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Town of Needham  
Comprehensive Permit Rules of the Board of Appeals

Adopted: September 15, 2011

**ARTICLE I. PURPOSE & CONTEXT**

The Comprehensive Permit Rules (the "Rules") establish procedures for submittal and review of an application to the Needham Board of Appeals (the "Board") for a comprehensive permit (an "Application") under G.L. c. 40B, §§ 20-23 (the "Act") and the regulations promulgated thereunder, at 760 CMR 56.00, *et seq.* They are required by G.L. c. 40B, § 21 and by 760 CMR 56.05(1). The purpose of the Act and the Rules is to facilitate the development of affordable housing in Massachusetts.

The Rules alone are not sufficient to describe comprehensive permit procedures before the Board. They must be read in conjunction with and implemented in a manner consistent with the Act. In addition, the Board's general rules for the conduct of hearings under G.L. c. 40A apply to all Applications. In the event of inconsistency or conflict between those general rules and these Rules, these Rules shall govern.

**ARTICLE II. DEFINITIONS**

- (a) *Board* means the Needham Board of Appeals, established by G.L. c. 40A, § 12, and acting in its capacity to issue a comprehensive permit under the powers granted by the Act.
- (b) *Local Board* means any local board or official, including but not limited to the Board of Health, Planning Board, Conservation Commission, Historical Commission, Department of Public Works, Fire Department, Police Department, Building Inspector and Board of Selectmen. All boards and commissions performing functions usually performed by locally-created boards and commissions shall be deemed local boards.
- (c) *Limited Dividend Organization* means any entity which proposes to sponsor housing under the Act, is not a public agency or a nonprofit, is eligible to receive a subsidy from a state or federal agency after a comprehensive permit has been issued and which, unless otherwise governed by a federal act or regulation, agrees to comply with the requirements of said subsidizing agency relative to a reasonable return for building and operating its proposed housing project.

**ARTICLE III. FILING, FEES & NOTICE**

**Section 1. Submittal Materials**

The Rules list plans and other reports required to be submitted to the Board in support of an Application. The materials listed below shall be submitted to the Board simultaneously with the Application. The Board recognizes that for many proposed projects, plans may not be at a definitive stage of development when the Application is filed. However, the Board needs to receive the following information from which it can determine the impact(s) of the proposed development on the Town and the surrounding area. Providing information and materials promptly with the Application will result in a quicker process and enable the Board to become better informed.

- (a) Required Materials

Twenty (20) copies of the following materials shall be submitted simultaneously with an Application to the Board:

- (i) Preliminary Site Development Plans: A set of preliminary site development plans showing the locations and outlines of proposed buildings; the proposed locations, general dimensions and materials for streets, drives, parking areas, walks and paved areas; open areas within the site; and other improvements. The plans shall also have a north point, names of streets, zoning districts, property lines, dimensions of the subject lot, rights of way and easements and names of abutting property owners. An applicant proposing to construct or rehabilitate four (4) or fewer units may submit a sketch of the foregoing, which need not bear an architect's signature and seal. All projects of five (5) or more units must have site development plans signed and sealed by a registered architect or engineer.
  - (ii) Report on Existing Site Conditions: A report on and summary of existing site conditions and those in the surrounding area.
  - (iii) Preliminary, Scaled Architectural Drawings: A set of preliminary, scaled architectural drawings for each building, which shall be prepared by a registered architect and, for projects of five (5) or more units, sealed by said architect. Said drawings shall include typical floor plans, typical elevations and sections, and shall identify construction type and exterior finishes.
  - (iv) Tabulation of Proposed Buildings: A tabulation of proposed buildings by type, size (e.g. number of bedrooms, floor area) and ground coverage, and a summary showing the percentage of the site to be occupied by buildings, by parking and other paved vehicular areas, by open areas and by other improvements.
  - (v) Preliminary Subdivision Plan: A preliminary subdivision plan, but only where a subdivision of land is involved under G.L. c. 41, § 81K.
  - (vi) Utilities Plan: A preliminary utilities plan showing the proposed location and types of sewage, drainage and water facilities, including hydrants.
  - (vii) Application for Project Eligibility & Project Eligibility Letter: A copy of the application for project eligibility submitted to the subsidizing agency, as well as the written determination of project eligibility by said subsidizing agency containing all of the findings required by 760 CMR 56.04(4).
  - (viii) List of Requested Exceptions to Local Requirements & Regulations: A detailed list of requested exceptions to local requirements and regulations, which shall include an analysis of each requirement or regulation for which an exception is sought, the location on the plans for which the exception is sought (if applicable) and an explanation of why the exception is required.
- (b) Additional Materials

The following materials may be required by the Board:

- (i) Environmental Impact Analysis: An "Environmental Impact Analysis" prepared by a qualified environmental scientist, professional wetland scientist (PWS), certified soil scientist, botanist, hydrogeologist and/or other scientific professional with demonstrated qualifications (e.g. education, training, or demonstrated experience) provided to the Board. The Environmental Impact Analysis shall assess the impact of the development on the environment within the development and adjacent thereto. Such analysis shall include, but shall not be limited to, an evaluation of pre-development conditions and post-development impacts. Such analysis shall include proposed mitigation of any identified post-development impacts. Mitigation measures requiring continuing or periodic maintenance shall be

identified and a proposed maintenance plan shall be included with the Environmental Impact Analysis.

- (ii) Traffic Impact Report: A Traffic Impact Report prepared by a registered professional engineer qualified in the field of traffic engineering, analyzing the proposed project's impact on the congestion, safety and overall convenience of the roadway system providing access to the proposed project. Impacts on both vehicular and pedestrian travel shall be addressed. Road intersections to be studied shall be mutually agreed upon by the Board, its consultants and the applicant.
- (iii) Long-Term Monitoring: A long-term monitoring plan identifying the governmental agency or other entity which shall be responsible for project monitoring for the duration of the project's affordability. A cost estimate to implement the long-term monitoring plan shall be submitted.
- (iv) Tenant/Owner Selection: A plan identifying the governmental agency or other entity that will be responsible for the marketing of the project and the selection of tenants or owners.
- (v) Landscape: A preliminary plan of proposed landscaping of the project site. The Board will normally include a condition in a comprehensive permit requiring approval of a definite landscaping plan prior to issuance of a building permit and maintenance of the landscaping by the owner(s) of the project.

(c) Pro Forma

A complete *pro forma* detailing the projected costs and revenues of the proposed project may be required if, following consultant review of the project, the Board proposes modification of the project or imposition of a condition that the applicant contends renders the proposed project uneconomic. The *pro forma* shall itemize all development costs, including hard costs, soft costs and site development costs, and all profits and distributions, in accordance with the Department of Housing and Community Development's (DHCD) "Comprehensive Permit Guidelines," (the "Guidelines") dated February 22, 2008, as amended. The applicant shall fully disclose to the Board all related party transactions, as defined by the Guidelines.

**Section 2. Fees**

(a) Administrative Fee

An Application shall be accompanied by an administrative fee in the amount of Two Thousand Dollars (\$2,000.00) plus One Hundred Dollars (\$100.00) per unit proposed. Said fee shall be paid by check made payable to the Town of Needham.

(b) Consultant Fee

In addition to the administrative fee above, an applicant may be required to pay an amount into an escrow account established pursuant to G.L. c. 44, § 53G (the "53G Account"), said amount to be determined by the Board in its sole discretion and to be used for consultant review of the Application in accordance with 760 CMR 56.05(5) and Article IV, below. If necessary, the Board may require that the 53G Account be replenished during the Board's review of the Application.

**Section 3. Notice**

Upon receipt of a complete Application, the Board shall provide notification and a copy of the same to each Local Board as required by 760 CMR 56.05(3), as may be amended.

**ARTICLE IV. USE OF OUTSIDE CONSULTANTS**

### **Section 1. Assistance of Consultants**

When reviewing an Application for, or when conducting inspections in relation to, a comprehensive permit, the Board may determine that the assistance of outside consultants is warranted because the necessary expertise is unavailable from municipal employees. The Board may, in its sole discretion, require that the applicant pay a reasonable review fee sufficient to enable the Board to retain consultants of its choice. All payments by the applicant toward consultants' fees shall be deposited into the 53G Account, referenced above.

### **Section 2. Consultant Selection**

#### **(a) Technical Consultants**

The Board may engage, as outside consultants, engineers, scientists, architects, environmental consultants, planners, urban designers and/or other appropriate professionals to assist the Board in analyzing a proposed project and the effect(s) on the project of all applicable laws, bylaws and rules and regulations. Such assistance may include, but not be limited to, reviewing an application, monitoring or inspecting a project or site for compliance with the Board's decision or applicable laws, bylaws and rules and regulations or inspecting a project during construction or implementation. Additionally, the Board may engage legal counsel to provide non-general representation including, but not limited to, review of legal documents and opinions submitted by the applicant.

#### **(b) Financial Analyst**

Where a *pro forma* is required by the Board, it may engage a financial analyst to perform the same consultant review permitted in connection with other technical information submitted to the Board.

#### **(c) Notification to the Applicant**

Upon selection of consultants as aforesaid, the Board shall provide notice thereof to the applicant, by hand or via first-class mail.

### **Section 3. Special Account**

Funds received by the Board for consultant review shall be deposited with the Town Treasurer, who shall establish the 53G Account. Expenditures from the 53G Account may be made at the direction of the Board without further appropriation, but only for services rendered in connection with the specific project or projects for which the consultant fee has been or will be collected from the applicant. Accrued interest may also be spent for this purpose. Failure of an applicant to pay any review fee requested by the Board within thirty (30) days of such request shall be grounds for denial of the Application.

### **Section 4. Remaining Funds**

At the completion of the Board's review of a proposed project, any remaining funds in the 53G Account attributable to said project, including any accrued interest, shall be repaid to the applicant or the applicant's successor in interest. A final accounting shall be made available to the applicant or applicant's successor in interest. For the purpose of this Section, any person or entity claiming to be an applicant's successor in interest shall provide the Board with all reasonably-requested documentation establishing the same.

### **Section 5. Appeals**

An applicant may appeal the selection of any outside consultant by the Board to the Board of Selectmen. Such appeal must be made in writing within twenty (20) days from the date the Board mailed or hand-

delivered notice to the applicant of the selection of the consultant. The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum required qualifications. The minimum qualifications shall consist either of an educational degree in, or related to, the field at issue or three (3) or more years of practice in the field at issue or a related field. The required time limits for action upon an Application by the Board shall be extended by the duration of the administrative appeal. In the event that no decision is made by the Board of Selectmen within one (1) month from the date of filing of the appeal, the selection made by the Board shall stand.

## **ARTICLE V. PUBLIC HEARING & DECISION**

### **Section 1. Conduct & Scope of Public Hearing**

The Board shall hold a public hearing on the Application, conducting the same in accordance with 760 CMR 56.05(3)-(4), as may be amended. The deadlines for Board action, as therein established, shall be applicable only to the extent that the applicant has made timely submittal of all materials required by these Rules and/or reasonably requested by the Board hereunder.

### **Section 2. Decision**

The Board shall render a decision, by majority vote, in the manner and within the time specified by 760 CMR 56.05(8), as may be amended. The Board may vote to approve, approve with conditions or deny a comprehensive permit to the applicant.

#### **(a) Approval**

The Board may approve a comprehensive permit on the terms and conditions set forth in the Application.

#### **(b) Approval with Conditions**

The Board may approve a comprehensive permit subject to conditions and limitations, including but not limited to those necessary to protect the health or safety of the occupants of the proposed project or of the residents of the Town, to protect the natural environment, to promote better site and building design in relation to the surroundings and municipal and regional planning and to preserve open spaces (the "Local Concerns"). A comprehensive permit issued by the Board may be subject to the grant of a subsidy by the applicant's subsidizing agency, the issuance of final approval by said subsidizing agency, the receipt of permit(s) or approval(s) required from any state or federal agency and/or the receipt of any waiver(s) ordered by the Board from fees normally imposed by Local Boards.

#### **(c) Denial**

The Board may deny a comprehensive permit if it finds that there are no conditions that will adequately address Local Concerns, or for any other reason which may be provided for by the Act or the Regulations, as amended from time to time. Additionally, an Application may be denied if any of the grounds set forth in 760 CMR 56.03(1), as may be amended, have been met, in which event it shall provide notice of the same to the applicant in accordance with 760 CMR 56.03(8), as may be amended.

## **ARTICLE VI. PROJECT MODIFICATIONS**

### **Section 1. Changes to an Application**

#### **(a) Project Eligibility**

Should an applicant propose any change(s) to its Application or any other aspect of its proposal

that may affect the project eligibility requirements of 760 CMR 56.04(1), as may be amended, it shall immediately notify its subsidizing agency of said change(s). In the event the Board finds that the change(s) may be substantial, the Board may request that the subsidizing agency review said change(s) and reaffirm, amend or deny its determination of project eligibility.

(b) Additional Information

In the event that an applicant proposes change(s) to a project while review of its Application is pending before the Board, the Board may require submittal of revised version(s) of the materials specified in Article III above, to the extent said materials are pertinent to the proposed change(s). For the purpose of determining deadlines for Board action, a substantial change to a project shall constitute a new Application to the Board.

**Section 2. Changes After the Issuance of a Comprehensive Permit**

If an applicant desires to change the details of a project approved by the Board, it shall promptly notify the Board, in writing, of the details of said change(s). Within twenty (20) days, the Board shall determine and notify the applicant as to whether the change(s) are insubstantial or substantial.

(a) Insubstantial Changes

If, in the opinion of the Board, the change(s) are insubstantial, or if the Board fails to respond within twenty (20) days following notification by the applicant of said change(s), the comprehensive permit granted by the Board shall be deemed modified to incorporate said change(s). Matters generally characterized as insubstantial changes are set forth in 760 CMR 56.07(4)(d), as may be amended.

(b) Substantial Changes

If, in the opinion of the Board, the change(s) are substantial, the Board shall hold a public hearing on said change(s) and review the same all in accordance with 760 CMR 56.05(11)(c), as may be amended. For the purpose of said review, the Board may require submittal of any of the materials specified in Article III above, to the extent said materials are pertinent to the proposed change(s), and payment of the fee(s) specified in said Article III. Matters generally characterized as substantial changes are set forth in 760 CMR 56.07(4)(c), as may be amended.

**ARTICLE VII. APPEALS**

If the Board approves an Application and issues a comprehensive permit to the applicant, appeals shall be taken pursuant to 760 CMR 56.05(9), as may be amended.

**ARTICLE VIII. VIOLATIONS**

Either the Building Inspector or the Board may issue a "stop work order," so-called, in the event that there is any violation of the comprehensive permit conditions, noncompliance with the plan(s) of record or serious environmental damage due to erosion, sedimentation or other site conditions. Said order shall remain in effect until such time as the violation(s) or damage(s) are corrected.

**ARTICLE IX. MISCELLANEOUS**

**Section 1. Policies and Advice**

Any advice, opinion or information given by any Board member or any other official or employee of the Town shall not be binding on the Board. It is the declared policy of the Board to discourage any personal communication with Board members. All communications to the Board outside of a convened meeting, whether concerning proposed or pending matters, shall be submitted through the Board's clerk.

**Section 2. Amendments**

These Rules may be amended by a majority vote of the members of the Board, provided that such amendment shall be presented in writing at a regular meeting of the Board and action thereafter taken on the amendment at a subsequent, regular meeting.

**Section 3. Effective Date**

These Rules were adopted at a regular meeting of the Board on September 15, 2011, and became effective upon filing a copy of the same with the Town Clerk. All Rules previously adopted, inconsistent herewith and not expressly incorporated herein by reference are hereby repealed; provided, however, that no action taken under said Rules shall be affected by said repeal.

  
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Jon D. Schneider, Chairman

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September 20, 2011