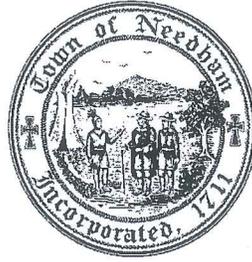


2015 DEC 15 AM 9:43



**TOWN OF NEEDHAM  
MASSACHUSETTS  
BOARD OF APPEALS**

***Greendale Avenue Venture LLC  
692 and 744 Greendale Avenue, Map 18, Parcels 42, 43 and 44***

**October 20, 2015**

The Town and the Applicant have a pending case before the Massachusetts Housing Appeals Committee regarding the Comprehensive Permit issued by the Board on December 19, 2013 under M.G.L. Chapter 40B. The matter was remanded back to the Board for consideration of a revised proposal. The revised proposal is to construct a 136-unit residential development consisting of ten townhouses, and a five-story building with associated parking and accessory units, on approximately 6.02 acres in the Single Residence A Zoning District at 692 & 744 Greendale Avenue. A public hearing was held October 20, 2015 pursuant to notice thereof, published in a local newspaper and mailed to all parties of interest.

***Documents of Record***

1. Greendale Avenue Venture, LLC v. Needham Board of Appeals, Housing Appeals Court, No. 2014-02: Order Granting Joint Revised Motion for Stay and Remand, dated October 14, 2015.
2. Settlement Agreement between Greendale Avenue Venture, LLC and the Town of Needham.
3. Draft Comprehensive Permit Plans, Needham Mews Residential Development, 692 + 744 Greendale Avenue, prepared by Tetra Tech for Greendale Avenue LLC, consisting of 3 sheets: C-2, Layout Plan, dated September 23, 2015; C-3, Grading & Drainage Plan, dated September 23, 2015; C-4, Utility Plan, dated September 23, 2015.
4. Architectural Plans, Modera Needham, 692 + 744 Greendale Avenue, Needham, MA, Application for Comprehensive Permit Site Approval, prepared by TAT The Architectural Team, consisting of 13 sheets: sheet 1 of 13, T0.01, Project Cover, signed and stamped by Michael D. Binette, RA No. 31191, dated October 13, 2015; sheet 2 of 13, T0.02, Drawing List & Project Information, signed and stamped by Michael D. Binette, RA No. 31191,

dated October 13, 2015; sheet 3 of 13, A1.01, Building A Garage Plans, signed and stamped by Michael D. Binette, RA No. 31191, dated October 13, 2015; sheet 4 of 13, A1.02, Building A Overall Floor Plans, signed and stamped by Michael D. Binette, RA No. 31191, dated October 13, 2015; sheet 5 of 13, A1.03, Townhouse Key Plan, signed and stamped by Michael D. Binette, RA No. 31191, dated October 13, 2015; sheet 6 of 13, A2.01 Building A Typical Unit Plans, signed and stamped by Michael D. Binette, RA No. 31191, dated October 13, 2015; sheet 7 of 13, A2.02, Building A Typical Unit Plan, signed and stamped by Michael D. Binette, RA No. 31191, dated October 13, 2015; sheet 8 of 13, A2.03, Townhouse: Typical Unit Plans, signed and stamped by Michael D. Binette, RA No. 31191, dated October 13, 2015; sheet 9 of 13, A4.01, Building A Exterior Elevations, signed and stamped by Michael D. Binette, RA No. 31191, dated October 13, 2015; sheet 10 of 13, A4.02, Building A Exterior Elevations, signed and stamped by Michael D. Binette, RA No. 31191, dated October 13, 2015; sheet 11 of 13, A4.03 Townhouse Exterior Elevations, signed and stamped by Michael D. Binette, RA, dated October 13, 2015; sheet 12 of 13 A4.04, Townhouse Exterior Elevations, signed and stamped by Michael D. Binette, RA No. 31191, dated October 13, 2015; and sheet 13 of 13, A5.01, Site Building Sections signed and stamped by Michael D. Binette, RA No. 31191, dated October 13, 2015.

5. Modera Needham Presentation Slide, October 20, 2015 Board of Appeals hearing.
6. Comprehensive Permit Plans, Modera Needham Residential Development, 692 + 744 Greendale Avenue, prepared by Tetra Tech for Greendale Avenue LLC, consisting of 11 sheets: sheet 1 of 11, C-0 cover sheet, signed and stamped by Glenn K. Dougherty, RPE No. 37924, dated October 22, 2015, revised October 28, 2015; sheet 2 of 11, C-1, Plot Plan, signed and stamped by Robert F. Daylor, PLS No. 20108, dated April 12, 2013 revised September 16, 2013, September 30, 2013, November 8, 2013; sheet 3 of 11, C-2, Layout Plan, signed and stamped by Glenn K. Dougherty, RPE No. 37924, dated October 22, 2015, revised October 28, 2015; sheet 4 of 11, C-3, Grading & Drainage Plan, signed and stamped by Glenn K. Dougherty, RPE No. 37924, dated October 22, 2015, revised October 28, 2015; sheet 5 of 11, C-4, Utility Plan, signed and stamped by Glenn K. Dougherty, RPE No. 37924, dated October 22, 2015, revised October 28, 2015; sheet 6 of 11, C-5, Erosion and Sediment Control Plan, signed and stamped by Glenn K. Dougherty, RPE No. 37924, dated October 22, 2015, revised October 28, 2015; sheet 7 of 11, C-6, Detail Sheet, signed and stamped by Glenn K. Dougherty, RPE No. 37924, dated October 22, 2015, revised October 28, 2015; sheet 8 of 11, C-7, Detail Sheet, signed and stamped by Glenn K. Dougherty, RPE No. 37924, dated October 22, 2015, revised October 28, 2015; sheet 9 of 11, C-8, Detail Sheet, signed and stamped by Glenn K. Dougherty, RPE No. 37924, dated October 22, 2015, revised October 28, 2015; sheet 10 of 11, C-9, Detail Sheet, signed and stamped by Glenn K. Dougherty, RPE No. 37924, dated October 22, 2015, revised October 28, 2015; and sheet 11 of 11, C-10, Detail Sheet, signed and stamped by Glenn K. Dougherty, RPE No. 37924, dated October 22, 2015, revised October 28, 2015.
7. Set of Road Profiles for 692 and 744 Greendale Avenue, prepare for Tetra Tech: by Vanasse Associates, Andover, MA signed and stamped by Stephen M. Boudreau, RPE No. 36136 all dated October 22, 2015, consisting of 3 sheets: sheet 1 Alignment Plan; sheet 2 Profiles; and sheet 3 Profiles.
8. Landscape Plans and Materials Plans, prepared by TAT The Architectural Team, Consultant: Stantec Consulting Services, consisting of 9 sheets: sheet 1 of 9, L-100, Landscape Plans-Materials Plan, signed and stamped by Joshua Millonig, RLA, October 28, 2015; sheet 2 of 9, L-200, Landscape Plans-Lighting Layout Plan, signed and stamped

by Joshua Millonig, RLA, October 28, 2015; sheet 3 of 9, L-201, Landscape Plans-Photometric Plans, signed and stamped by Joshua Millonig, RLA, October 28, 2015; sheet 4 of 9, L-300, Landscape Plans-Planting Plan Trees, signed and stamped by Joshua Millonig, RLA, October 28, 2015; sheet 5 of 9, L-400, Landscape Plans-Site Details, signed and stamped by Joshua Millonig, RLA, October 28, 2015; sheet 6 of 9, L-401, Landscape Plans-Site Details, signed and stamped by Joshua Millonig, RLA, October 28, 2015;. sheet 7 of 9, L-402, Landscape Plans-Site Details, signed and stamped by Joshua Millonig, RLA, October 28, 2015; sheet 8 of 9, L-403, Landscape Plans-Site Details, signed and stamped by Joshua Millonig, RLA, October 28, 2015; and sheet 9 of 9, L-404, Landscape Plans-Site Details, signed and stamped by Joshua Millonig, RLA, October 28, 2015.

Materials submitted after the October 20, 2015 hearing:

9. Comprehensive Permit Plans, Modera Needham Residential Development, 692 + 744 Greendale Avenue, prepared by Tetra Tech for Greendale Avenue LLC, consisting of 11 sheets: sheet 1 of 11, C-0 cover sheet, signed and stamped by Glenn K. Dougherty, RPE No. 37924, dated October 22, 2015, revised October 28, 2015, December 3, 2015; sheet 2 of 11, C-1, Plot Plan, signed and stamped by Robert F. Daylor, PLS No. 20108, dated April 12, 2013 revised September 16, 2013, September 30, 2013, November 8, 2013; sheet 3 of 11, C-2, Layout Plan, signed and stamped by Glenn K. Dougherty, RPE No. 37924, dated October 22, 2015, revised October 28, 2015, December 3, 2015; sheet 4 of 11, C-3, Grading & Drainage Plan, signed and stamped by Glenn K. Dougherty, RPE No. 37924, dated October 22, 2015, revised October 28, 2015, December 3, 2015; sheet 5 of 11, C-4, Utility Plan, signed and stamped by Glenn K. Dougherty, RPE No. 37924, dated October 22, 2015, revised October 28, 2015, December 3, 2015; sheet 6 of 11, C-5, Erosion and Sediment Control Plan, signed and stamped by Glenn K. Dougherty, RPE No. 37924, dated October 22, 2015, revised October 28, 2015, December 3, 2015; sheet 7 of 11, C-6, Detail Sheet, signed and stamped by Glenn K. Dougherty, RPE No. 37924, dated October 22, 2015, revised October 28, 2015, December 3, 2015; sheet 8 of 11, C-7, Detail Sheet, signed and stamped by Glenn K. Dougherty, RPE No. 37924, dated October 22, 2015, revised October 28, 2015, December 3, 2015; sheet 9 of 11, C-8, Detail Sheet, signed and stamped by Glenn K. Dougherty, RPE No. 37924, dated October 22, 2015, revised October 28, 2015, December 3, 2015; sheet 10 of 11, C-9, Detail Sheet, signed and stamped by Glenn K. Dougherty, RPE No. 37924, dated October 22, 2015, revised October 28, 2015, December 3, 2015; and sheet 11 of 11, C-10, Detail Sheet, signed and stamped by Glenn K. Dougherty, RPE No. 37924, dated October 22, 2015, revised October 28, 2015, December 3, 2015.
10. Set of Road Profiles for 692 and 744 Greendale Avenue, prepare for Tetra Tech: by Vanasse Associates, Andover , MA consisting of 3 sheets all signed and stamped by Stephen M. Boudreau, RPE No. 36136: sheet 1 Alignment Plan dated November 30, 2015; sheet 2 Profiles dated November 19, 2015; and sheet 3 Profiles dated November 19, 2015.
11. Landscape Plans and Materials Plans, prepared by TAT The Architectural Team, Consultant: Stantec Consulting Services, consisting of 9 sheets: sheet 1 of 9, L-100, Landscape Plans-Materials Plan, signed and stamped by Joshua Millonig, RLA, October 28, 2015, revised December 3, 2015.; sheet 2 of 9, L-200, Landscape Plans-Lighting Layout Plan, signed and stamped by Joshua Millonig, RLA, October 28, 2015, revised December 3, 2015; sheet 3 of 9, L-201, Landscape Plans-Photometric Plans, signed and stamped by Joshua Millonig, RLA, October 28, 2015, revised December 3, 2015; sheet 4

of 9, L-300, Landscape Plans-Planting Plan Trees, signed and stamped by Joshua Millonig, RLA, October 28, 2015, revised December 3, 2015; sheet 5 of 9, L-400, Landscape Plans-Site Details, signed and stamped by Joshua Millonig, RLA, October 28, 2015, revised December 3, 2015; sheet 6 of 9, L-401, Landscape Plans-Site Details, signed and stamped by Joshua Millonig, RLA, October 28, 2015, revised December 3, 2015; sheet 7 of 9, L-402, Landscape Plans-Site Details, signed and stamped by Joshua Millonig, RLA, October 28, 2015, revised December 3, 2015; sheet 8 of 9, L-403, Landscape Plans-Site Details, signed and stamped by Joshua Millonig, RLA, October 28, 2015, revised December 3, 2015; and sheet 9 of 9, L-404, Landscape Plans-Site Details, signed and stamped by Joshua Millonig, RLA, October 28, 2015, revised December 3, 2015.

### ***October 20, 2015***

The Board included Jon Schneider, Chairman; Howard Goldman, Member; and Peter Friedenber, Associate Member. Also participating was Kathy Lind Berardi, Associate Member. Mr. Schneider opened the hearing at 7:02 p.m.

Mr. Schneider began with a summary of the proceedings. In 2013, the Applicant applied for a Comprehensive Permit under M.G.L. Chapter 40B for a 300-unit development. During the hearings, the Applicant reduced the project size to 268 units. On December 19, 2013, the Board issued a Comprehensive Permit for 108 units. The Applicant appealed the decision to the Housing Appeals Committee ("HAC"). A number of motions from both sides were filed and resolved. The matter is ready to be decided by the HAC with only cross examination and oral arguments remaining. During the whole process, the Selectmen engaged in discussions with the Applicant to try to reach a settlement. The Selectmen stated during the hearing before the Board that they would support the project if it were the right size. This past summer, the Applicant and the Selectmen came to a general understanding as to the number of units. The parties asked the HAC to hold off and remand the matter back to the Board to see if the Board will issue a revised decision after a public hearing. Under the terms of the remand, the Board must close the public hearing by December 1<sup>st</sup> and issue a decision by December 8<sup>th</sup> (such deadline was extended to December 15<sup>th</sup>).

If the Board does not approve the revised project or imposes conditions unacceptable to the Applicant, the Applicant reserves the right to go back to HAC and continue the appeal seeking approval for 268 units.

Mr. Schneider said that he would like the Applicant to explain the proposed 136-unit project, then he will ask the Selectmen to explain why they support the settlement and then he will open the hearing for public comments.

Deborah Horwitz, Goulston & Storrs, attorney representing the Applicant, introduced the team: Rob Hewitt and Jim Lambert, Mill Creek Residential Trust; Chris Regnier and Kevin O'Flaherty, Goulston & Storrs; Andrew Stebbins, The Architectural Team, and Glenn Dougherty, Tetra Tech.

Ms. Horwitz reviewed the 136-unit plan and compared it to the 268-unit plan. If the Applicant can live with the conditions in the new decision, there will be no further appeals from the Applicant. However, if the parties cannot mutually agree upon the conditions of the new decision or there are other appeals or a buffer zone legislation is passed, then Mill Creek reserves the right to go back to the HAC and continue the appeal for 268 units.

Although the Applicant is still the same, the project has a new name: Modera Needham. The 136-unit project has a total of 267 bedrooms, while the 268-unit project has 394 bedrooms. The 136-unit project has

14 three-bedroom units to be consistent with new 40B guidelines requiring 10% of the units to be three-bedroom. There are ten townhouse buildings in two rows fronting on Greendale Avenue and one traditional five-story apartment building with a parking garage and amenities to the rear. The site slopes steeply down towards Route 128 and it is difficult to see the large building from Greendale Avenue. A cross-section was shown depicting the building on the slope.

The townhouses average 41 feet high and the rear building averages 77 feet high. The project includes 265 parking spaces; two parking spaces per unit as opposed to the 1.7 parking spaces originally proposed. The new project has a density of 21.9 units per acre whereas the 268-unit project was 44.5 units per acre. The project went from two driveways to one driveway with two 18-foot-wide drive aisles. The exit was shifted north to prevent headlights from shining into the Howell's residence.

The townhouses maintain the 30-foot setback from Greendale Avenue as required in the Single Residence A District. In the rear, the driving lanes of Route 128 are 154 feet away from the building at its closest point. There is an existing 80-foot vegetative buffer and the developer has agreed to add a 20-foot buffer on its property.

The sidewalk out of the development goes northward along Greendale Avenue to the crosswalk where Mill Creek has agreed to install a pedestrian activated flashing light.

Originally, the Town did not want to allow Mill Creek to move the existing sewer line, which added to the engineering difficulty. In the settlement, the Selectmen have agreed to let Mill Creek move it to the adjacent town-owned Hardy Street: an ancient way. There will be no buildings over the the new sewer line. Mill Creek requests that the Board grant all approvals in their power to move the sewer line. The new sewer line built by Mill Creek will be built using current best practices.

Since the revised project is significantly smaller, there will be 800 fewer car trips per day on Greendale Avenue. It was predicted that the 268-unit project would generate an average of 1748 trips per day and the 136-unit project will generate 948 trips per day. Both the morning and evening peak number of trips will be reduced. The Kendrick Street project will be finished before this development is occupied, which will alleviate some existing traffic.

Mr. Schneider asked who was responsible for the traffic light. Ms. Horwitz said that Mill Creek has agreed to do a flashing pedestrian light at the crosswalk. However, it is up to the Town to decide if there will be a full traffic light. Should the Town decide it wants a full red light, Mill Creek will pay the equivalent of a flashing yellow light towards the cost of the red light.

Mr. Schneider asked whether they were planning to save existing trees or plant new ones along Greendale Avenue. Ms. Horwitz answered that they plan to do both, but most of the vegetation will be newly planted.

Mr. Schneider asked about the connection of the existing trail in the back of the property behind the parking lot. Ms. Horwitz said that the developer intends to grant an easement for the trail. The engineers were working on the specifics of the trail connection.

Mr. Schneider asked if the Fire Department was ok with the new entrance and exit layout. Ms. Horwitz said yes.

Ms. Horwitz said the next steps are that the engineers need to finish their work. Another hearing is scheduled for November 10<sup>th</sup>. The hearing will close by December 1<sup>st</sup> with a Decision issued by December

8<sup>th</sup>. Then we wait and see. Other parties may have the right to appeal this decision. Everybody has spent a lot of time working through the issues and both parties have an interest in making this agreement work.

Mr. Matt Borelli, Vice-Chairman of the Board of Selectmen addressed the Board. He said that the settlement is almost half of the proposed 268-unit development. It maintains the critical buffer from Route 128, which the Board was intent on keeping, and allows the Town to review critical engineering and drainage plans. The revised proposal is a much better design and will have less traffic impact. This settlement resulted from discussions and negotiations over the past year. 40B presents challenges and this agreement does not satisfy every issue. However, it does reduce the Town's exposure and has a predictable outcome that is on our terms instead of waiting for an HAC decision where we would have very limited input. Mr. Borelli thanked Town staff, the Board, Representative Garlick for putting forth the buffer bill, the Greendale neighbors and all who participated in the hearings.

Mr. Goldman asked for a comparison of bedroom mixes between the two projects. Ms. Horwitz said the 136-unit project has 19 one-bedroom units, 14 three-bedroom units and 103 two-bedroom units. The 268-unit project had 142 one-bedroom units and 126 two-bedroom units.

Ms. Berardi said that it seems like the whole parcel will be clear-cut and most of the area either paved or built. She asked if the Applicant will be saving some trees or will there be new plantings. Ms. Horwitz said there will be mostly new plantings. Mr. Schneider said he would like to see a landscape plan as a few trees can make a huge difference.

Mr. Schneider asked for public comment.

A Greendale Avenue neighbor asked how far the proposed crosswalk is located from Bird Street. Mr. Dougherty, the project engineer from Tetra Tech, said that the crosswalk will be on the south side of Bird Street; 10 to 20 feet away from the intersection. The neighbor said he was concerned about safety as the cars come down the hill at a fast clip and turn right. Mr. Schneider said that in the earlier decision the Board required a full red light. At a minimum, there will be a pedestrian activated flashing light.

Matt Howell, 721 Greendale Avenue, the intervener in the appeal, asked if traffic signal timing on Great Plain Avenue was still on the table. Ms. Horwitz said that with the reduced size and the new Kendrick Street interchange, re-timing is not likely needed. Mr. Schneider suggested that the Town can still alter the signal separate from this project if it feels it is needed. Mr. Howell asked about the construction schedule. Mr. Hewitt said they hope to start work in the middle to end of next year. They want to complete the front row of townhouses first. The townhouses are expected to take about 10-12 months to build. The large building in the rear will take longer. He said the sequencing is not finalized.

Elizabeth Handler, 317 Greendale Avenue, asked if an analysis has been done on the project's impact on the schools. Ms. Horwitz said no. Mr. Schneider said, that under Chapter 40B, the Town cannot use impact on the schools as a reason to deny a project. He said that the School Committee is currently looking to build a new school, so there is likely to be some changes. The Charles River Landing project added a small number of school-aged children spread across all grades. Three-bedroom units are included in this project because they are required by Chapter 40B regulations. There is an increased likelihood of more families with kids in this development. It is the Town's responsibility to accommodate the new students.

Lee McNally, 778 Greendale Avenue, thanked the Board for their time and effort in finding an agreement for this distasteful project. She was concerned about construction traffic. Mr. Hewitt said that construction will take about 18 months from start to finish. She also asked if there was something in the agreement that the

developer has to repair any damage to the road. Mr. Schneider said any permit will limit construction hours and, if they damage the road, they are responsible for fixing it.

Mr. Schneider asked Representative Denise Garlick how this settlement fits with the pending legislation. She said that she re-filed the buffer protection bill, and it has been reported favorably out of committee. The Selectmen's work has preserved the buffer. The reason the bill was filed was to help mitigate air pollution and drainage. Since the buffer has been preserved, there will be no need for further legislation.

Angela Tess, 7 Rybury Hillway, asked if parking spaces are allocated for visitors and delivery trucks and where the construction workers park since 18 months is a long time. Mr. Schneider said that Mill Creek is providing 2 parking spaces per unit which is more than the 1.7 spaces required by the Town's zoning by-laws. Mr. Schneider said that usually the Board limits the construction hours and may prohibit parking on Greendale.

Mr. Hewitt said they plan to finish quickly and all parking during construction will be on site.

Mr. Goldman asked if the Board should limit parking after the construction.

Ms. Horwitz said they will have control over construction workers. With the number of available parking spaces, she does not think anyone will want to park on Greendale Avenue.

Ms. Berardi confirmed there are currently no designated visitor spots. Mr. Hewitt said that, with the exception of the townhomes, there are no designated parking spaces. The use of the parking spaces is flexible. They presume not all residents will need two spaces.

Mike Tobin, 20 Rybury Hillway, asked how many bedrooms have lofts. The Architectural Team's representative responded that 18 two-bedroom units have lofts.

Debbie Burger, 147 Tower Avenue, asked for a review of the unit mix and how many people would be allowed to live in each apartment. Ms. Horwitz listed the unit sizes. She said 25% of the units will be affordable. There are several HUD regulations regarding this issue, but it works out to be a maximum of 1.5 people per bedroom. The number of people allowed will be limited by the lease and there will be on-site property management. Ms. Horwitz said that people could sleep in the loft, but the lofts are not intended to be used as bedrooms.

Connie Leacock, 778 Greendale Avenue, asked about the number of townhomes. Ms. Horwitz answered that there are multiple townhomes in each building. There will be 52 townhomes in ten buildings.

Mr. Schneider asked again if there were questions or comments from the public. There were no more.

The hearing was closed at 7:55 p.m. and the Board began deliberation.

Mr. Goldman said that he was favorable because of the significant reduction in the number of units. He understands this development will still bring more traffic than the neighbors want. He was supportive of the settlement when weighed against the potential of having 268 units. He understands there are some things to be worked out by the engineers and it sounds like they are very close.

Ms. Berardi said that she appreciates the work that went into negotiating the settlement and likes the reduction of the number of units. She understands there were a number of considerations by the Selectmen, but thinks this is still not what people want. She is not thrilled with the design. She would like to see less

pavement. Although she would like to see a different look to the project, it is an improvement over the prior proposal.

Mr. Friedenbergsaid it could be nicer looking than what is proposed, but the proposal is a huge improvement. He thinks that the impacts will be much less than the larger project. He appreciates the efforts that went into the settlement. He asked how the Board will proceed given there are still a number of issues that need to be resolved, plans submitted and conditions worked out.

Mr. Schneider suggested that the Board could vote tonight to approve the project and limit the discussion at the next hearing to the form of an order. If the Applicant agrees, the order can provide that no building permit will be issued until all the engineering is resolved. He can circulate some proposed conditions before the next hearing to be discussed at the hearing.

Mr. Friedenbergs wondered if they can issue a decision based on future approvals.

Ms. Berardi clarified that the Board is voting to approve the project subject to working out proposed conditions.

Mr. Schneider said that no one was happy with a multi-family project at this site and he would prefer it to remain green space. If the Town wins the appeal, we would still have a 108-unit development. It would be a tragedy to end up with 268 units. He would rather take the certainty of 136 units. A project is going to happen, one way or another and a huge project would be awful.

Mr. Goldman moved to allow the Applicant to construct a 136-unit residential development consisting of ten townhouses and a five-story building with associated parking on approximately 6.02 acres in the Single Residence A Zoning District at 692 & 744 Greendale Avenue, subject to compliance with requirements of the Town Engineer and working out conditions at the next hearing.

Mr. Friedenbergs seconded the motion. The Board voted unanimously in favor.

Mr. Schneider said he would work with the counsel to come up with a proposed order with conditions to be reviewed by the Mill Creek team and discussed at the November hearing.

The hearing closed at 8:05 p.m and the matter was scheduled for deliberation at 7:30 p.m. on November 10, 2015.

### ***November 10, 2015***

The Board included Jon Schneider, Chairman. Mr. Schneider opened the hearing at 7:30 p.m. by reading the public notice. At the request of the Applicant and due to the lack of a quorum, the case was continued to Monday, December 7, 2015 at 7:30 p.m.

### ***December 7, 2015***

Chairman, Jon D. Schneider opened the meeting at 7:34 p.m. and the following members were present: Jonathan D. Tamkin, Member; Howard Goldman, Member; and Peter Friedenbergs, Associate Member. Jay Talerman, the attorney representing the Town, was also in attendance. There was no one else present.

Mr. Schneider said the purpose of the meeting was for the Board to discuss findings and conditions for the Needham Modera Comprehensive Permit.

In advance of the meeting scheduled for November 10, 2015, the Chairman and Mr. Talerman sent a draft decision to the Applicant. The Applicant asked to continue the November 10, 2015 meeting because the Applicant didn't want a decision that required issues to be resolved later with the Town Engineer. As of this afternoon, the Town Engineer has received revised plans and indicated that they are acceptable. The Applicant never sent back comments to the draft until this Thursday. The comments were extensive. Mr. Schneider worked on a revision over the weekend. The Applicant received the new version this afternoon. Because they did not have time to review the revisions with their client, they declined to attend this evening's meeting. Mr. Schneider thinks the Board should move ahead to discuss the findings and conditions, then give guidance to the Chairman and counsel so they can negotiate a final form. Mr. Schneider had distributed his draft to the Board on Sunday night and Mr. Talerman circulated his revisions to the Board on Monday. The Board worked with Mr. Talerman's draft.

The Board first discussed changes in the plans.

The proposed location of the new sewer line goes down Hardy Street then across the rear of the property. The Town Engineer did not want trees along the sewer line to the rear of the property which would diminish the effect of the 20-foot vegetated buffer negotiated by the Selectmen. Mr. Schneider asked the engineers for an alternative location. The proposed new sewer line now goes down Hardy Street then straight out to the line along Route 128. This change will need a state permit. Mr. Talerman said the Town Engineer was reasonably confident that the Applicant would be allowed to connect into the existing sewer line at that location, but there is a chance that the state will not allow two connections in close proximity. If the second connection has to be eliminated, engineering adjustments will be needed.

The Board looked at the revised landscape plans. Mr. Schneider said that the Tree Warden walked the property and reported that there were no special trees worth the extra effort to be saved. Mr. Schneider noted that there are a lot of trees proposed along Greendale Avenue and that he was generally pleased with the plan. However, he was concerned about the size of trees proposed for the rear buffer. The plan proposes maples and white pines which are fast growers, but only 7-9 feet in height. The Board discussed the size of the proposed trees. They want the trees to be taller than the retaining wall. They decided to require all the trees beyond the retaining wall in the rear of the site to be 12 feet tall.

Mr. Schneider reported that the Board of Health has raised issues, primarily regarding the location of the pool. Mr. Talerman said that, under state law, the Board of Health approves pools and the permitting is not subject to 40B. As to the concerns raised by the Board of Health, Mr. Talerman reported that the expert who wrote an article regarding concerns over locating developments close to highways was not willing to testify in the HAC proceeding that the Project should not be built. The expert indicated that risks posed by pollutants decrease significantly after 150 feet and a major factor in the effect of pollutants is the wind direction. The Applicant needs to work this out with the Board of Health. Mr. Schneider and Mr. Talerman confirmed that the Applicant knows that they will have to permit the pool through the Board of Health.

The Board discussed the trail connection that will go along the rear of the property. The Board concluded that the easement should go to the Town for the benefit of the public. It was agreed that that the trail could be closed dusk to dawn if the Applicant insists.

Mr. Schneider noted that the Applicant extended the sidewalk along Greendale Avenue so that the crosswalk connects to the northwest side of the Bird Street where there is an existing Bird Street sidewalk.

The Board discussed the proposed pedestrian light. The Applicant has agreed to pay for a flashing pedestrian light. The Town Engineer would prefer a full red light. Mr. Talerman indicated that he was unsure whether a full red light can be justified under the applicable regulations and the Board agreed with his concern based on the testimony of the traffic experts. The Board discussed timing. The Board would like the light installed before the development is occupied, but thought it unfair to impose this condition on the developer if the Town is responsible for the installation. The draft decision proposes that the Applicant pay \$100,000 to the Town before a building permit is issued and the Town be responsible for a pedestrian or full traffic light. Mr. Talerman needs to confirm that this is acceptable to the Town. He is also uncertain if the Applicant would prefer to handle the construction if there is only a pedestrian light.

The Applicant proposed that there be some standard that would compel the Building Commissioner to issue temporary or partial occupancy permits. They probably are going to want partial occupancy permits for the townhouses because they are projected to be ready before the large building is complete. Mr. Schneider said that the draft decision gives the Building Commissioner discretion to determine when there can be occupancy. He feels there is no right to occupancy before the project is complete and that the Building Commissioner will be reasonable.

Mr. Talerman said the Applicant wants every approval needed from the Town to relocate the sewer. The ZBA may not have the discretion to issue approvals because Hardy Street is not on the 40B locus. In any event, the Applicant will have to go through the regular process to build the new sewer line down Hardy Street. The Selectmen are supportive of the sewer relocation. The Applicant has proposed that the Town abandon the easement on the site, but that would have to be accepted by Town Meeting. The Selectmen can authorize construction over the easement which is all the Applicant needs. Authorization to build over the existing easement was effectively granted by the Selectmen in the Settlement Agreement.

Mr. Schneider said that the Town would like to be the monitoring agent since they have a highly qualified housing specialist. The Town would like to be involved in supervising the project. The Applicant objected to this notion in their revision to the draft decision. The selection is made by the subsidizing agency and the Town recognizes that any role may be limited. The Board agreed that the Town should have the opportunity to participate in monitoring, as requested by the Town Manager.

The Applicant has asked for a blanket waiver of all zoning, general by-laws and rules of the Town. Mr. Schneider objects to granting a waiver when he does not have the provision before him and does not know what is being waived. 40B Applicants are required to identify the waivers they need and list them in their application. If the Applicant misses something, they can come back to the Board with a specific request. Mr. Talerman said in smaller projects he sometimes sees a blanket waiver of dimensional requirements, but it is unusual to give a waiver of all rules and by-laws. The Board concluded that they would deal only with specific waivers. The Applicant also asked for a waiver of sign review. However, they did not submit any signs to be reviewed and the Chairman prefers that, once these hearings are closed, they go to the Design Review Board which has the expertise and regularly approve signs.

Mr. Schneider said that the Applicant asked that this decision be a stand-alone decision. In order for that to work, Mr. Schneider felt it was necessary to include some findings such as the site description and traffic impacts. There was no new traffic report for the 136 units. The draft decision says that the traffic will be less than originally predicted with a 268-unit project. Since the development will be coming online

after the Kendrick Street interchange is complete; the Board does not think the traffic will have a material impact.

Mr. Tamkin said that the prior 40B decision was an important document that contained a lot of good facts and reflects issues the community was discussing. Mr. Talerman suggested that they put a preamble in this document that refers to the December 19, 2013 decision which is filed with the Town Clerk.

Given the uncertainty after Mr. Talerman's discussions with the air pollution expert, Mr. Schneider did not put in any findings regarding air pollution. Mr. Schneider suggests that an air filtration system be required and be maintained by the owner. Mr. Talerman said that the Tufts researcher suggested that no buildings be within 150 feet of the highway and that a well maintained air filtration system should be adequate. The Board agreed that it was important to have an air infiltration system in the HVAC system.

The Applicant has agreed to comply with the HUD standards for noise. Mr. Schneider said he felt strongly about this because a 2006 study on this property for a different project showed that the noise exceeded the standards. The Applicant's revision eliminates some of the enforcement mechanisms in the draft, so enforcement will be up to the Building Commissioner.

Mr. Friedenbergs suggested that the unit mix should be noted in this new decision.

The Board discussed the parking provision in the draft and that the utilities will be underground.

The Applicant objected to a construction mitigation plan, but Mr. Schneider feels this is standard with large projects. Mr. Talerman agreed. The Board agreed a plan was important. Ms. Berardi (who could not attend) had conveyed a concern as to whether the construction hours should be shortened to those used in the recent A Street decision. The Board briefly discussed hours and agreed that the hours in the draft are appropriate.

Mr. Schneider said that he added a provision to the draft that, after the building permits are issued, the Building Commissioner has the discretion to decide if a proposed change to the project plans is insubstantial. The Board agreed to this provision in the recent A Street decision. If the change is substantial, it must come to the Board. Mr. Tamkin pointed out that the A Street Comprehensive Permit was through the LIP program and had a lot of backing from the community. This project may need more oversight. Mr. Talerman pointed out that there may be inconsistent provisions in the draft on how to handle plan changes. Mr. Talerman will make provisions work together, but will set it up so that the Building Commissioner is the initial gatekeeper.

Mr. Talerman's suggested a revision to the language restricting the use of lofts and dens as bedrooms.

The storm water compliance for public education is a federal requirement and will be a condition.

The Board also confirmed that the project should remain in one entity. The Planning Board feels strongly about this. The Applicant says this condition will restrict their ability to get investors, but we can make it clear that changes in the investors are not prohibited.

The Board decided it was reasonable to have the sidewalks complete before the first occupancy permit is issued.

Mr. Friedenbergs expressed concern that the draft language on timely completion was not strong enough. Since this is a large project in a residential neighborhood on a major street, the Applicant should be encouraged to start the project in earnest and finish in a timely manner. The Board agreed that the term "proceed with construction" should require foundations for 20% of the units. In addition, the project

needs to be finished by December 31, 2020. The Board would be willing to extend the sunset if the Applicant is able to show cause.

The Board discussed the consequences of failure to comply with the conditions.

No one representing the Applicant came to participate in tonight's meeting.

The Decision must be filed by the December 15, 2015 under the modified terms of the Settlement Agreement. The deadline was moved from December 8<sup>th</sup> to December 15<sup>th</sup> in connection with the Applicant's request to postpone the November 10<sup>th</sup> hearing.

Mr. Goldman made a motion to accept the conditions discussed tonight.

Mr. Friedenbergs seconded and the Board unanimously approved.

The meeting adjourned at 9:07 p.m.

### ***GENERAL FINDINGS***

Based on the evidence presented at the Board's hearing on October 20, 2015 and the hearings held in 2013, the Board finds as follows:

1. The Board issued a Decision on December 19, 2013 granting a comprehensive permit to the Applicant with conditions, including a condition that the project be reduced to 108 units. The Board hereby refers to the procedural history contained within its original decision, a copy of which is filed with the Needham Town Clerk.
2. The Applicant appealed to the Housing Appeals Committee ("HAC") seeking to overturn the Decision of the Board and seeking to construct 268 units as proposed during the hearings held in 2013. The appeal remains pending, but the matter was remanded to the Board to consider a proposed settlement under which the project would be reduced to 136 units. Under various circumstances set forth in a Settlement Agreement dated October 15, 2015 (the "Settlement Agreement"), and the ensuing Order for Remand by the HAC, the Applicant has the right to terminate the remand and ask the HAC to proceed with the appeal.
3. In connection with the remand, the Applicant has filed revised plans as described in items 9, 10 and 11 of the Documents of Record. These plans and the architectural plans describe in item 4 of the Documents of Record are collectively the "Approved Plans"<sup>1</sup>. The Approved Plans, which were prepared by The Architectural Team, Tetra Tech and Stantec depict 136 units consisting of 52 units in two rows of townhouses facing Greendale Avenue and 84 units in a multi-story building behind the townhouses, with 17 of the units containing one bedroom, 103 of the units containing two bedrooms and 14 of the units containing three bedrooms (the "Revised Project"). The Revised Project observes the 30-foot front setback from Greendale Avenue and preserves a 20-foot vegetative buffer to the rear lot line towards Route 128. No building will be constructed within 150 feet of the current paved

---

<sup>1</sup> The "Approved Plans" are based upon the basic plans reviewed during the Board's remand hearing and provide some enhancements so as to address peer review by Town staff. The Approved Plans, as revised, do not materially differ from the configuration presented during the open public hearing.

travel lanes of Route 128. The Revised Project includes green space for a playground and snow storage to the west of the large rear building and a pool area and snow storage to the east.

4. The Selectmen have recommended approval of the Revised Project.
5. The Applicant has agreed to install a sidewalk along Greendale Avenue to Bird Street, and to fund up to \$100,000 for design and installation by the Town of a cross-walk and flashing pedestrian light, or other traffic signalization at the intersection of Bird Street and Greendale Avenue. Selectmen have agreed that the Town will be otherwise responsible for funding, designing and installing any traffic improvements desired by the Town at the intersection of Bird Street and Greendale Avenue.
6. The Applicant has moved the entrance to the Revised Project and designed it as a "boulevard" with separate entrance and exit lanes, each of which is 18 feet wide. The new design will mitigate the shining of headlights of exiting vehicles on neighboring houses. The Fire Chief has approved the general design of the entrance with respect to concerns over elimination of two full access points.
7. The Selectmen have agreed that they will cooperate to allow the Applicant to relocate the municipal sewer and, upon completion of the new sewer, to allow construction over the easement currently crossing the site as shown on the Approved Plans. To the extent the relocation of the sewer as shown on the Approved Plans would require other permits and approvals, including but not limited to, a MassDOT access permit or a MWRA 8(m) permit, the Town will cooperate with the Applicant and support its efforts to obtain such permits. To the extent the Applicant is unable to obtain the permits and approvals to construct the sewer line in Hardy Street as depicted on the Approved Plans in order to construct the Revised Project, the Board and the Applicant will cooperate with each other on a project modification, as noted in the conditions below. As shown on the Approved Plans, the Applicant intends to relocate the Town's existing sewer line to Hardy Street which would then connect at a new location in the sewer line running parallel to Route 128. As shown on the Approved Plans, the Applicant intends to connect to sewer through both the presently existing service that connects to the rear of the property as well as via a new sewer line to be constructed in Hardy Street. Additionally, while the Applicant seeks approval by the Board for such sewer connections, and the Board is empowered to issue such approvals, additional information is required to evaluate such sewer connections, as detailed in the conditions below.
8. The Approved Plans include connections to the existing Town trails to the east and west of the property. The Approved Plans also include access to such trail for residents of the Revised Project.
9. Several of the floor plans for the units include a den or a loft. The Applicant has represented that the dens and lofts are not intended for permanent use as bedrooms and will accept a restriction in this regard, as detailed below.
10. While the Revised Project does not satisfy all of the concerns of the Board and the residents, the Board finds that the Revised Project is a reasonable compromise of the pending appeal and is consistent with local needs.
11. Subject to the provisions of the Order of Remand and the Settlement Agreement, this Decision on Remand shall supersede and replace in its entirety the Decision dated December 19, 2013.
12. The site contains 6.02 acres located in the Single Residence A District.
13. The Applicant has control of the site by virtue of a Purchase and Sale Agreement dated February 29, 2012 as amended May 29, 2012, September 19, 2013 and September 16, 2015 to acquire two parcels from Vincent and Mary Boris and a Purchase and Sale Agreement dated July 10, 2012 to acquire a

parcel with 0.58 acres from Christopher A. MacDonald. One of the Boris parcels and the MacDonald parcel are improved with single family homes which the Applicant proposes to demolish.

14. The site is bounded on the northwest by a single family residence and Town parkland and to the southeast by a worship center (used for religious services and day care) and Town parkland. The site is bounded to the northeast by Route 128 and to the southwest by Greendale Avenue. Across Greendale Avenue are single family homes in the Single Residence B District. The predominant use in the area is residential, with single family homes being the most common. Access is off Greendale Avenue. There is no access from Route 128.
15. The site is heavily wooded providing a green space and sound barrier from the noise of Route 128 for the residents of Greendale Avenue and surrounding streets. The Applicant is providing additional vegetative buffering to the rear of the property, as shown on landscaping plan included with the Approved Plans. The Board finds such landscaping plans to be sufficient provided that certain enhancements shall be provided, as detailed in Condition 18 below.
16. The site falls off steeply from Greendale Avenue with the front of the property at elevation 155 feet and the rear at elevation 109 feet.
17. The Applicant filed an application with the Board dated April 12, 2013 seeking to construct a 300 unit apartment project under the provisions of M.G.L. Chapter 40B. During the course of the hearings in 2013, the Applicant reduced the proposed project to 268 units.
18. The Project Eligibility Letter (“PEL”) indicates that the Applicant’s chosen subsidy is funding from the New England Fund.
19. The PEL provides prima facie evidence that the Applicant has satisfied the requirements under 760 CMR 56.04(1).
20. The Applicant is a limited dividend organization.
21. The Applicant will conform to the limited dividend requirements of M.G.L. Chapter 40B, which will limit the Applicant’s annual return on equity to no more than 10%.
22. The Applicant has agreed that 25% (34) of the units will be made permanently “affordable” for “moderate income renters” within the meaning of M.G.L. Chapter 40B.
23. As of the filing of the application, Needham had 7.6% of its housing stock defined as “affordable” as reflected in the housing inventory published by the Massachusetts Department of Housing and Community Development (“DHCD”) dated April 30, 2013. As a result, under Chapter 40B any applicant who proposes to build housing providing the requisite percentage for affordable housing will be entitled to an exemption from local zoning unless there is a supportable finding “that there is a valid health, safety, environmental, design, open space, or other Local Concern which supports such denial, and then that such Local Concern outweighs the housing need.” 760 CMR 56.07(2)(b)(2)(2012). The burden of proof is on the Town and, where the Town fails to have 10% affordable housing, there is “compelling evidence that the regional need for housing does, in fact, outweigh the objections to the proposal.” The Town of Needham (the “Town”) is below the 10% standard for low and moderate income housing mandated by the state under Chapter 40B.
24. Subject to compliance with the conditions hereof, the Revised Project is consistent with local needs.

## **TRAFFIC**

25. The site is not served by any public transportation. There is a commuter rail station approximately one mile away. Substantially all transportation from the site will be by car other than children walking to the Broadmeadow School.
26. The Applicant presented a traffic study in 2013 prepared by Vanasse & Associates, Inc. The Town engaged BETA Group, Inc. to provide a peer review. As a result of the comments by BETA and the changes in the Applicant's plans, Vanasse conducted additional traffic counts and revised its analysis. Vanasse and BETA are in substantial agreement with respect to traffic counts and presented their conclusions and recommendations at the October 15, 2013 hearing.
27. Greendale Avenue is a busy street carrying an average of 10,976 vehicles per day with 1,320 vehicles per hour during morning peak hour and 1,245 vehicles per hour during the evening peak. Many of the vehicles travel in excess of the posted speed limit of 40 mph. If the proposed interchange with Route 128 at Kendrick Street is built, there is likely to be some reduction in traffic. The Applicant's proposed 268-unit project would add 1,748 vehicles per day with 135 vehicles per hour entering or exiting from the project during the morning peak and 165 vehicles per hour during the evening peak. The Applicant did not present an updated traffic study in connection with the revised proposal for 136 units, but the number of trips will be substantially less than the trips that would have been produced by a 268-unit development. The Applicant indicates that the Revised Project will generate 948 trips per day. The Revised Project will not be ready for occupancy until the new interchange is complete. While the Revised Project will add to traffic, it will not be a material burden to the traffic situation, subject to compliance with the conditions hereof.
28. The traffic near the site is complicated by an unusual intersection of Greendale at Bird Street with Rybury Hillway connecting to Greendale within 45 feet of Bird Street. Bird Street serves as a pass-through to the Broadmeadow Elementary School which is approximately ½ mile away and to the Hersey commuter rail station which is approximately 1 mile away. Traffic backs up on Bird Street seeking to enter Greendale in the morning and afternoon as children are transported to and from the school.
29. In order to move pedestrian traffic safely across Greendale Avenue, the Applicant proposes the installation of a yellow pedestrian light. The Town may determine that it wants a full traffic signal. The Applicant has agreed to contribute \$100,000 towards the cost of such traffic improvements and the Town will determine whether it wants a yellow pedestrian light or full traffic signal. The Town has agreed that it will be responsible for the design and construction of any enhanced traffic improvements.

## **APPROVAL AND CONDITIONS**

On the basis of the foregoing findings, in open session, by unanimous vote, after motion duly made and seconded, the Board grants the Applicant a Comprehensive Permit pursuant to M.G.L. Chapter 40B to construct 136 apartment units at 692 and 744 Greendale Avenue, subject to the following:

1. The Revised Project shall contain no more than 136 residential units consisting of 52 units in two rows of townhouses facing Greendale Avenue and 84 units in a multi-story building behind the townhouses.
2. The Revised Project shall be constructed substantially in accordance with the Approved Plans.

3. The owner of the building shall install and maintain the air filtration system which is a component of the project's HVAC system and shall be responsible for maintenance of air filters in any air conditioning or filtration system. The owner shall change or clean the filters on a regular basis, no less frequently than as recommended by the manufacturer.
4. The Revised Project shall comply with applicable HUD noise guidelines set forth in 24 CFR 51.
5. Prior to the issuance of any occupancy permit, the Applicant shall grant an easement to the Town for use by the public of the pathway across the rear of the property, as depicted on the Approved Plans, connecting the existing trails on either side of the property. The easement shall be for passive recreation purposes and the Applicant may prohibit such use between dusk and dawn, for normal maintenance, and otherwise subject to appropriate safety requirements. The form of the easement shall be subject to Town Counsel's reasonable review and approval.
6. All permanent utilities on the site shall be underground.
7. As presented by the Applicant, the only designated/reserved parking shall be located under and in front of the townhouse units, as shown on the Approved Plans. The Applicant has indicated that other spots will generally be available to residents and visitors on a first-come-first served basis. The Applicant may reserve up to one space per unit provided that sufficient spaces are available for visitors and deliveries.
8. The Applicant shall obtain approval of its final plans from MassHousing. Prior to the issuance of a building permit, the Applicant shall file seven sets of plans for the project stamped by a registered engineer and approved by Mass Housing as final plans, together with a narrative indicating any changes from the Approved Plans. If, upon review of such plans, the Chairman of the Board determines that the filed final plans are not consistent with the Approved Plans, he shall decide whether the changes are substantial. If not substantial, he may approve the plans. The Chairman shall notify the Applicant within 20 days if the changes are approved. If not, the Board shall hold a public hearing within 30 days of the Chairman's determination to consider only those changes that the Chair determines to be substantial and shall issue a decision within 40 days of the termination of the hearing.
9. The Applicant shall enter into a Regulatory Agreement, Monitoring Agreement and suitable restriction for the affordable units in a form approved by MassHousing. The Town shall not be a party to the Regulatory Agreement unless it is provided with an opportunity to review and approve the same. Prior to the issuance of a building permit, executed copies of these agreements shall be filed with the Board. It is acknowledged that the Town may wish to serve as a Monitoring Agent for the project. Should the Town seek to serve in such capacity, the Applicant shall cooperate with such request, provided that it is also acknowledged that the ultimate decision on such request is at the discretion of the Applicant's subsidizing agency.
10. Twenty-five percent of the units shall be designated permanently as affordable units pursuant to the terms of the Regulatory Agreement approved by MassHousing. The instrument ensuring perpetual affordability shall be recorded in the Norfolk County Registry of Deeds and proof of such recording to be provided prior to the issuance of any building permit.
11. The Applicant will make a good faith effort to obtain local preference in the marketing of the affordable units to the maximum extent allowable under present law and guidelines. Marketing plans, once approved by MassHousing, will be submitted to the Board. In the event the Board requests changes in the local preference or marketing plans, the Applicant will work with the Board to obtain

approval of requested changes. In the event the changes are not approved, the Applicant may proceed in accordance with the plans approved by MassHousing.

12. The Board hereby generally and conceptually approves water, sewer and drain connections, as well as a street opening permit in Greendale Avenue, subject to final review and recommendations for approval and or conditions that may be imposed by the Public Works Department or Water and Sewer Superintendent. In order to obtain the approval of the Public Works Department or Water and Sewer Division, the Applicant shall submit all normally required plans and information and shall pay all usual fees. This requirement is applicable to the technical construction and connection permits and approvals, but this Decision approves the proposed connections and capacity and waives any other local approvals in connection therewith. The Applicant will be responsible for patching of any trenches or excavations required to connect to utilities in Greendale Avenue and shall resurface Greendale Avenue as necessary in the area of any such trenches so as to restore Greendale Avenue to an acceptable condition within the limit of work, all as may be determined by the Public Works Department.
13. All construction will be subject to building codes and to building permits issued by the Building Commissioner and will be subject to the usual fees (including, without limitation, the affordable units).
14. No changes may be made to the Approved Plans unless the changes are approved in accordance with 760 CMR 56.05(11). Requests for changes to the Approved Plans shall be submitted to both the Board and the Building Commissioner. In order to facilitate the process under such regulation, the Board hereby delegates the initial review of proposed changes to the Needham Building Commissioner. The Needham Building Commissioner shall be charged with making the initial determination as to whether the changes are substantial or insubstantial. In the event that the Building Commissioner is unable to make that determination, the Board's Chairman shall be charged with making the determination as to whether the changes are substantial or insubstantial, all within the timeframes specified under said regulation. Any substantial changes can only be approved by the entire Board after a duly noticed public hearing.
15. Prior to the issuance of a building permit, the Applicant shall submit, for the Building Commissioner's prior review and approval, a construction mitigation plan that addresses noise, trucking routes, dust control, and such other issues as he deems reasonably relevant to reduce and manage the disruption arising from construction. The Building Commissioner shall consult with the Town Engineer, Police Department and such other municipal parties as he deems appropriate and shall allow interested parties who request participation in writing an opportunity to comment on the plan before giving his approval. The approved construction mitigation plan shall be provided to every contractor and subcontractor working on the project.
16. Construction hours shall be limited to 7:00 a.m. to 6:00 p.m. Monday through Friday and 7:00 a.m. through 5:00 p.m. on Saturdays. There will be no construction on Sundays, Municipal Holidays or outside the approved hours unless necessary to deal with an emergency or as otherwise approved by the Building Commissioner. No construction vehicles may stand with engines running before the designated hours of construction. No construction vehicles or vehicles of workers involved in the construction shall be parked on Greendale Avenue or surrounding streets. Prior to beginning construction, the Applicant will provide to the Building Commissioner, Chief of Police and the Board the name and telephone number of the person in charge of construction and responsible for maintenance of the site during construction.

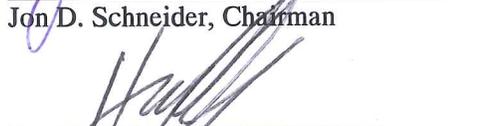
17. The Applicant shall use vinyl fencing, covered dumpsters or other appropriate means to keep debris from leaving the site during construction and will be responsible for cleaning up debris from construction of the project on adjacent properties in a timely manner.
18. The landscaping shall be substantially in accordance with the landscape plan which is part of the Approved Plans, provided however that, due to the height of the retaining wall at the rear of the property, all trees planted in the buffer immediately adjacent thereto shall be at least twelve feet in height at initial planting. All landscaping shall be maintained by the owner in good condition. Any tree or plant material that dies or becomes diseased shall be replaced by the owner.
19. The owner of the project shall be responsible for snow removal and waste disposal. The owner shall implement the following maintenance plan:
  - a) parking lot sweeping twice per year after the snowmelt and in the fall;
  - b) catch basin cleaning and inspection twice per year in the spring and the fall;
  - c) oil/gas separators in the drainage system to be inspected monthly and cleaned four times per year, once in each season.
20. No dens, lofts or other living space may be used as permanent bedrooms. The Applicant and its successors shall include this restriction in every lease for any such unit and shall, as may be feasible, enforce this restriction upon receipt of information of a violation.
21. Prior to the issuance of the first occupancy permit, the Applicant shall construct the sidewalk along Greendale Avenue to Bird Street. Prior to the issuance of the first building permit, the Applicant shall also provide to the Town the sum of \$100,000 to be used for installation of a flashing light, full traffic light or other traffic mitigation measure as may be determined by the Town. In the event that the Town does not use such funds within five years from the date they are provided, such funds shall be returned to the Applicant.
22. The Town's existing sewer line, which bisects the site, shall be decommissioned and relocated to Hardy Street adjacent to the property (to be connected to a sewer line adjacent to the Route 95 layout), as shown on the Approved Plans, at the Applicant's sole cost and expense prior to the issuance of any occupancy permits for the Project. Consistent with the authority advanced under the Settlement Agreement with the Town, the Board hereby generally grants all municipal permits and approvals required for the Applicant to relocate the sewer line as shown in the Approved Plans. However, such approval is subject to final review and recommendations for approval and or conditions for technical details that may be imposed by the Public Works Department and Board of Sewer and Water Commissioners, as may be applicable, with respect to both the decommissioning and relocation of the sewer line, as set forth herein. In order to obtain the approval of the Public Works Department or Water and Sewer Division, the Applicant shall submit all normally required plans and information and shall pay all usual fees. This requirement is applicable to the technical construction details and approvals, but this Decision approves the proposed sewer work in Hardy Street and waives any other local approvals in connection therewith. Prior to the issuance of an occupancy permit, the relocation of the sewer line must be satisfactorily completed and inspected in accordance with accepted standards and the Town's practices. After construction of the same, the Applicant shall convey the pipes and other infrastructure to the Town. To the extent the Applicant is unable to obtain the permits and approvals to construct the sewer line in Hardy Street as depicted on the Approved Plans, the Board and the Applicant will cooperate with each other on a modification of the Revised Project and grant any waivers needed with respect to alternative sewer, said modification to be subject to further peer review as may be required

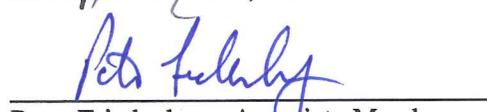
23. Prior to the issuance of any occupancy permit, the Applicant shall establish compliance with the public education requirements regarding storm water stipulated under the NPDES Storm water Phase II Program.
24. Prior to the issuance of any occupancy permit, the Applicant shall file three wet-stamped copies of the following with the Building Commissioner:
- a) An as-built plan supplied by the engineer of record certifying that the project was built substantially according to the Approved Plans (as may be modified in accordance with the provisions hereof) as well as the approved documents submitted to the Board and Public Works Department. The as-built plan shall show all structures, all finished grades and final construction details of the driveways, parking areas, drainage systems, utility installations, and sidewalk and curbing improvements in their true relationship to the lot lines for all on-site and off-site construction. In addition, the as-built plan shall show the final location, size, depth and material of all public and private utilities on the site and their points of connection to the individual utility, and all utilities which have been abandoned. In addition to the engineer of record, the as-built plan shall be certified by a Massachusetts Registered Land Surveyor.
  - b) A statement by the registered professional engineer of record certifying that the finished grades and final construction details of the driveways, parking areas, drainage systems, utility installations, and sidewalk and curbing improvements on-site and off-site, have been constructed substantially in accordance with the Approved Plans for the Revised Project.
  - c) An as-built landscaping plan showing the final location, number and type of plant material, final landscape features, parking areas, and lighting installations for the Revised Project. The plan shall be prepared by the landscape architect of record and shall include a certification that such improvements were completed substantially according to the Approved Plans and approved documents.
25. No building may be occupied or parking lot used prior to the issuance of an occupancy permit by the Building Commissioner. The Building Commissioner, in his discretion, may issue one or more certificates for temporary or partial occupancy of a building or use of parking lots prior to the completion of the entire project if he determines that such occupancy or use will be safe and that he has adequate assurance that the project will be completed. In connection with any temporary or partial permit, the Building Commissioner may require that a bond be filed with the Board in an amount not less than 135% of the value of the unfinished work on the project.
26. The Board grants the waivers, as requested by the Applicant to the following sections of the Zoning By-Law: Sections 3.2.1 (uses- to permit apartments and multi-family dwellings and accessory uses), 4.2.1 (side and rear setbacks and height), 5.1.2(20) (determination of the number of spaces, provided that the number of spaces depicted on the Approved Plans are provided at the project)), 5.1.1(k) (landscaping of parking areas), 5.3.6 (limit on multi-family development), 6.1.2 (limit on garages) and 7.4.3 (site plan review). The Board grants the waiver requested by the Applicant to the following provisions of the General By-Law: with respect to 2.2.5.1.2 to allow the development of streets shown on approved plans. The Board waives a requirement for a license or permit to park motor vehicles on the site. The Board waives the requirement for approval to remove shade trees. The Board does not grant the other waivers requested by the Applicant including, without limitation, no waiver of Zoning By-Law section 4.2.1 as to front setback or Sections 5.1.1 and 5.1.1.7 as to the design requirement for parking or the General By-Law Section 3.6.1.1 requiring that fire lanes be 18 feet in width. The Board grants a waiver and approval for the signs shown on the Approved Plans but does

not grant a waiver or approval for any signs that have not been presented to the Board for approval. No other waivers are granted or implied. The Board will consider further waivers upon request of the Applicant. Should such request for additional waivers be based upon an inadvertent omission of a request for a waiver that is necessary to construct the project shown on the Approved Plans, the Board will review such request administratively, rather than at a full public hearing.

27. Ownership of the project shall remain in one entity, provided that the Applicant shall not be prohibited from obtaining investors in the project or in such ownership entity.
28. This permit is issued to the Applicant and may be transferred only as permitted under 760 CMR 56.05(12)(b).
29. The Applicant's profit shall be limited in accordance with Chapter 40B and any applicable policies or Guidelines of DHCD or MassHousing, and any excess profit remitted to the Town's fund for affordable housing
30. This Comprehensive Permit shall lapse if the Applicant does not proceed with construction within three years of the date this permit becomes final (meaning the date of this decision if no appeal is filed, or 30 days after the date any appeal is resolved if and appeal is filed). "Proceed with Construction" for the purposes of this paragraph shall mean the construction of at least the foundations for twenty percent of the project's units and the continuous prosecution of construction thereafter with reasonable diligence to completion. Construction of the project and all associated infrastructure must be completed no later than December 31, 2021. For good cause shown, extensions may be requested and no such request may be unreasonably denied. The Board acknowledges that extension of the completion date requested as the result of any appeal of this Decision shall constitute good cause.
31. Failure to comply with any terms of this Comprehensive Permit shall be grounds for revocation of any building permit or occupancy permit issued hereunder. No order of revocation shall be issued by the Board without prior notice to the holder of the Comprehensive Permit and an opportunity to be heard at a public hearing. As an alternative, the Town may enforce compliance with this Comprehensive Permit by injunctive relief issued by a court of competent jurisdiction.

  
\_\_\_\_\_  
Jon D. Schneider, Chairman

  
\_\_\_\_\_  
Howard S. Goldman, Member

  
\_\_\_\_\_  
Peter Friedenber, Associate Member