, are be affordable to households whose earnings do not exceed 50% of the applicable median income.

### III. ECONOMIC EFFECT OF THE CONDITIONS

When the Board has granted a comprehensive permit with conditions, the ultimate question before the Committee is whether the decision of the Board is consistent with local needs.<sup>4</sup> Pursuant to the Committee's procedures, however, there is a shifting burden of proof. The Appellant must first prove that the conditions in aggregate make construction of the housing uneconomic. See 760 CMR 31.06(3); *Walega v. Acushnet*, No. 89-17, slip op. at 8 (Mass. Housing Appeals Committee Nov. 14, 1990). Specifically, the developer must prove that "the conditions imposed... make it impossible to proceed... and still realize a reasonable return [or profit] as defined by the applicable subsidizing agency...." 760 CMR 31.06(3)(b); also see G. L. c. 40B, § 20.

The proper methodology to be used in analyzing the economics of an ownership housing proposal is a Return on Total Cost (ROTC) analysis. *Rising Tide Development, LLC v. Lexington*, No. 03-05, slip op. at 11 (Mass. Housing Appeals Committee Jun. 14, 2005). Once the ROTC is established for a particular proposed development, we must determine whether it is reasonable, that is, whether it is sufficient in the marketplace to induce the developer to invest its resources in pursuing the proposal.

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4. The developer's owner also alleged that the Board did not apply density standards as equally as possible to subsidized and unsubsidized housing. See Exh. 30, ¶ 5(c), 5(d); 760 CMR 31.06(4). This issue was not raised in the Pre-Hearing Order, however, and thus was waived. See Pre-Hearing Order, §§ IV-2, IV-3.

### A. The Developer's Presentation

The only condition seriously challenged by the developer and the central issue with regard to economics is the limitation of the development to eight units. In January 2006, the developer prepared several *pro forma* financial statements. See Exh. 20, 21(a), 21(b). The one most relevant to our inquiry is Exhibit 21(a), since it projects costs and revenues for the project as approved by the Board—an eight-unit project with 25% of the units affordable to households at or below 80% of median income. That *pro forma* showed a loss of 5.3%, and the owner testified, “If the project was reduced to eight units, it would be uneconomic and I would not be able to pursue it.” This testimony was supported by that of a financial expert with many years of experience in the development of affordable housing. Following the standard methodology for determining the Return on Total Cost (ROTC) that is applied to affordable housing developments in Massachusetts, he reviewed the developer’s cost estimates in December 2006, and generally found them to be within industry standards.<sup>5</sup> Exh.33, ¶¶ 6, 7; see Exh. 22 (MHP Guidelines).<sup>6</sup> He made several adjustments, however, reflecting both the passage of time and the appropriate ROTC methodology, and therefore we will focus on his version of the *pro forma* (Exhibit 33-A), rather than on that originally prepared by the developer. Exh. 33, ¶ 6.

The developer’s financial expert first evaluated development costs. He accepted as the land acquisition cost the developer’s purchase price of \$750,000. Exh. 33, ¶ 6(a); 20; 21(a); Exh. 33-A. Then, using standard ROTC methodology, he made several

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5. He actually reviewed the costs in Exhibit 21(b) rather than Exhibit 21(a), but the figures are identical in those two documents.

6. Detailed policy guidance concerning the use of this methodology has been provided in the appendix to a document issued in November 2003 by the Massachusetts Housing Partnership and endorsed not only by that agency, but also by the Department of Housing and Community Development, the Massachusetts Housing Finance Agency (MassHousing), and the Massachusetts Development Finance Agency (MassDevelopment). See “Local 40B Review and Decision Guidelines: A Practical Guide for Zoning Boards of Appeal Reviewing Applications for Comprehensive Permits Pursuant to M.G.L. Chapter 40B” (Massachusetts Housing Partnership and Netter, Edith M., November 2005). These guidelines, though they do not have the force of law, provide information, structure, and background which provide a context for proof by expert witnesses of the economic issues that arise under the Comprehensive Permit Law.

adjustments. For instance, he placed the costs for construction management within construction costs instead of showing them as a separate line item. Exh. 33, ¶ 6(b); Exh. 33-A. He increased projected legal expenses by about 10%, and added closing costs related to the sale of units. Exh. 33, ¶ 6(d); Exh. 33-A. He increased insurance, taxes, appraisal costs, financing fees, and utilities and maintenance during construction slightly to make them more realistic. Exh. 33, ¶¶ 6(e)-6(h); Exh. 33-A. He added a fee for an owner-selection-lottery consultant and set the commission rate for sales of the market-rate units at 5%. Exh. 33, ¶ 6(i); Exh. 33-A. Thus, total development costs were established at \$3,830,831.<sup>7</sup> Exh. 33-A.

The developer's expert then developed estimates for the sales prices of the market-rate units ranged from \$580,000 to \$610,000 with total sales revenues of \$3,576,000. Exh. 33-A. Sales prices for affordable units were set at \$116,900 and \$128,000. Exh. 33-A. This resulted in Total Sales Revenues of \$3,820,900. Exh. 33-A.

The estimated Return on Total Cost (ROTC) involves only a simple calculation.<sup>8</sup> The return is simply total sales less total development costs, that is, \$3,820,900 minus \$3,830,831 or a loss of \$9,931. Exh. 33-A. The projected ROTC is return divided by total development costs, that is, \$9,931 divided by \$3,830,831 or -0.3%. Exh. 33-A. Such a loss would certainly render the proposal uneconomic. Exh. 33, ¶ 12.

## **B. The Board' Response**

In rebuttal, the Board introduced testimony from its own well qualified expert witness, and challenged the developer's analysis on several grounds. His testimony is particularly useful since it not only provides a critique of individual line items in the developer's *pro forma*, but also provides his own version, with comparison made easy by his use of the same format and his having provided his own and the developer's figures

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7. The expert mistakenly referred to this amount as \$3,833,209 in his prefiled testimony, Exh. 33, ¶ 9. In all instances we have relied on the *pro forma* itself as showing the most accurate projections.

8. As we have noted before, because of the preliminary and approximate nature of these projections it is not necessary to use the related, but slightly more sophisticated Internal Rate of Return (IRR) analysis. See *Bay Watch Realty Tr. v. Marion*, No. 02-28, slip op. at 13-14, (Mass. Housing Appeals Committee Dec. 5, 2005).

side-by-side on a single page. See Exh. 36-13. We will examine each of the challenged line items.

### **1. Land Acquisition Value**

The developer agreed to purchase the site for \$750,000, and this was the figure used by the developer's expert as the land acquisition value. Exh. 25; 33, ¶ 6(a). The Board argues that an appraisal provides a more accurate assessment of value, and that as the developer's expert himself noted, the sale is only "apparent[ly]" an arm's-length transaction, and thus the price may be inflated if it includes some value related to the anticipated issuance of a comprehensive permit. See Exh. 33, ¶ 6(a); Exh. 22 (MHP Guidelines), p. 13. The accepted methodology for determining land acquisition value is, in fact, the preparation of an appraisal of the fair market value of the site at the time of the developer's submission of a request for a project eligibility letter pursuant to 760 CMR 31.01(2). Exh. 22 (MHP Guidelines), p. 13. The Board's expert, who is a certified real estate appraiser in Massachusetts, examined comparative sales data at the time of the developer's submission of project eligibility request. He found that single-family home prices were generally below \$550,000, noted that two houses in the area were purchased for demolition and sold for \$465,000 and \$485,000 respectively. Exh. 36, ¶¶ 22-24; 36-1; 36-2; 36-3. He concluded that the land acquisition value for the site would not exceed \$550,000. Exh. 36, ¶ 25. He failed to note, however, that because the site is in a "Single Family B" zoning district, which requires only 10,000 square feet per lot and 80 feet of frontage, it could be divided by right into two house lots. Exh. 3; 24, p. 77; 37, ¶ 3; 38, ¶ 3.

In rebuttal testimony, the developer suggested that the actual value of the site would be that of two separate lots. That is, assuming that the site comprises two lots, the developer essentially asks us to draw the inference from the testimony of the Board's expert that it is worth approximately \$950,000. See Developer's Brief, p. 10; Exh. 38, ¶ 3. But this line of reasoning was raised only in rebuttal testimony, and was not explored



thoroughly during the hearing. For instance, a question that remains unanswered is why, if the value is actually \$950,000, did the owner agree to sell it for only \$750,000.<sup>9</sup> Although the evaluation by the Board's expert appears flawed, on the record before us, that is, with no actual appraisal of the site as two lots or other unequivocal evidence, the developer has not established that the value of the site is greater than the \$750,000 that it originally asserted. We find that its value is at least \$750,000, but that any higher value is speculative, and that therefore the land acquisition value of \$750,000 used in the developer's *pro forma* is proper.

## **2. Affordable-Unit Sales Prices**

As noted above, there was confusion during the hearing process as to the level of affordability to be provided in the proposed development. Because of this, the developer's expert was mistakenly led to believe that the sales prices of the affordable units would be set to so that they would be affordable to households at 50% of median income. The proper figure is that used by the Board's expert, that is, 80% of median income. This results in somewhat higher sales prices for the affordable units, \$162,000 for the two-bedroom unit and \$182,000 for the three-bedroom unit. Exh. 36, ¶ 31.

## **3. Market-Rate-Unit Sales Prices**

In January 2004, the developer estimated the sales prices of two-bedroom units at \$500,000 and of three-bedroom units at \$599,000 to \$609,000. Exh. 19-D. The testimony of the developer's expert at the hearing was that appropriate sales prices were \$580,000, \$588,000, and \$610,000. Exh. 33-A. The Board argues that the true values of the units are \$620,000, \$680,000, \$690,000, and \$710,000, that is, on the average, approximately \$100,000 higher than the developer's figures. Exh. 36, ¶ 44.

The direct testimony of the developer's financial expert with regard to sales prices for the market-rate condominium units is not extensive. He first indicates that he is "mindful of the sudden downturn in condominium prices," but does not elaborate. Tr. 33, ¶ 8. Then, drawing on his experience, he indicates that the prices "are based upon a

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9. There is also ambiguous testimony concerning the possibility that the previous owner of the land will receive two condominium units at a reduced price. Exh. 33, ¶ 10; 38, ¶ 4.

projected price of \$250 per square foot for the units in the front of the site and \$255 per square foot for the 2 units located in the rear....” Exh. 33, ¶ 8).<sup>10</sup>

The Board’s expert reached different conclusions. First, he testified that data from the Warren Group/Banker and Tradesman indicated that from 2004 to 2006, the median price of all condominium sales in Needham increased by 16%, from \$379,000 to \$440,000. Exh. 36, ¶ 35; 36-6. He then analyzed eighteen sales of new condominium units that occurred in 2006, and found that sales prices ranged from \$275 to \$409 per square foot. Exh. 35, ¶ 38; 36-8; 36-9. He also analyzed ten newly constructed condominium units currently listed in Needham on the Multiple Listing Service, and found listing prices ranging from \$250 to \$439 per square foot. Exh. 36, ¶ 40; 36-11. These analyses led him to conclude that for units in the range of 2,100 to 2,325 square feet, the most typical likely sales price would be about \$300 per square foot, and that asking prices would typically range from \$312 to \$335 per square foot. Exh. 36, ¶ 39; 36, ¶ 41; 36-10; 36-12. He testified that in summary his analysis showed that the median sales price for new condominium units in Needham in 2006 was \$303 per square foot. Exh. 36, ¶ 43. Based on this, he estimated the sales prices for the proposed market-rate units conservatively at an average of \$293 per square foot, which resulted in prices ranging from \$620,000 to \$710,000. Exh. 36, ¶ 43, 44; 36-13.

In rebuttal, the developer’s expert raised two points. He indicated that the Board’s expert, “[i]n arriving at [his] price, ... neglects to separate prices by location in Needham, [which] is a very varied housing market.” Exh. 38, ¶ 2. Second, he indicated that the Board’s expert’s own evidence shows an average price more than \$115,000 higher than the highest price paid in the neighborhood for a single family house, and concluded that “it is simply unreasonable to suggest that a condominium will sell for 20% more than the highest price achieved for a single family house in the

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10. The expert’s conclusion was based in part on a letter from a local real estate broker that the developer received after the expert “solicited market estimates for sales prices.” Exh. 33, ¶ 8; see Exh. 33-B. Although the letter was excluded from evidence as unreliable hearsay, since his testimony was based upon more than one source of information or experience, we do not reject it entirely, but rather to give it less weight. See *Commonwealth v. Roman*, 414 Mass. 235, 238, 606 NE2d 1333, 1335 (1993).

same neighborhood.” Exh. 38, ¶ 2. He did not elaborate on either of these points. That is, he neither provided new data of his own, nor prepared his own analysis of the data used by the Board’s expert.

Particularly in light of evidence that shows not a single condominium unit sold in Needham in 2006 with a price lower than \$275 per square foot and exactly half of the units with prices over \$300 per square foot, we find, on balance, that the analysis of the Board’s expert is the more thorough and convincing. See Exh. 36-8. Therefore, we find that his sales prices for market-rate units, based upon the figure of \$293 per square foot, to be the appropriate prices to use in estimating sales revenues. As shown on the *pro forma*, those prices are \$620,000, \$680,000, \$690,000, and \$710,000, and total sales revenues from the market-rate units are \$4,070,000.

#### **4. Sales Commissions**

Both experts agree that 5% of the market-rate sales revenues may be carried as a cost. We have found that the total revenues from sales of market-rate units is \$4,070,000, the appropriate figure to be carried in the *pro forma* for commissions is \$203,500.

#### **C. Synthesized *Pro Forma* Analysis**

Following the standard ROTC format used by both financial experts, and based upon our findings with regard to the Board’s objections, as discussed above, the following are the best estimates of development costs.

## 1. Development Analysis

<b><i>Land Acquisition</i></b>	<b>750,000</b>	Developer's figure, § III-B(1)
<b><i>Hard Costs</i></b>		
Site Preparation	360,000	not disputed
Landscaping	42,000	not disputed
Unusual Site Conditions	22,356	not disputed
Construction	1,806,616	not disputed
Amenities / Common Areas	-0-	not disputed
Contingency	<u>111,549</u>	not disputed
<b><i>Sub-Total, Hard Costs</i></b>	<b>2,342,521</b>	
<b><i>Soft Costs</i></b>		
Permits/Surveys/Fees	29,370	not disputed
Architectural Fees	134,218	not disputed
Engineering Fees	48,924	not disputed
Zoning / Legal Fees	60,000	not disputed
Recording / Title /Closing	17,423	not disputed
Insurance	10,000	not disputed
Taxes	10,000	not disputed
Security	-0-	not disputed
Financing Fee / Applic.	35,821	not disputed
Monitoring Agent Fee	5,000	not disputed
Construction Manager	-0-	not disputed
Appraisal	2,500	not disputed
Maintenance: Unsold Units	2,000	not disputed
Utilities: Unsold Units	2,000	not disputed
Peer Review Consultants	-0-	not disputed
Accounting	15,000	not disputed
Construction Inspection	-0-	not disputed
Construction Loan Interest	125,373	not disputed
Soft Cost Contingency	24,881	not disputed
Marketing: Affordable Units	5,000	not disputed
Commissions: Mkt. Units	203,500	Board's figure, § III-B(4)
Dev. Overhead/Consultant	<u>32,000</u>	not disputed
<b><i>Sub-Total, Soft Costs</i></b>	<b>763,010</b>	
<b><i>Total Development Cost</i></b>	<b>3,855,531</b>	

Thus, we find that the total development cost for the eight-unit development approved by the Board is \$3,855,531.

**2. Revenues from Total Sales** – Calculation of revenues is quite straightforward. Based upon our findings with regard to the Board’s objections, as discussed above, the following figures represent best estimates of sales prices.

<i>House Type</i>	<i>No.</i>	<i>Price</i>	<i>Total Sales</i>	
2 BR Affordable “1B”	1	162,000	162,000	Board’s figure, § III-B(2)
3 BR Affordable “2A”	1	182,000	182,000	Board’s figure, § III-B(2)
3 BR Market “2A”	2	680,000	1,360,000	Board’s figure, § III-B(3)
3 BR Market “2B”	2	690,000	1,380,000	Board’s figure, § III-B(3)
3 BR Market “2C”	1	710,000	710,000	Board’s figure, § III-B(3)
2 BR Market “1B”	1	620,000	<u>620,000</u>	Board’s figure, § III-B(3)
<b><i>Revenues from Total Sales</i></b>			<b>4,414,000</b>	

Thus, we find that revenues from total sales are \$4,414,000.

**3. ROTC** – The projected return is revenues from total sales less total development costs, that is, in this case, \$4,414,000 less \$3,855,531 or \$558,469. The Return on Total Cost (ROTC) is the projected return divided by total development cost, that is, \$558,469 divided by \$3,855,531 or 14.5%.

Both experts testified concerning the threshold for a reasonable return by referring to the MHP Guidelines.<sup>11</sup> Exh. 33, ¶ 11; 36, ¶ 46. Those guidelines state, “A for-sale project should be considered uneconomic if the Return on Total Cost is less than 15%.” Exh. 22 (MHP Guidelines), p. 17. We conclude that return of 14.5% is not a reasonable return, and that therefore the conditions imposed by the Board have rendered construction of the proposed development uneconomic.

#### IV. LOCAL CONCERNS

Since the developer has sustained its initial burden, the burden shifts to the Board to prove that there is a valid health, safety, environmental, or other local concern that supports each of the conditions imposed, and that such concern outweighs the regional

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11. Had the experts not agreed, we would have determined the threshold for a reasonable return as a matter of fact. See *Paragon Residential Properties, LLC v. Brookline*, No. 04-16, slip op. at 24 (Mass. Housing Appeals Committee Mar. 26, 2007), *appeal docketed* No. 07-00697 (Norfolk Super. Ct.); *Bay Watch Realty Trust v. Marion*, No. 02-28, slip op. at 10, n.16 (Mass. Housing Appeals Committee Dec. 5, 2005), *aff’d* No. 2006-00007-B (Plymouth Super. Ct. Jun. 19, 2007), *appeal docketed* No. 2007-P-1372 (Mass. App. Ct.).

need for low or moderate income housing. 760 CMR 31.06(7). To justify its limitation of the development to eight units, in its brief the Board raises several local concerns: the density and intensity of the proposed design, concerns about open space, and questions about internal traffic circulation and on-site parking. Board's Brief, pp. 2-4. It has provided little tangible evidence in support of its position, however.

The first question raised by the Board is an amalgam of what it refers to as the "intensity" and the "density" of the proposed development and the adequacy of open space on the site. Board's Brief, p. 2. This cannot be a question of whether multi-family units *per se* are appropriate in this neighborhood of single-family and two-family homes, since the Board itself, in granting a permit for eight condominium units, has acknowledged that this sort of housing is appropriate. And yet the only specific concern raised by the Board is that of the development's "location in a single-family residential area [and] the lack of any meaningful access to the commuter train or ability to walk to stores...." Board's Brief, pp. 2, 10-11. Similarly, the Needham planning director testified that "there are no multi-family properties greater than two units... within a third of a mile of [the site]," and then went on to draw a number of comparisons with other multi-family housing in town that is located closer to commuter rail services and stores than the site is.<sup>12</sup> Exh. 35, ¶¶ 5, 7-9. The Board did not develop these arguments in any meaningful way, and we doubt that it could do so. Residents of condominium units are just as capable as their neighbors in single-family homes of either driving to these facilities or taking a public bus that stops within 100 feet of the site.<sup>13</sup> See Exh. 30, ¶ 11; Tr. II, 7.

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12. As noted above, whether local requirements may have been applied unequally to subsidized and unsubsidized housing was not properly raised by the developer and therefore is not in issue. See Section III, p. 3, n.4, above; Pre-Hearing Order, § IV-3; see 760 CMR 31.06(4). Comparisons between the proposed housing and other housing approved in town under the Comprehensive Permit Law are irrelevant. *Peppercorn Village Realty Trust v. Hopkinton*, No. 02-02, slip op. at 12 (Mass. Housing Appeals Committee Jan. 26, 2004).

13. Similarly, passing reference was made to "smart growth" and a vague "plan to encourage pedestrian use of [the town's] retail and business districts...." Exh. 35, ¶ 9. But no serious attempt was made to present a town master plan as justification for reducing the size of the proposed development. Cf. *Stuborn Ltd. Partnership v. Barnstable*; No. 98-01 (Mass. Housing Appeals Committee Sep. 18, 2002); also see 760 CMR 31.07(3)(d).

Even less evidence was introduced with regard to the second question raised by the Board, that is, the adequacy of internal traffic circulation and parking. A four-sentence memorandum from the Needham Police Department noting that “all night parking is of concern” is hardly evidence of a legitimate local concern. See Exh. 9.

In rebuttal, the developer introduced testimony in support of its design from an experienced architect and from a professional engineer specializing in traffic and parking. Exh. 31, 34; also see Exh. 4.

We find that the Board has not proven a local concern with regard to density, intensity, open space, traffic safety, or on-site parking that outweighs the regional need for housing.

## V. CONCLUSION

Based upon review of the entire record and upon the findings of fact and discussion above, the Housing Appeals Committee affirms the granting of a comprehensive permit, but concludes that certain of the conditions imposed in the Board’s decision render the project uneconomic and are not consistent with local needs. The Board is directed to issue an amended comprehensive permit as provided in the text of this decision and the conditions below.

1. The comprehensive permit shall conform to the application submitted to the Board and the Board’s decision except as provided in this decision.
2. The comprehensive permit shall be subject to the following conditions:
  - (a) The development, consisting of 10 total units, including 2 affordable units, shall be constructed substantially as shown on plans by Norwood Engineering Co., Inc. (Modified Site Layout, July 13, 2005 (Exhibit 14) and Upgraded Conceptual Grading & Drainage, September 8, 2005 (Exhibit 15)), and shall be subject to those conditions imposed in the Board’s decision filed with the town clerk on November 4, 2005 (Exhibit 2) that are not inconsistent with this decision.
  - (b) Sales prices of the affordable units and eligibility requirements for

purchasers shall be set by the subsidizing agency for households with incomes at or below 80% of the applicable median income.

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), 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 except those waived by this decision or in prior proceedings in this case.

(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 the Board or 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) 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.

(e) 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.

This decision may be reviewed in accordance with the provisions of G.L. c. 40B, § 22 and G.L. c. 30A by instituting an action in the Superior Court within 30 days of



receipt of the decision.

Housing Appeals Committee

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Werner Lohe, Chairman

Date: September 18, 2007

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Joseph P. Henefield

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Marion V. McEttrick

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Christine Snow Samuelson