

February 23, 2015

Wenham Zoning Board of Appeals
Wenham Town Hall
138 Main Street
Wenham, MA 01984

By Email: ecademartori@wenhamma.gov and by First Class Mail

**Reference: Proposed Maple Woods Project
62R Maple Street
Wenham, MA 01984**

Members of the Zoning Board of Appeals (ZBA):

My name is Paul Berthiaume and I reside at 78 Maple Street. I have attended every ZBA meeting to date regarding the referenced project and I feel as though I have been respectful to the ZBA's review process. I would like to now take the opportunity to provide you with my perspective as a direct abutter to the project.

First, I would like to provide some background information. My wife Erin and I purchased our home here in Wenham in October of 2012. When we were looking at homes in the area, we conducted some research and found that Wenham was a small town with a nice, quiet community, and has a great school system. It just felt like the right place to set down roots since Wenham also reminded me of where I personally grew up, but ultimately the decision was made because Erin loved the house.

I am writing you today, not to cry "NIMBY" or "Not in My Back Yard", but to give you my observations of the proposed project. I would like you to know that I am a Registered Professional Engineer and my specific background is in bridge design. Every day it is my responsibility to design projects which first and foremost have the interest and safety of the public as a number one priority. I also understand how the perspective of the public can provide specific insight into the development of a project. I hope that you can take my letter into consideration while making your decision about this project.

We were notified by Mr. DeFranza of Harborlight Community Partners (HCP) of this potential project in October 2013. Over the past year plus, I have attended many meetings regarding this project, as well as other projects, and have learned a lot about the local town government, committees and trusts. In addition to the ZBA meetings referenced above, I have also attended Board of Selectman meetings, Conservation Commission meetings, Affordable Housing Trust meetings, Planning Board meetings and Water Commission meetings.

Through all of those meetings, I feel that I understand the Chapter 40B situation in Wenham better, but by no means understand it completely. I do understand that the town needs to have 10% of its housing inventory deemed affordable, which the town currently has approximately 8% and is approximately 20 units short of its goal. I can appreciate the need for the Town of Wenham to reach its goal of the 10%

affordable housing so that it will be able to directly control all future 40B applications without the applicant having the right to a state appeal.

I would like to tell you that I can appreciate the ongoing need and demand for elderly housing, not only from the 40B requirement perspective, but as a human being. My grandmother lived in a low income elderly housing community, so I can certainly understand the importance of such infrastructure. Please also understand, I am not opposed to low income elderly housing, however I am strongly opposed to the scope of this project based on the site which it is proposed and for the environmental burdens that come with it.

My specific comments relating to this project are:

- 1.) ZONING AND BUILDING MASS.** I understand because this is a 40B development, HCP is therefore not required to adhere to local zoning by-laws. There are two specific regulations in the by-laws I would like to highlight which are contained in the Senior Housing Overlay District section. Section 12.3.3, Paragraph 1 states that "Where land is to be developed solely for Multi-family residences the site shall contain not less than 7.5 acres exclusive of any area of land lying in the Flood Plain Overlay District." Also, Section 12.3.7.2 states that "All newly constructed housing developed in a SHOD shall not have more than 7 dwelling units per acre, or portion thereof, provided however that the Planning Board may limit development to as few as one dwelling unit per acre." I would like to point out that the proposed site is only 3.5 acres and HCP is proposing a density of approximately 17 units per acre.

I would also like to share with you information, obtained as part of my research, contained in a document on the Massachusetts Department of Housing and Community Development (DHCD) website titled "Handbook: Approach to Chapter 40B Design Reviews" ⁽¹⁾ dated January 2011 which was specifically written for the DHCD. The referenced document states that it is intended for "the Subsidizing Agencies and the individuals who perform the design reviews under the regulations....." which I interpret to pertain to ZBA's. On Page 3 of this document, under paragraph c.40B Regulations on Design Elements, it states "that the conceptual project design is generally appropriate for the site on which it is located, taking into consideration factors that may include proposed use, conceptual site plan and building massing, topography, environmental resources, and integration into existing development patterns (such finding, with supporting reasoning to be set forth in reasonable detail);"

As you are aware, our neighborhood is comprised of single story and two story single family homes. My home is a two story Cape Cod style home which stands approximately 23' from ground level to the roof peak which is at approximately Elevation 93.0. HCP is proposing a three story structure which is going to have a height equal to 35' from ground level to the roof peak at Elevation 101.5. For your information, I have enclosed Exhibit 5 of the comprehensive permit application ⁽²⁾ and my home can be seen as the one with the 283' proximity to the proposed building.

The proposed building, is going to be one of the largest buildings in the Town of Wenham and it is going to be constructed amongst modest and quiet residential homes. I strongly urge you to consider these points and evaluate whether the density, size and/or height of the proposed building is appropriate for this site and surrounding environment.

- 2.) **WATER.** I have read the Ipswich River Watershed Association (IRWA) letter dated January 16, 2015 and the response letter from HCP dated January 26, 2015 which are posted on the Towns website. I would like to begin with stating that I am very concerned and agree with IRWA about the quantity of consumption of water this project is going to use and the possible damaging demand on the Ipswich River. I understand that HCP is partly agreeing with IRWA and proposing to offset 100% of its actual anticipated water use by potentially improving Town facilities and/or creating a water bank system. I would like to point out that the proposed offset should not include private residences because private owners could, at any time, replace those fixtures (back to less efficient ones) which would therefore negate the offset. I make this point because I do believe there was discussion about using private residences during previous ZBA meetings and it was mentioned in the IRWA letter as well.

I would also like to add that the offset mechanism selected, needs to be in place prior to the building being completed and opened for occupancy. The offsetting mechanism cannot be put in place after the fact, since the project could place damaging withdrawals on the Ipswich River while the system is being determined or implemented. I would suggest to the ZBA that whatever the proposed offsetting mechanism is, it should be determined now and be a condition to the comprehensive permit, if approved.

I recently requested from the Wenham Water Department their latest water usage statistics and was provided this information via email. I have enclosed these water usage statistics for your reference. I would like to specifically point out the total water usage numbers for the past five years and how the demand has gone up each and every year. Our yearly permitted usage (shown on the bottom left hand corner) is 142.35 million gallons and the town closed this year out at 133.699 million gallons. It seems that at the end of every year, we keep on encroaching closer and closer to our permitted usage and that is with required, restrictive water bans imposed during the summer months and without this large development currently seeking approval from the ZBA. I feel this further reinstates the need to have at least 100% of the projects water offset beforehand.

- 3.) **AGE RESTRICTION.** HCP has filed its permit with the age restriction of 55 and older. At numerous meetings it was unclear what the age restriction was going to be for this low income, **elderly** housing project. However, at a Board of Selectmen meeting on April 1, 2014, this project was presented to the board as a 62 and older development, as documented in the approved meeting minutes⁽³⁾. I believe the change has occurred due to how the project gets funded, however, I believe from what has been stated during the public hearing process from proponents of the project, is that these individuals feel this project should be for retired persons with local preference to Wenham residents. If you concur, and should you approve this permit, please consider restricting the age to 62 years and older. I would also ask that you consider this

February 23, 2015

Page 4

decision to be placed in perpetuity so that future use cannot be modified, should the property change ownership in the future.

In closing, this process has been very tiring, very stressful and ultimately very concerning to me and wife regarding the future of the property we invested in such a short time ago. We have been very disappointed with the response from residents of other parts of town which seem to simply not care that an enormous building is being proposed as close as 45' from our property lines. This building is going to tower over all the adjacent homes and properties. We hope that you can see that the proposed project is too large, too costly and too detrimental to the quiet neighborhood in which it is proposed. Please keep us, the residents of Maple Street as well as all the residents of Wenham, in your consideration throughout your decision making process.

Thank you for your time and consideration.

Sincerely,



Paul W. Berthiaume

Enclosure(s)

- Excerpts from "Handbook: Approach to Chapter 40B Design Reviews"
- Exhibit 5 of Comprehensive Permit Application
- Wenham Water Usage Statistics
- Wenham Board of Selectmen, Meeting of Tuesday, April 1, 2014, Approved Meeting Minutes

CC: Wenham Board of Selectmen
Daniel C. Hill, Esq.

References:

1. <http://www.mass.gov/hed/docs/dhcd/cd/handbook-ch40b/handbook-approachtoch40b-designreview.pdf>
2. http://www.wenhamma.gov/boards_and_committees/docs/Revised_Exhibits_1_3_4_and_5.pdf
3. http://www.wenhamma.gov/agendas_and_minutes/docs/WBOS_4_1_14_APPROVED.pdf

Excerpts from “Handbook:
Approach to Chapter 40B
Design Reviews”



Canton Village, Canton



Oxbow Road, Wayland

HANDBOOK: APPROACH TO CHAPTER 40B DESIGN REVIEWS



Chocksett Crossing, Sterling



Residences at Canal Bluffs, Bourne



Treehouse at Easthampton Meadow, Easthampton



Waverly Woods, Belmont

Prepared for:

Massachusetts Department of
Housing and Community Development

MassDevelopment

Mass Housing

Massachusetts Housing Partnership

Prepared by:

The Cecil Group, Inc.

January 2011

Section 1:

PURPOSE

The Chapter 40B Design Principles Handbook (Handbook) was created to provide information and guidance for the design review process undertaken by the agencies subsidizing c.40B affordable housing projects in Massachusetts. Design review is necessary when evaluating new c.40B housing developments for consistency with the requirements of the c.40B regulations in terms of use, site planning and building design.

The reason for creating this Handbook is that certain changes were recently made in the Chapter 40B program regarding review criteria for the siting and design of projects. These design elements are listed in the implementing regulations found at 760 CMR 56.04(4)(b) and (c). Using a list of criteria, the sections require findings:

“that the site of the proposed Project is generally appropriate for residential development” and, “that the conceptual project design is generally appropriate for the site on which it is located”

The c.40B Guidelines prepared by the Department of Housing and Community Development further define the reasons for this Handbook in the design review process for c.40B projects, specifically to:

“...draw attention to factors that are of particular importance when introducing a Project into existing surroundings, encourage a uniform perspective among Subsidizing Agencies, and to create a more transparent review process...”

This Handbook provides some suggestions for applying these program standards and goals in the early stages of the design process. The Handbook provides information for non-designers when making findings of conformance with the review criteria and requirements for the project proposals. The Handbook includes:

- A glossary (Section 2, pg. 3 and Attachment A, pg. 25) to describe and help clarify the terms and criteria included in the regulations and guidelines, and how the terms may be applied in the design review process;
- Typical submissions (Section 2, pg. 3) that convey a sufficient level of information for the reviews; and
- A recommended process (Section 3, pg. 5) for reviewing the design criteria of projects submitted for eligibility reviews, including recommendations on the content and form of the applications.

While this handbook is intended for the Subsidizing Agencies and the individuals who perform the design reviews under the regulations, the content will also inform Project proponents submitting Projects for Site Eligibility. However, this is only a recommended approach and each of the Subsidizing Agencies will determine their specific requirements for the design review. Those not involved in the design or review processes may use this information to understand the criteria that are considered by the Subsidizing Agencies in the review process.

The Handbook intentionally does not provide specific guidance on density, typically represented as units per acre, because the acceptable density of a given housing development is site- and context-specific. This Handbook instead suggests that the site and building design, not the numerical density, determines if a development is “generally appropriate for the site.” In some instances, a proposed development may contain more units than a site can reasonably accommodate. In those instances, the reviewing subsidizing agency may reject a proposed development that it determines to be inappropriate or make a determination that results in modifications of the project by the sponsor, including a reduction in size.

Section 2:

REQUIREMENTS FOR DESIGN REVIEW

Subsidizing Agencies, the primary audience for this Handbook, are responsible for determining Site Eligibility. Site Eligibility determinations are typically the first step for a c.40B Project and are completed with the issuance of a Project or Site Eligibility Letter. The Project or Site Eligibility Letter allows the Project to then be reviewed under a Comprehensive Permit process with the local zoning board of appeals.

A review of the project design is included in this step and is required to complete the Findings before determining Site Eligibility. Recommendations on the means to analyze a Project design that integrates the Project into the existing development patterns have been provided in the c.40B Regulations and Guidelines, as summarized below.

c.40B Regulations on Design Elements

The implementing regulations for the law are found in 760 CMR 56.00. Within section 56.04(4) of those regulations, entitled Findings in Determination, there are a number of terms to consider related to use and design. The relevant subsections read as follows:

“(b) that the site of the proposed Project is generally appropriate for residential development, taking into consideration information provided by the municipality or other parties regarding municipal actions previously taken to meet affordable housing needs, such as inclusionary zoning, multifamily districts adopted under M.G.L. c.40A, and overlay districts adopted under M.G.L. c.40R, (such finding, with supporting reasoning, to be set forth in reasonable detail);

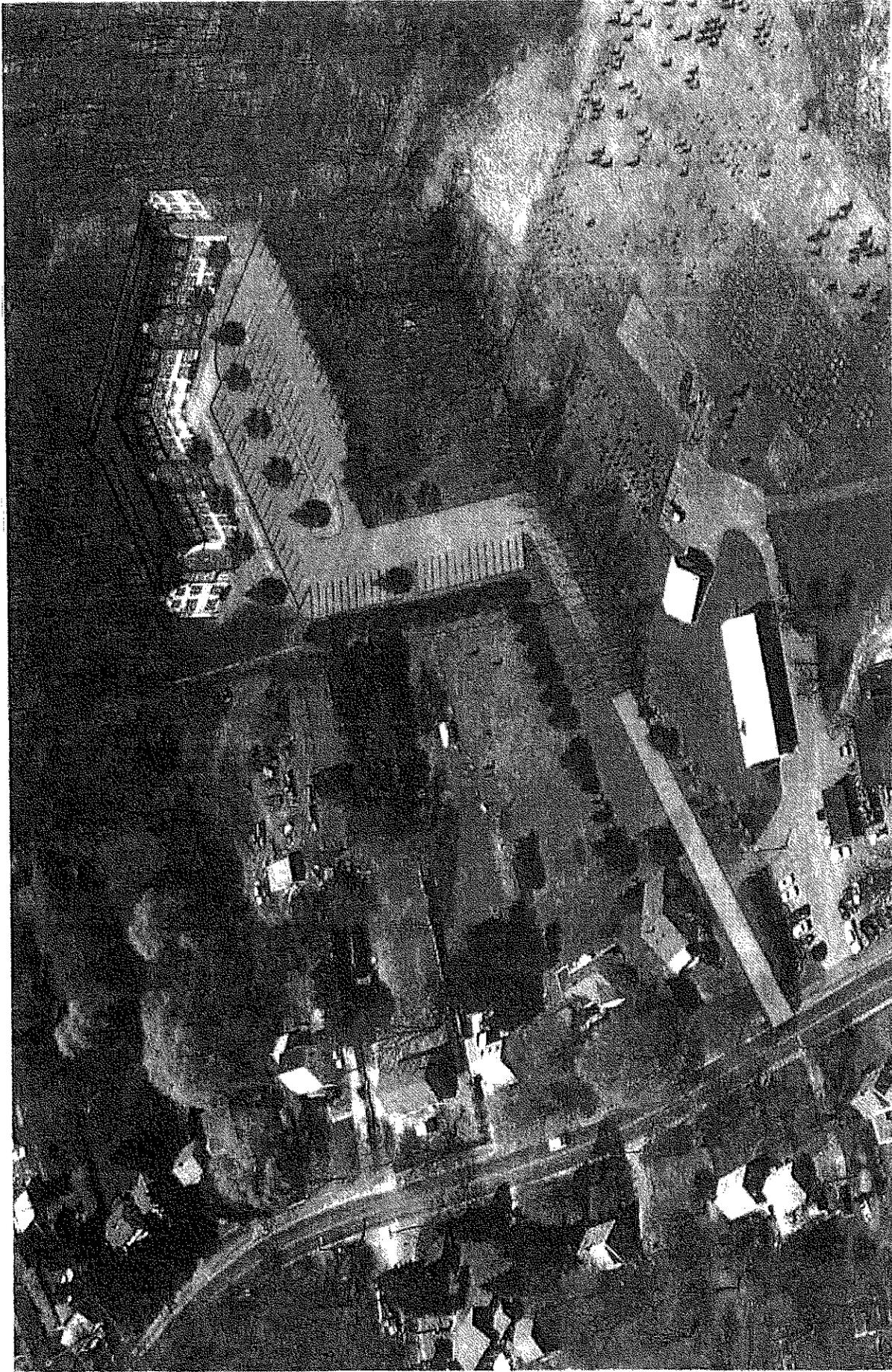
“(c) that the conceptual project design is generally appropriate for the site on which it is located, taking into consideration factors that may include proposed use, conceptual site plan and building massing, topography, environmental resources, and integration into existing development patterns (such finding, with supporting reasoning, to be set forth in reasonable detail);”

The regulations at subsection (b) frame the considerations for the choice of a site for the Project. Using this standard, the determination of consistency should be defined as a general allowance for residential development. The regulations at subsection (c) then consider the Project design which at this early stage is a ‘conceptual project design.’ The Project design elements considered here include the use (expected to be predominantly residential), the building in terms of massing, site conditions defined by topography and environmental resources, and the Project’s ‘integration into existing development patterns.’

The c.40B Guidelines that were drafted to meet the goals stated in the Introduction to this Handbook define the ‘context’ of a Project by elaborating on the relationships with adjacent buildings and streets, as described in the next sections.

**Exhibit 5 of Comprehensive
Permit Application**

EXHIBIT 5

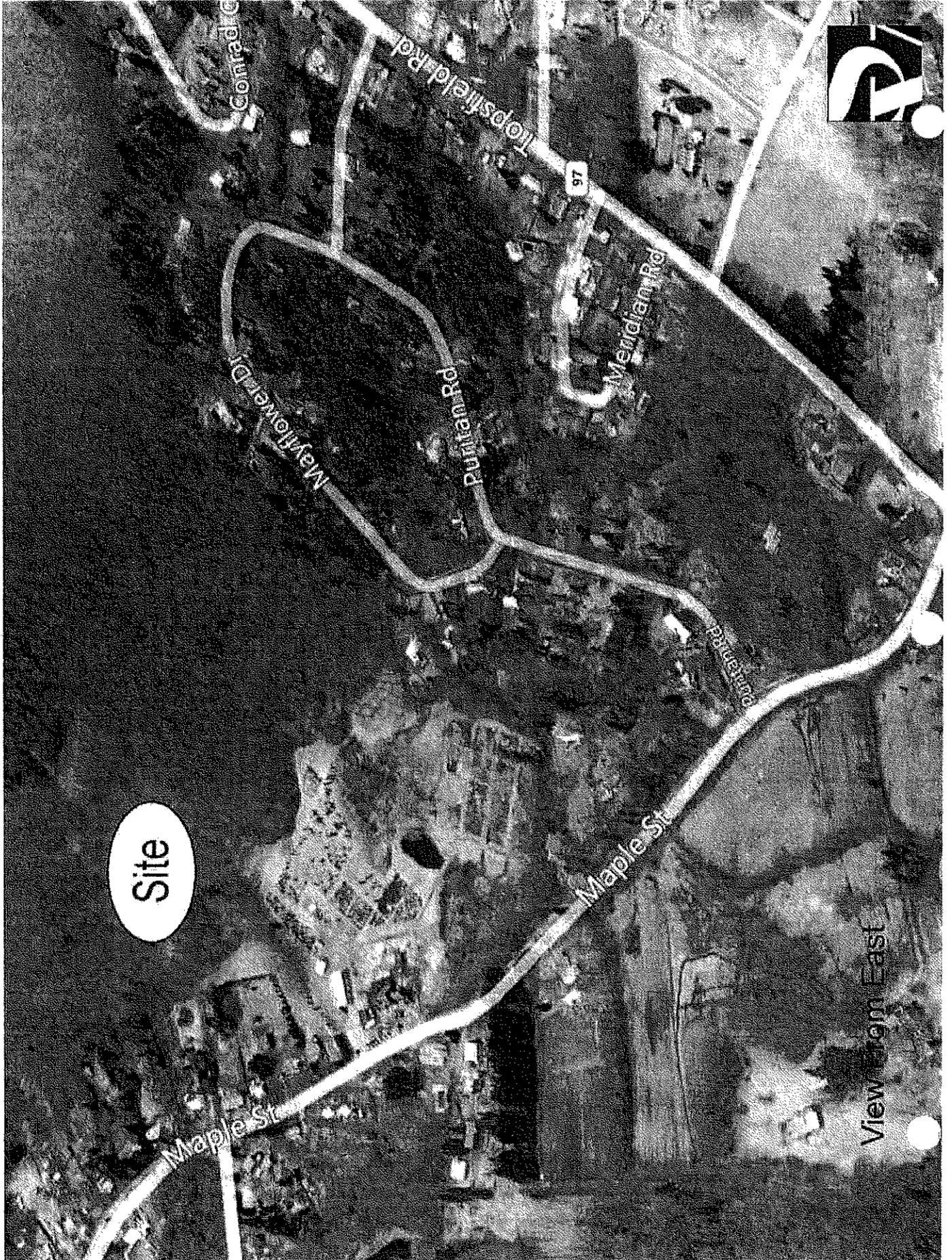


Siemasko + Verbridge

Maple Woods

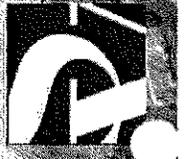
Harborlight Community Partners
16 March ~14

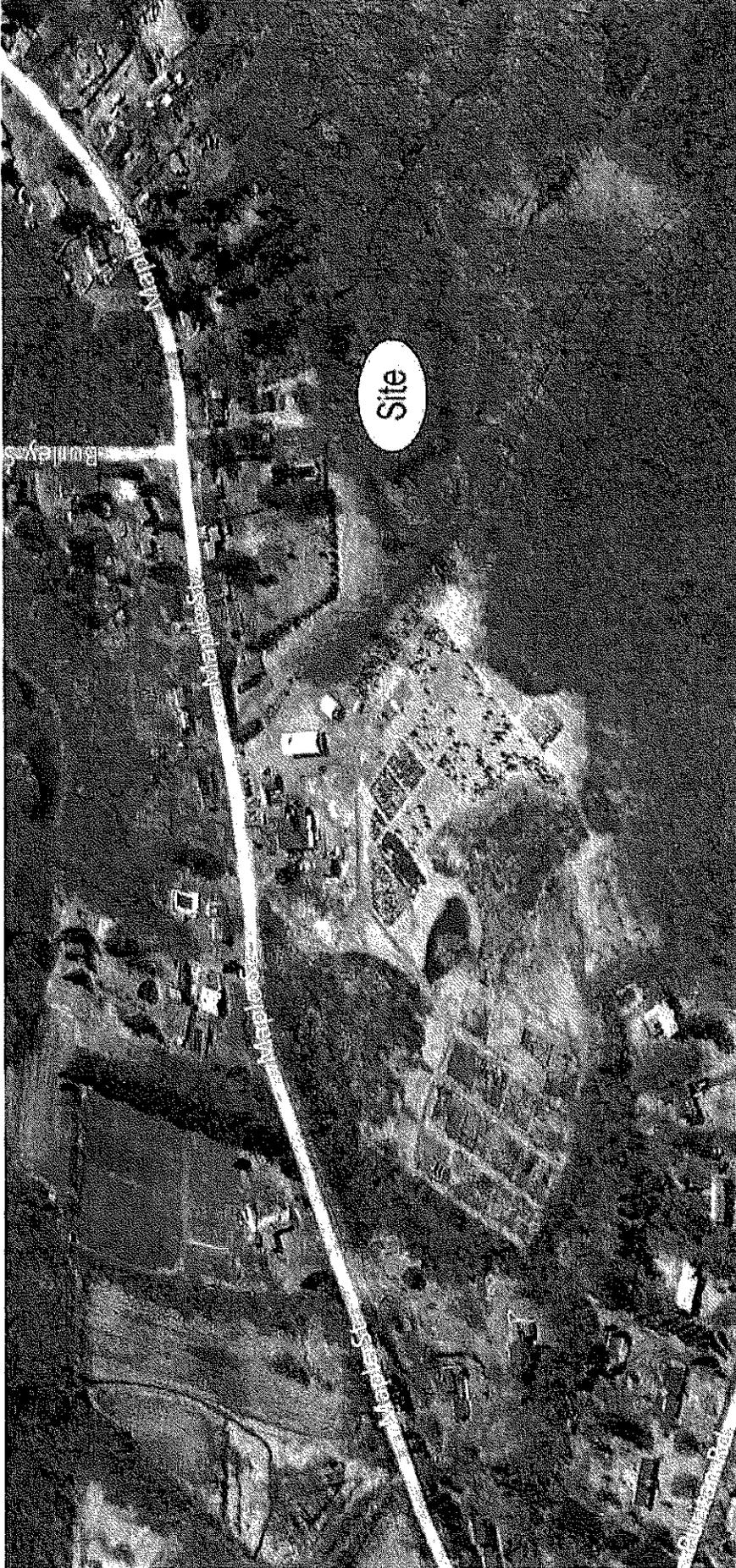
08.07.14



Site

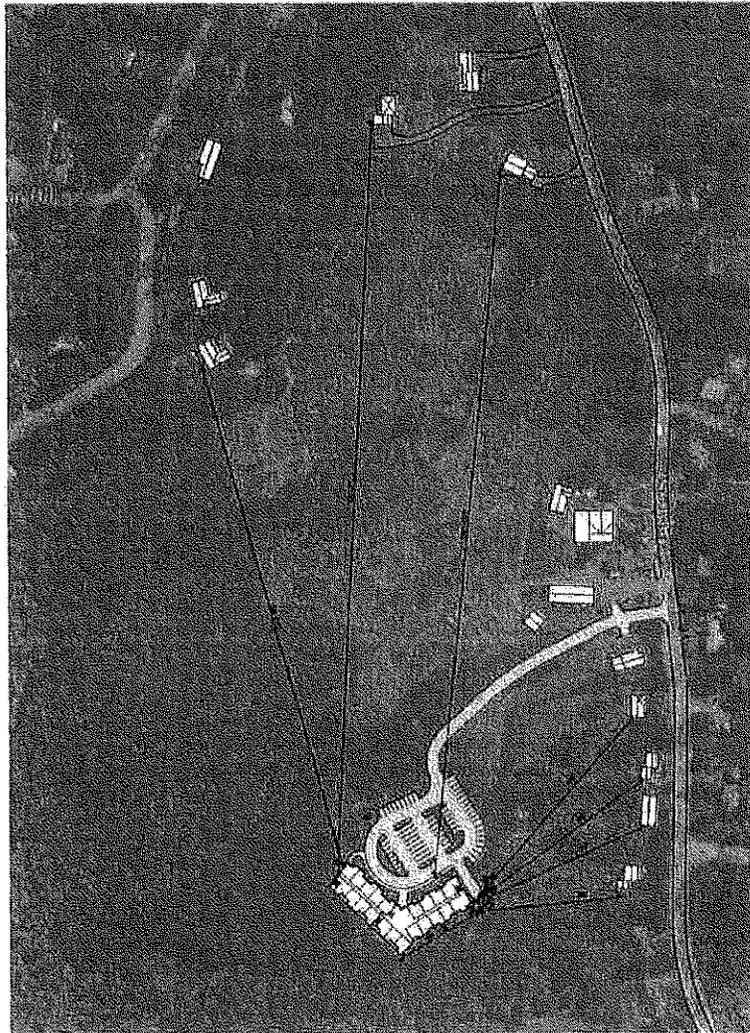
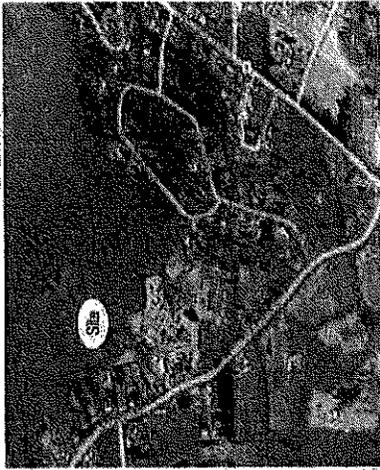
View From East





View From North





Wenham Water Usage Statistics

WENHAM WATER DEPARTMENT
WATER USAGE STATISTICS

2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2010's AVERAGE
7,358	7,756	8,998	10,777	10,349	9,215					JAN 9,076
6,003	6,817	8,472	9,552	8,574						FEB 7,884
7,120	7,507	9,710	10,801	10,448						MAR 9,117
7,057	7,587	10,577	10,769	10,071						APR 9,212
9,178	9,109	11,059	12,150	11,618						MAY 10,623
10,378	10,858	11,327	11,301	14,204						JUN 11,614
12,915	13,285	13,589	12,630	14,544						JUL 13,393
10,813	10,861	11,862	12,626	14,781						AUG 12,189
9,012	8,542	11,086	10,425	12,597						SEP 10,332
8,218	9,599	9,780	10,667	9,168						OCT 9,486
7,438	9,770	10,156	9,362	8,393						NOV 9,024
7,852	9,408	10,333	10,130	8,952						DEC 9,335
103,342	111,099	126,949	131,190	133,699	9,215	0	0	0	0	YEARLY TOTAL 61,549

Registration: .29 mgd
Permit: .10 mgd
TOTAL: .39 mgd (142,350,000)

ALL DATA IN 1,000 GALLONS

**Wenham Board of Selectmen
Meeting of
Tuesday, April 1, 2014
Approved Meeting Minutes**

APPROVED 5.6.2014

WENHAM BOARD OF SELECTMEN
Meeting of Tuesday, April 1, 2014
Town Hall, 138 Main Street

Pursuant to the Open Meeting Law, M.G.L. Chapter 30 A, §§ 18-25, written notice posted by the Town Clerk delivered to all Board members, a meeting of the Board of Selectmen was held on April 1, 2014 at 7 PM in the Selectmen Chambers.

WELCOME & OVERVIEW OF AGENDA

With a quorum present, Chairman Whittaker called the Board of Selectmen meeting to order at 7 PM
Selectmen Present: Ken Whittaker, Chair; Patrick Wilson, Vice Chair; Jack Wilhelm, Clerk
Also Present: Mark Andrews, Town Administrator; Catherine Tinsley, Minutes Secretary
This meeting was recorded, with permission, by HWCAM.

Abbreviations used
BOS Board of Selectmen
TA Town Administrator

Public Information
Agenda
Photos submitted by David Reid
Proclamation – L. Stephens/Boy Scouts
Reynolds Farm Lease
Maple Street
Town Administrator's Contract
Minutes: March 17, 2014

PUBLIC INPUT

David Reid, Topsfield Road was first to request to speak under public input but agreed to hold his comment to accommodate others with scheduling conflicts.

Town Counsel/ Moderator Paul Weaver addressed public comment regarding a group home on Route 97 saying they are essentially exempt under the Dover Amendment as an educational institution; there are no additional requirements e.g. permits, from the Town. He suggested the BOS provide the public with an update regarding group homes at the next meeting.

Planning Board Chair David Geikie stated he had another engagement and could not stay for the meeting to discuss the proposed Maple Street project. He spoke briefly saying this is a "friendly" 40b project. He gave an overview of MGL Chapter 40b saying once the Maple Street Plan is submitted, the Town can hold all subsequent comprehensive permit applications. He summarized that because Wenham currently has less than 10% affordable housing (currently 8.5 %) the Town must allow a proposed 40B development that provides 25% of the units as affordable housing. The Town has no say on 40b projects. Mr. Geikie stated that the Planning Board supports the Maple Street concept, noting phase one provides about 30 affordable units and therefore fills the affordable unit deficit of the town. He went on to say that even though this is a 40b project, the developer is willing to work with the Town. The process for this development is just beginning and meetings and public hearings will be scheduled.

David Reid returned to the podium. He provided printed photos of campaign signs for Patrick Wilson on Cedar Street property owned by the Hamilton Wenham Open Land Trust property, held under a 501 3c. He said while trying to contact the Trust regarding this matter, he found that the address for the Trust comes up as Selectman Whittaker's home address. He referenced the IRS laws stating that that "no Charitable Trust can campaign indirect or directly". Mr. Whittaker acknowledged that he is an Officer, Clerk, and Treasurer for the Trust and placed the signs there. He stated he was unaware of these campaign laws, and would remove the signs immediately following the meeting. Mr. Reid also noted that he has observed that some appointed officials in town are making public statements using their appointed title and this is prohibited by standard Massachusetts campaign guidelines.

He stated his concern that campaign guidelines are not being followed and respectfully requested that the laws be reviewed and followed.

PRESENTATIONS BY GUESTS ANNOUNCEMENTS

A Volunteer is needed as an alternate member of the Zoning Board of Appeals
The ATM is this Saturday, April 5, 2014 at 1 PM in the Bessie Buker School.
Town Election is held Thursday, April 10, 2014 in Town Hall.
Turn Off Your Digital Devices - Family Night at the Library April 7, 2014.

NEW BUSINESS

A. Presentation of Resolution

Mr. Wilhelm read a Proclamation in honor of Laurie Stephens who was a Bronze Medalist at the 2014 Paralympics Winter Games. Ms. Stephens was unable to attend and her parents John and Donna were present in her stead to accept the proclamation.

B. Recognition of the dedicated work of the Boy Scouts - to deliver 1300 copies of the Annual Town Report and Warrant Book. Mr. Wilhelm read a Proclamation in recognition to the Boy Scouts of Troop 28 for their assistance, dedication, and devotion to their duties.

C. Reynolds Farm Lease Endorsement

Conservation Commissioner Phil Colarusso and James Harrison, North Shore Director of The Food Project were present.

Mr. Colarusso summarized that every five years the lease for the Reynolds Farm is renewed through the RFP (Request for Proposal) process. Four responses were received this year. After careful consideration, the Conservations Commission accepted the bid by the non-profit group "The Food Project".

Mr. Harrison talked about The Food Project saying it has been active on the North Shore for ten years, encouraging youth development through the farming of fresh food. Teenagers from all over the North Shore participate. In addition, the Food Project has 31 acres in Beverly. On average, 250,000 pounds of produce is grown, much of which is sold locally at Farmer's Markets. It was noted that for long-term fertility of the land, the 15 acres on the west side of Larch Row would be used for cover crops this year. This will be beautiful with lots of flowers but will not be farmed this year to allow the land to rest.

D. Financial Policies was held for additional changes by the TA

F. Maple Street Affordable Housing

Josh Anderson, Chair of the Affordable Housing Trust, and Andrew D'Franza, Executive Director of Harborlight Partners, were present to talk about the proposed "40 b" project on Maple Street and answer questions. MGL Chapter 40 section b allows developers to build in towns that do not currently have a least ten percent affordable housing, and forgo the town's permitting regulations by providing affordable units within the development. Currently it is estimated that Wenham is 21 affordable housing units short of the ten percent required by the state to stave off 40 b developments. Although the proposed affordable housing project on (4 acres) of the Burnett's 50-acre property on Maple Street is only in the beginning stages, Mr. Whittaker introduced the subject as an information discussion. He summarized that the proposed project is supported by the Town to maximize affordable housing and stop other 40b projects. Because the developer is willing to work with the town, it is referred to as a friendly 40b project.

The Community Preservation Committee approved the use of CPA funds in the amount of \$950,000 towards the development of the Maple Street project. The BOS must authorize if the Trust can spend the money for this purpose. Mr. D'Franza gave a preliminary overview of the proposed project, noting the project has not been submitted and is only in the preliminary stage. The project is being planned in two phases for a total of 60 units. The units are one bedroom, 650 square feet, and age restricted to people 62 years and older. The project is 450 feet from the road and 265 feet from the nearest home. The estimated property tax paid to the Town was \$50,000-\$60,000.

The project must be presented to the Zoning Board of Appeals and all environmental laws must be followed.

Mr. Whittaker opened the meeting to the BOS and public for questions and comments. A very lengthy discussion followed.

Participating in the discussion was Timothy Mansfield of the ZBA. He reiterated that unless the town has 10 percent of the housing stock as affordable, the Town could not refuse a developer who is willing to provide affordable units as part of a project. He stressed the benefit to Wenham to work with Harborlight Partners, citing they are looking forward to working with the Town. Many public meetings and public hearings will be scheduled when the process begins officially.

G. HUD 2014 Home Allocations

Mr. Anderson recommended the BOS vote to accept the 2014 HUD Home Allocation.

Vote: Mr. Wilson moved, and it was seconded, to accept the HUD Home Allocations funds in the amount of \$4,003.00 for 2014 Federal Fiscal Year. The motion carried unanimously.

H. Town Administrator's Contract – Discussion and Vote

Chairman Whittaker reviewed that the BOS met in executive session with Mark Andrews on March 17, 2014 to discuss the terms of a contract to continue as Town Administrator.

Mr. Whittaker reviewed that Town Administrator's contract was similar to the previous contract.

- Term of the contract is for three years through June 30, 2017
- Salary of \$102,393 through June 30, 2014
- Two year mandatory two percent increase
- Selectmen option to increase the salary (2-3%) for exemplary performance
- Review at the end of each calendar year; December 31, 2016 review to include notice to retain or notice of non renew of contract (6 month notice)
- Provisions to cancel for cause
- Three weeks vacation with option to carry over 2 weeks; maximum vacation time per year is 5 weeks

Chairman Whittaker opened the meeting for comment from the BOS

Selectmen Wilson stated he is comfortable with the terms of the contract.

Selectman Wilhelm identified the comments he made in executive session saying that does not agree with the three-year length of the contract and supported a one year contract for the Town Administrator and that it be reviewed annually by the sitting Board of Selectmen. Mr. Wilhelm also expressed his concern that under "Duties and Responsibilities" of the contract, it appears Mr. Andrew's duties exceed the Town Administrator's ability to supervise departments heads of elected boards i.e. Board of Assessors. He referenced the hiring, firing, and training of "department heads" as stated may not be under the Town Administrator or the BOS purview. Lastly, Mr. Wilhelm disagreed that Mark Andrews as Town Administrator is tasked with providing overall management direction and policy implementation of all affairs of the Town of Wenham. He noted the other two Selectmen did not agree and his comments "did not prevail".

Chairman Whittaker added that a three-year contract is consistent with other town employee contracts.

Vote: Mr. Wilson moved, and Mr. Whittaker seconded, to approve the Memorandum of Agreement as between the Town of Wenham, represented by the Board of Selectmen and the Town Administrator, for the contract term to commence as of April 1 2014 through June 30, 2017 consistent with the terms of the contract presented at the meeting. Under discussion,

Chairman Whittaker refused the request for public comment on this matter.

The motion carried by majority vote with Mr. Wilhelm voting in the negative.

REPORTS

Mr. Andrews reported that the March 21, 2014 dedication ceremony on Cedar Street was well attended.

Senator Tarr informed Mr. Andrews that the Conference Committee has approved the State Transportation Bond Bill. If approved by the Governor, Wenham would receive \$550,000 for the Route 22 Essex Street culvert. Mr. Andrews passed along a recommendation that the BOS authorize the Chair to sign a letter to the Conference Committee urging for expeditious funding and release of the money.

Mr. Andrews provided the BOS with a chart of grant money the town is applying for and has received.

Area administrators are forming a regional association to meet quarterly for joint grant opportunities and projects.

Mr. Andrews and Selectman Wilhelm will review applications received for the Town Accountant and Finance Director. This will be on the agenda for the next meeting.

MINUTES - March 17, 2014

The Release of ES minutes are on the agenda for the April 15, 2014 meeting.

The March 17, 2014 minutes were held; no action was taken

AT&T will put a balloon or crane at the 150 ft height of the proposed cell tower on Monument Street April 5, 2014.

Comments can be submitted to the BOS. It was noted that the Town's Cell Tower bylaw is for preferred sites to be on town property.

Mr. Wilson moved, and it was seconded, to adjourn at 9:35 PM



TETRA TECH

February 23, 2015

Wenham Zoning Board of Appeals
Wenham Town Hall
138 Main Street
Wenham, MA 01938

Wenham Conservation Commission
Wenham Town Hall
138 Main Street
Wenham, MA 01938

**Re: Maple Woods - 62 Maple Street
Engineering Review
Wenham, Massachusetts**

Dear Members of the Zoning Board and Conservation Commission:

Tetra Tech (TT) has been retained by Hill Law and the neighbors and abutters to the above-referenced residential project, and is pleased to submit our review of documents related to the project, generally referred to as Maple Woods. The objective of our services was to review plans and supporting documentation provided by the applicant and other reviewers and provide initial comments on the completeness and general suitability of the design and the Project's potential impact to public health, safety and the environment.

1.0 Comments on Reliability/Completeness of Information

The following comments identify areas where information provided may not be sufficient to result in an adequately informed conclusion. Suitable and reliable foundational information is an absolute necessity in determining if the proposed project can be constructed and operated in a manner that meets applicable performance standards and expectations. Our comments are provided below.

1. No professional endorsement – None of the Plans or documents submitted include a stamp from a Professional Engineer or Land Surveyor licensed in the Commonwealth of Massachusetts. Without such endorsement it is impossible to establish the reliability of information provided. We recommend the applicant be required to provide appropriate professional endorsements on any plans submitted in support of the application.
2. Uncertain datum reference – Plans provided do not include an adequate datum reference. Note 8 on sheet 2 of 4 indicates “elevations are reported to be based on the American Vertical Datum of 1988”. Use of the term “reported to be” suggests a level of uncertainty in the information provided. Clear and reliable datum references are needed to compare vertical information across data sources. The ability to compare information on groundwater elevations from other sources is dependent on reliable datum reference. We recommend the applicant be required to provide any additional survey required to confirm the datum reference.

One Grant Street
Framingham, MA 01702
Tel 508.903.2000 Fax 508.903.2001



3. Reference to plans not included in the submission – Plans provided direct the reader to lighting and septic system plans not included in the submittal. Detailed septic system design information is required to determine if wastewater generated at the site can be safely discharged to groundwater. We also recommend the applicant be required to provide floor plans and calculations clearly establishing how project wastewater flows were calculated.
4. No soil or groundwater information provided for Septic System – Plans provided suggest several test pits and percolation tests were performed on the site in the area of the proposed septic system yet no test pit or percolation test logs have been provided. This information is critical in establishing if underlying soils and groundwater conditions are suitable to safely discharge wastewater generated from the project. Without test pit and percolation test data there is no way to determine if the size and elevation of the system as shown will meet design requirements of 310 CMR 15.00 (Title V). Given how close the proposed subsurface soil absorption system is to the proposed building and stormwater recharge system any required changes will likely impact the layout/location of other site improvements. Without reliable and complete test pit and percolation test information it is impossible to conclude that the measures provided are adequate. We recommend the applicant be required to provide detailed design of the proposed soil absorption system and document the foundational information used in the design (test pits and percolation tests) for both the primary and reserve disposal areas.
5. Incomplete groundwater information for stormwater recharge system - Information on several of the test pits shown was provided on Sheet 6 of the Notice of Intent submission, however the information provided is labelled as “Unofficial” and does not indicate seasonal high groundwater clearly. These test pits are critical in determining if adequate separation exists to groundwater (from the bottom of the stormwater infiltration system), if there is a potential for groundwater mounding to impact the adjacent wastewater soil absorption system and that adequate measures are proposed to mitigate for lost groundwater recharge due to the large amount of new impervious area. Without reliable and complete test pit and percolation test information it is impossible to conclude that the measures provided are adequate. We recommend the applicant be required to submit all test pit and percolation test logs and provide the appropriate certification of their completeness and reliability.

2.0 Comments on Potential Risks to Public Health or Safety

The following comments identify areas where significant questions remain related to potential risks to public health or safety. Most of our concerns relate to information needed to conclude if the Project can be constructed and operated without risk to public health or safety that has not been provided by the Applicant. Our comments related to potential risks to public health and safety presented by the Project are provided below.

6. It is unclear if adequate space has been provided to maneuver the emergency vehicle required to fight a fire at a building that exceeds 40 feet in some places. Through access is not provided for emergency vehicles around the perimeter of the apartment building, and no

turnaround is provided. These issues clearly represent a risk to public health and safety. We recommend the applicant be required to provide plans showing maneuvering aisles needed to accommodate an emergency vehicle suitable to fight a fire at a wood structure of the height proposed.

7. No information has been provided supporting the suitability of the proposed wastewater disposal system. Given the constrained location of the soil absorption system and its proximity to the proposed stormwater recharge system a significant potential exists for the discharge of under-treated wastewater which could pose a risk to the health of residents and nearby public water supplies. We recommend that applicant be required to provide design plans and supporting data proving the ability to satisfy state and local system design criteria.
8. The Project is only providing a single means of access/egress. The potential exists for the single access to be blocked limiting the ability of first responders to access the site. We recommend the applicant be required to provide secondary means of accessing the site.
9. No area has been designated for snow storage. Given the proposed density of development and the proximity of the proposed property lines to buildings and other site improvements there is little room provided for the storage/disposal of snow significantly increasing the likelihood that emergency access and general safe site circulation could be impaired by piled snow. This is a particular concern for the area around the building which barely has enough room for fire access (see comment 5). We recommend the applicant be required to designate a snow storage area and demonstrate the suitability of the area provided.

3.0 General Comments

The following comments identify areas where we have general comments on project design. Most of our concerns relate to proposed property line and its proximity to proposed improvements leaving little or no room for adequate maintenance or modification of the site to address potential future issues that are unforeseen at the time of review.

10. It is unclear as to how or why the applicant intends to use the Waterloo Biofilter Secondary Treatment System referenced in the letter from C.G. Johnson Engineering, Inc.. However, it is important to note that this system has Provisional Use Approval only and, as indicated in its approval letter from MassDEP, the approval has been granted to “determine if the Technology is capable of consistently meeting the concentration limits for total nitrogen (TN) of 25 milligrams per liter”. We recommend the applicant be required to provide specific details of how the Waterloo components will be used in the proposed wastewater disposal system in addition to the detailed wastewater disposal design information discussed in earlier comments.
11. The limits of development extend beyond the primary parcel property line. We recommend the applicant confirm required control of all of the land required for the development of the project and that the affected subject parcels have been adequately referenced in any public



notice requirement or other application submittal requirement. Certification should be provided indicating that compliance with existing zoning is maintained for any impacted lots (abutting the project site).

12. The proposed stormwater recharge system is located within 2 feet of the proposed property line leaving little or no room to repair or maintain system without accessing the adjacent property or allowing any room in the event that changes in either the wastewater disposal system or groundwater recharges system cause a modification in the horizontal extent of the system.
13. Parking is proposed at one space per unit which is significantly lower than we would expect for an "over 55" age restricted facility. Given the facility is not within reasonable walking distance from public transportation and has few on-site amenities, at a minimum each household would be expected to have one car. This leaves no room for visitors, building staff/workers, or additional vehicles. We recommend the applicant be required to provide additional spaces and a justification for the proposed amount. Typically projects of this type will provide 1.5 spaces per unit to accommodate the range of uses expected at the site.
14. Given the volume of water being introduced in a relatively constrained footprint a significant risk exists for ground water mounding that may impact the performance of absorption systems (stormwater and wastewater). We recommend the applicant provide a mounding analysis as part of the wastewater soil absorption system and stormwater recharge system design to verify required separation from mounded groundwater is provided.

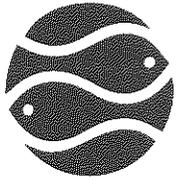
We appreciate the opportunity to provide these services and look forward to continuing to work with you. Please contact us if you have any questions or require additional information.

Very truly yours,

A handwritten signature in black ink, appearing to read 'S. P. Reardon', written over a horizontal line.

Sean P. Reardon, P.E.
Vice President

Cc: Daniel C. Hill



IPSWICH RIVER
WATERSHED
ASSOCIATION

The Voice of the River

P.O. Box 576
Ipswich, MA 01938

January 16, 2015

Emilie Cademartori
Zoning Board of Appeals
Conservation Commission
Town Hall
Wenham MA 01984

Re: Maple Woods Project

Dear Ms. Cademartori,

Thank you for the opportunity to comment on the proposed Maple Woods Project currently before the Wenham Zoning Board of Appeals and Conservation Commission. As you are aware, we have been following this project since its inception, attended public meetings and met with the developer on several occasions. Before offering specific comments on the project, I would like to provide some background relative to the extreme environmental sensitivity of the site and our position on requests for additional water in flow impaired sub basins within the Ipswich River Watershed.

The Ipswich River is the most flow-depleted river in Massachusetts due to excessive water withdrawals (ground and surface) and other impacts to the natural water balance in the watershed (wastewater and drinking water exports, impervious surfaces, etc.). In addition, the Ipswich River is the lifeblood of the North Shore providing drinking water to 330,000 people every day and supports significant ecological resources. Thus, protecting its water quality is equally critical. It is therefore the position of the Ipswich River Watershed Association that every new development or redevelopment project does not increase water use/export or negatively impact water quality *in any amount* and ideally, such projects will contribute to improving current conditions.

As you are aware, the project site is adjacent to a stream and associated wetlands which flow into the Ipswich River and is in close proximity to several public drinking water withdrawal locations including wells in the Towns of Wenham, Hamilton and Topsfield, as well as the main intake for the Salem-Beverly reservoir system. In addition, the site is located on a sand and gravel deposit which contains a large groundwater aquifer which connects to these drinking water sources, as well as provides critical base flow to the River during dry periods. In locations such as this, it is particularly important to limit discharges of nitrogen, pharmaceuticals, personal care products, household chemicals, lawn care chemicals, hydrocarbons, salt (deicers) and other contaminants; all of which could be produced by the proposed development. With this backdrop, we have reviewed the application and associated documents and offer the following specific comments.

Water Quantity

- The project at a minimum should offset 100% of its water use through minimization of its use (e.g. ultra efficient fixtures and use of rainwater for toilet flushing) and work with the town and private parties to mitigate the remainder off-site (e.g. through tools such as a water bank).
- Ideally, the project will offset its water use by much better than 100% and approach a ratio of 2 gallons saved for every gallon used which is the common threshold for most water banks.
- The project will minimize its production of stormwater through site design (e.g. minimization of impervious areas) and infiltrate 100% of its stormwater runoff.
- Landscapes should be planted with drought tolerant native species which do not require irrigation (beyond the establishment phase) and irrigation systems should not be used.
- The amount of lawn should be minimized and where required, planted with drought tolerant turf grasses such as fescues.

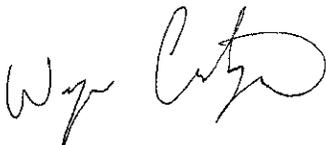
Water Quality

- The project will adequately treat 100% of its runoff.
- Landscapes should be managed organically without the use of synthetic fertilizers or pesticides.
- Non-pervious surfaces should be minimized and use of salt and chemical deicers should be minimized in favor of sand and environmentally safe deicers.
- Development within the wetlands buffer zone should be minimized and if encroached upon, replaced at a minimum 1:1.5 ratio elsewhere on the property.
- There should be a proactive and ongoing educational effort and systems put in place for residents to divert all hazardous materials from the waste stream with a focus on household cleaners and pharmaceuticals.
- The wastewater treatment system should be the most advanced possible and be designed to remove nutrients and treat pharmaceuticals and hazardous household waste to the extent possible.
- A third party should be contracted with to maintain the stormwater and wastewater treatment systems in perpetuity (it is a virtual guarantee that these systems will fail in the future if managed by the owners).

While some of these measures exceed minimum regulatory requirements, they are readily achievable using modern Low Impact Development Standards and should be required in environmentally sensitive areas such as this. The Ipswich River Watershed Association can advise the developer and/or community on the implementation of these measures and stand ready to assist you in any way to achieve these protections.

Please incorporate these comments into the public record of the hearing on this matter, and please contact me if you have any questions about these comments. Thank you for your consideration.

Sincerely,



Wayne Castonguay
Executive Director



January 28, 2015

**BY ELECTRONIC MAIL: ecademartori@wenhamma.gov
AND BY HAND**

Wenham Zoning Board of Appeals
Wenham Town Hall
138 Main Street
Wenham, Ma 01938

Re: Maple Woods Chapter 40B Application

Dear Members of the Zoning Board:

As you know, this firm represents several neighbors and abutters to the proposed 60-unit housing project on 3.5 acres at 62 Maple Street in Wenham. On January 9, 2015, we provided comment on the Project's compliance with the state stormwater management standards and the local Water Resource Protection Bylaw. We raised several areas of concern that, to our knowledge, have not yet been addressed. At the Board's public hearing on January 14, 2015, we provided comments on the Applicant's traffic study and the peer review of the study by Weston and Sampson, including what we believe to be a material sight distance misrepresentation made by the Applicant. The Board asked the Applicant and Weston and Sampson to address our concern, but to our knowledge, this has not yet happened. Today, we are providing comment on the peer review letter submitted last Thursday (January 22, 2015) by Horsley Witten Group, concerning the Applicant's requested waivers from local bylaws and regulations. In our opinion, the peer review of this very important element of the comprehensive permit application is inadequate, and more information should be gathered by the Board in order to make a reasonably educated decision on these waivers.

First, as a preliminary matter, the peer review letter refers to a plan set dated November 6, 2014, containing six (6) plan sheets. The plan set that has been posted to the Town's website, however, only contains four sheets. We raised this issue at the last Conservation Commission hearing on January 12, 2015, because the Applicant has represented that critical soil data and test pit log information is contained on "sheet 6," which has been unavailable for public inspection. Until we have an opportunity to review the test pit logs, which we assume will include information on actual soil types and depths to groundwater, we cannot adequately review the Applicant's stormwater management plans and calculations. We respectfully request that this and all Project-related information be made available for public review, either on the Town's website, or in a file that the public can access and photocopy during business hours.

1. The Applicant's Waiver Requests

Horsley Witten summarizes the requested waivers, but offers no opinions on whether it would be advisable to waive the bylaws and regulations, or whether additional information would be desirable in order for the Board to weigh the merits of the waivers against any impacts

to public health or safety. This analysis goes to the Board's ultimate role in the Chapter 40B process – to weigh the need for low or moderate income housing against “local concerns.” The denial of waivers will be upheld on appeal if the denial is based on a critical public health, safety or environmental concern that outweighs the need for housing, or if the developer cannot prove that the denial of the waivers in the aggregate render the project “uneconomic.”

For example, under Section 10.1 of the Zoning Bylaw, concerning grading and earth removal, Horsley Witten recites the waiver request, and makes some observations about cuts and fills on the Project Site. However, there is no discussion of whether the Applicant would meet the performance standard under Section 10.1.3.1. Specifically, that section provides:

The applicant shall make written application and shall show to the satisfaction of the Planning Board that such alteration of the site for which the application is made will not alter any significant topographical feature and will not cause a nuisance, noise, vibration, dust, smoke, gas fumes, odor, or other objectionable features; will not be hazardous because of fire or explosion or other reason; will not adversely affect the economic status of the District or the Town; will not be injurious or dangerous to the public health and welfare of the District or town; and will not result in a change in topography and cover which will be disadvantageous to the appropriate re-use of the land as permitted by this zoning By-Law.

In considering whether to “waive” this earth removal bylaw, or issue the special permit required under the Bylaw as part of the “comprehensive permit,” the Board should be curious as to whether this Project conforms to this performance standard or not. We have no opinion as to whether it does or not, but are concerned that this waiver request, among others, are not being fully vetted.

Similarly, the Applicant has requested a blanket waiver from the Town's Water Resource Protection Bylaw regulations, ordinarily administered by the Conservation Commission. Horsley Witten commented that it had reviewed the stormwater management system in a previous comment letter, but failed to note that its review is not yet complete, because it had requested confirmation of soil type and additional test pits. We would have expected this detail to be noted. Further, Horsley Witten did not offer any opinion as to whether the Project complies with the performance standards under the Bylaw and Regulations. As we noted in our previous letter, the Water Resource Protection Regulations regulate the siting of septic systems, but contain a presumption that a septic system constructed more than 100 feet from a wetland resource area “protects the interests of the Bylaw” provided that the system fully complies with Title 5 of the State Environmental Code and any Board of Health requirements. §10.03(2). We recommended that the Commission and the Board evaluate whether the proposed septic system is Title 5-compliant, because if it isn't, the Applicant would need to demonstrate that there will be no adverse effects from the proposed project on water quality (§10.52) or impair ground or surface water quality (§10.53). This is not a trivial matter, as the Project will be designed to discharge 6600 gallons of wastewater per day into the groundwater below the Site, which is presumably hydraulically connected to the wetlands and streams that are tributary to the Ipswich River. The Applicant continues to insist that the Board lacks the authority to evaluate the

proposed septic plans, which is incorrect as long as the Applicant is seeking a waiver from these Regulations.

We were surprised to see no discussion on the extent to which this Project conforms to the Town's Senior Housing Overlay District Bylaw, and the Independent Living Overlay District Bylaw. Both sections of the Zoning Bylaw would appear to allow precisely the kind of housing that is being proposed here, yet neither the Applicant nor Horsley Witten has referenced these bylaws. The bylaws contain performance standards, such as minimum lot sizes and buffers, that were presumably carefully developed in order to encourage this type of housing while also protecting the Town's rational planning interests. For example, the Senior Housing bylaw requires compliance with the Planning Board's subdivision rules and regulations, even if a subdivision is not technically proposed. We think this makes a lot of sense, since the subdivision regulations contain a number of minimum design standards, such as roadway/driveway construction specifications, that would serve to protect the interests of the future residents of the Project as well as public safety personnel who will inevitably be travelling on the 600-foot driveway from Maple Street to the proposed apartment building. While a waiver from these bylaws may not technically be required under Chapter 40B, we think it would be appropriate for the Board to consider the extent to which the Project would deviate from these bylaws' minimum requirements.

Finally, we were surprised to see little if any discussion on the technical aspects of the Project's infrastructure, such as the driveway's specifications and utility conduits. For example, the Applicant is proposing an 18-foot fire lane around the perimeter of the proposed building, as required by Article X of your General Bylaws, yet there are no details on the plan showing what materials the fire lane will be constructed with, what curbing will be used, how drainage from the fire lanes will be managed, or how snow will be removed from the fire lanes. In our experience, peer review can play an important role in the Chapter 40B process by not just reviewing requested waivers, but also by reviewing all of the technical aspects of the proposal and considering whether they comply with bylaws and regulations that are not being waived. We would respectfully request that the Board engage in a more robust review of these details, and not capitulate to the Applicant's pleas to side-step this review.

Very truly yours,


Daniel C. Hill

Enc.

cc: Ted Regnante, Esq.
Wenham Board of Selectmen
Clients



January 9, 2015

**BY ELECTRONIC MAIL: ecademartori@wenhamma.gov
AND BY FIRST CLASS MAIL**

Wenham Zoning Board of Appeals
Wenham Town Hall
138 Main Street
Wenham, MA 01938

Wenham Conservation Commission
Wenham Town Hall
138 Main Street
Wenham, MA 01938

Re: Maple Woods Chapter 40B Application

Dear Members of the Zoning Board and Conservation Commission:

This firm represents a group of neighbors and abutters to the above-referenced project.¹ I have had the opportunity to review the recent peer review report from the Horsley Witten Group (stormwater management) and would like to share some initial comments and observations. I also would like to respond to Attorney Regnante's letter to the Board dated December 1, 2014.

1. Horsley Witten Letter

The Horsley Witten ("HW") letter dated January 5, 2014 focused exclusively on the Project's stormwater management system. While this is a very important design element of the Project, it is not the only design element that should be vetted by peer review during this comprehensive permitting process. I am assuming that another peer review report, whether from Horsley Witten or another firm, concerning the other design elements of the Project (such as the construction of the building, driveways, utilities, and the wastewater management system) is forthcoming, but I was not able to confirm that with your Planning Coordinator before the filing of this letter.

^{1/} My clients are: Paul and Erin Berthiaume, 78 Maple St; Deborah and Steven Stanton, 86 Maple St.; Nancy and Dan O'Connell, 63 Maple St.; Vivian and Jim Sears, 1 Burley St.; Bill Busby and Vin Lee Young, 40 Maple St.; Lou and Lisa Terranova, 38 Maple St.; Donald and Peggy Duffy, 94 Maple St.; Millie Bromley, 10 Maple St.; Sandra Roman, 55 Maple St.; Lenny Tipert, 47 Maple St.; Andrew and Tom Verrington, 102 Maple St.; Ken Hollingsworth, 53 Maple St.; Catherine and Rob Marks, 115 Maple St.; Anne and Gareth Evans, 100 Maple St.; Kevin Coughlin, 36 Maple St.; Dacia and Jeff Rubel, 12 Puritan Rd.; Julie Preston, 4 Meridian Rd.; Iris Miller, Meridian Rd.; and Marty Cooke, 4 Puritan Rd.

According to the HW letter, there is a material discrepancy in the design infiltration rate used in the Applicant's stormwater modeling (8.27 inches/hour) versus the infiltration rate typically associated with the type of soil discovered by the Applicant's soil testing (2.41 inches/hour). It is common for developers to field test the permeability of soils on the project site, but apparently that was not done here, or if it was HW did not have the data. This discrepancy could have a material effect on the sizing of the stormwater infiltration basin required for the Project, and given the small area of the Project Site (3.48 acres), there is not a lot of room for error.

Related to this, HW is recommending additional test pits in the location of the single, subsurface infiltration basin. The basin is partially located under the proposed driveway, and has an outlet to direct stormwater into the wetland on an abutting parcel of land. It appears that only one test pit was dug in the location of this basin. We didn't see the soil and groundwater logs attached to the stormwater report that is currently posted on the Town's website. We would respectfully request that the Board or Commission either post this information on its website, or make it available for public inspection.

HW recommended on page 5 of its letter that infiltration basin profile detail be verified for consistency with the minimum depth to groundwater. By this we assume the author meant that the design of basin should be reviewed to ensure compliance with the required separation between the bottom of the basin and seasonal high groundwater. This is a fundamental and critical design issue for all infiltration systems, and we would like clarification that either this was reviewed, or will be reviewed, during this public hearing. We would also like to see the data collected by the Applicant estimating the seasonal high groundwater in this location.

On page 4 of its letter, HW concludes that Stormwater Standard #6, pertaining to stormwater discharges in Zone II protective areas for public water supplies, is not applicable. The Applicant's stormwater report makes the same assertion, based on a Zone II map that it produced in its report. The Zone II map, however, appears to be a map delineating the Zone II for wells located in Hamilton, and not for other wells in the area, including those off of Sleepy Hollow Road in Topsfield. As I mentioned in my letter to you of November 19, 2014, according to MassGIS maps, the Zone II for those Topsfield wells extends onto the Project Site. The Applicant's attorney, Ted Regnante, challenged this in a letter dated December 1, 2014, again relying on the same Zone II map for the Hamilton wells. That map has a legend at the bottom, which clearly indicates that the map is for the Pinetree Drive wellfield in Hamilton. The legend on the map specifically refers to Department of Environmental Protection ("DEP") identifiers PWS ("public water supply") 3119001 - 04G, 05G, and 06G, which are the Pinetree Drive wells. The map does not reference the two Sleepy Hollow wells, that are identified by DEP as PWS 3298002 - 01G and 02G. For the Board's information, attached to this letter are excerpts of the MassGIS maps, showing the locations of the Sleepy Hollow wells, and the Pinetree Drive wells, with their DEP PWS identifiers. I have requested confirmation from the Topsfield Water Department of the accuracy of the Zone II delineation that appears on the MassGIS. If the delineation is accurate, the Applicant will have to conform to Standard #6.

The presence of the Project Site in a Zone II also triggers the Town's Aquifer Protection Overlay District bylaw (Section 12).² That Bylaw appears to have been adopted pursuant to the state public water supply regulations, 310 CMR 22.00, et seq., which require, among other things, towns to adopt zoning controls over the use of land within a Zone II of a public water supply. 310 CMR 22.21. That regulation requires local bylaws to prohibit in Zone IIs "land uses that result in the rendering impervious any lot or parcel more than 15% or 2500 square feet, whichever is greater, unless a system for artificial recharge of precipitation is provided that will not result in the degradation of groundwater quality." The Bylaw seems to prohibit any uses that render impervious more than 20% of any lot. See, §12.1.6. Here, according to the Chapter 40B Application, Exh. 4, 49.4% of the Project Site will be rendered impervious, greatly exceeding the 15% or 20% standard. The Applicant has not requested a waiver from the APOD Bylaw, and therefore we will expect that the Board will want to have its peer review consultant evaluate whether the Project actually complies with the Bylaw.

2. Water Resource Protection Bylaw and Regulations

The Applicant has requested a blanket waiver from the Town's Water Resource Protection Bylaw and its associated Regulations. There should be no dispute that the Project Site is within jurisdictional areas governed by the Bylaw. Importantly, the Regulations regulate the siting of septic systems, but contain a presumption that a septic system constructed more than 100 feet from a wetland resource area "protects the interests of the Bylaw" provided that the system fully complies with Title 5 of the State Environmental Code and any Board of Health requirements. §10.03(2). Otherwise, the applicant will have to demonstrate that there will be no adverse effects from the proposed project on water quality (§10.52) or impair ground or surface water quality (§10.53). Thus, in the ordinary course it is critical for the Conservation Commission, which has primary jurisdiction under the Bylaw, to determine first whether a project's septic system is fully compliant with Title 5. Since the Applicant has requested a waiver from this section, that burden falls to the Zoning Board.³

The Applicant has offered no evidence that this proposed 6600 gallon per day septic system will conform to Title 5, and there is reasonable grounds for concern that it won't. As noted above, the Project Site is presumed to be in a Zone II. Septic systems in a Zone II must

^{2/} The Project Site is not within the delineated APOD on the Town's Zoning Map. However, the purpose of the Bylaw is to protect existing groundwater and public water supplies (§12.1.1), and the intent of the Bylaw appears to implement the requirements of 310 CMR 22.21. Further, under the terms of the Bylaw, the delineation of the APOD on the Zoning Map is not dispositive - the boundaries of the APOD are to be determined by the Zoning Board in the event of a dispute, "to determine more accurately the location and extent of an aquifer or recharge area, or a Watershed."

^{3/} Attorney Regnante states on page 3 of his letter of Dec. 1, 2014 that no peer review of the Project's wastewater management system would be appropriate, because the system will comply with Title 5, and no waivers from any septic requirements are being sought. However, by the Applicant requesting a waiver from the Water Protection Bylaw, the Board is entitled to review whether the 6660 gpd septic system will "impair water quality" or have any adverse effects on the nearby wetlands, groundwater, or streams.

not discharge more than 440 gallons per day, per acre. 310 CMR 15.214. An “acre” under Title 5 is 40,000 square feet. 310 CMR 15.002. The Project Site contains 3.79 “Title 5 acres” and therefore can accommodate a maximum discharge of 1,667 gallons per day (3.79 x 440). This is significantly less than 6600 gallons per day, which Attorney Regnante stated would be the Title 5 design flow for the proposed system. Title 5 allows alternative technology septic systems to discharge more than 440 gallons per day if they can remove nitrogen from the wastewater before it is discharged. An applicant could also acquire a restrictive easement on adjacent land to comply with this requirement. However, we are not aware of any such proposals being offered by the Applicant.

The presence of the septic system in a Zone II also mandates a mass balance analysis, and justifies a full hydrogeologic study under Title 5. Under DEP’s nitrogen loading guidelines, a project must meet a performance standard of 10 mg/l of nitrogen at property boundaries and “sensitive receptors,” including tributaries to public water supplies. The size of the system being greater than 2,000 gallons per day requires the Applicant to perform a mounding analysis, to determine the effect of the system on groundwater levels. This is particularly important where, as here, a large septic system would recharge wastewater adjacent to a stormwater infiltration system – the combination of which will likely cause groundwater levels to rise, which may require both systems to be elevated so that there is sufficient clearance between the bottom of the systems and seasonal high groundwater. Thus, it is imperative that the design of the wastewater and stormwater infiltration systems be thoroughly evaluated to ensure that there will be no unintentional adverse effects on the groundwater that is hydraulically connected to Burley Brook and the wetlands that part of the Great Swamp of the Ipswich River watershed.

3. Regnante Letter Dated December 1, 2014

The Applicant’s attorney responded to my initial letter to the Zoning Board on December 1, 2014, challenging a number of my legal and factual assertions. First, Attorney Regnante’s quarrel with my description of the applicable standard of review under Chapter 40B is hair splitting. We both agree that the developer bears the ultimate burden in an appeal from a conditional approval to establish that the conditions imposed by the zoning board (or denial of waivers) render the project uneconomic. The purpose of this test is to place limits on the degree to which a project veers off from a municipality’s rationally-conceived local bylaws and regulations. The developer is only entitled to waivers to the extent necessary to make a project economic.

Next, Mr. Regnante seems to downplay the uniquely sensitive environment in which his client is proposing to parachute in 60 units of housing on just 3.5 acres. His attempts to correct the factual record are unavailing, and any member of the Board can do what I did – go to the MassGIS website, punch in the property address, and add the relevant data layers – to see that the Project Site is indeed within the mapped Zone II wellhead protection area for the Topsfield Sleepy Hollow Wells. As discussed above, Mr. Regnante attached a copy of what he described as the “Hamilton/Wenham Zone II Map,” which, according to its legend, is actually the Zone II map for three wells located in the Town of Hamilton, identified by the state Department of

Environmental Protection (“DEP”) as PWS (“public water supply”) 3119001 – 04G, 05G, and 06G. This map does not reference the two Sleepy Hollow wells, that are identified by DEP as PWS 3298002 – 01G and 02G. I have requested confirmation from the Topsfield Water Department of the accuracy of the Zone II delineation that appears on the MassGIS.

Further, I was not “incorrect” in stating that there is a mapped Priority Habitat of rare species under the state Endangered Species Act just east of the Putnamville Reservoir. The Habitat is approximately ½ mile west of the Project Site. I did not claim otherwise. For clarification, attached to this letter is the MassGIS map clearly showing the location of this habitat area. Further, I did not state that the Ipswich River Wildlife Refuge “surrounds” the Project Site. What I said was that there is a large and uniquely sensitive wetland system surrounding the site, which included the wildlife refuge.

The Applicant seems to be in denial that the Project presents a real and unique threat to these “sensitive receptors,” which must be carefully evaluated as part of this comprehensive permit approval process given the waivers that are being sought.

With respect to the design flow of the Project’s septic system, our original assumption on design flow was incorrect. However, the discharge of 6600 gallons of wastewater per day is still a significant ecological change from existing conditions, the impact of which on the groundwater and the Ipswich River watershed should be analyzed. We stand by our comment that a hydrogeological analysis should be undertaken to fully characterize the threat of contamination from this Project’s wastewater and stormwater to the watershed and sensitive receptors. This is especially justified given that the Project Site is located partially within a 100-year floodplain, and construction of the Project will come within 40 feet of the FEMA floodplain boundary. The Applicant’s resistance to a thorough vetting of the Project’s hydrological and ecological impacts is troubling, and we respectfully request that the Conservation Commission and the Zoning Board not waver from its responsibilities under state and local laws.

Thank you for your attention to this matter, and we look forward to providing additional comment as the hearings progress.

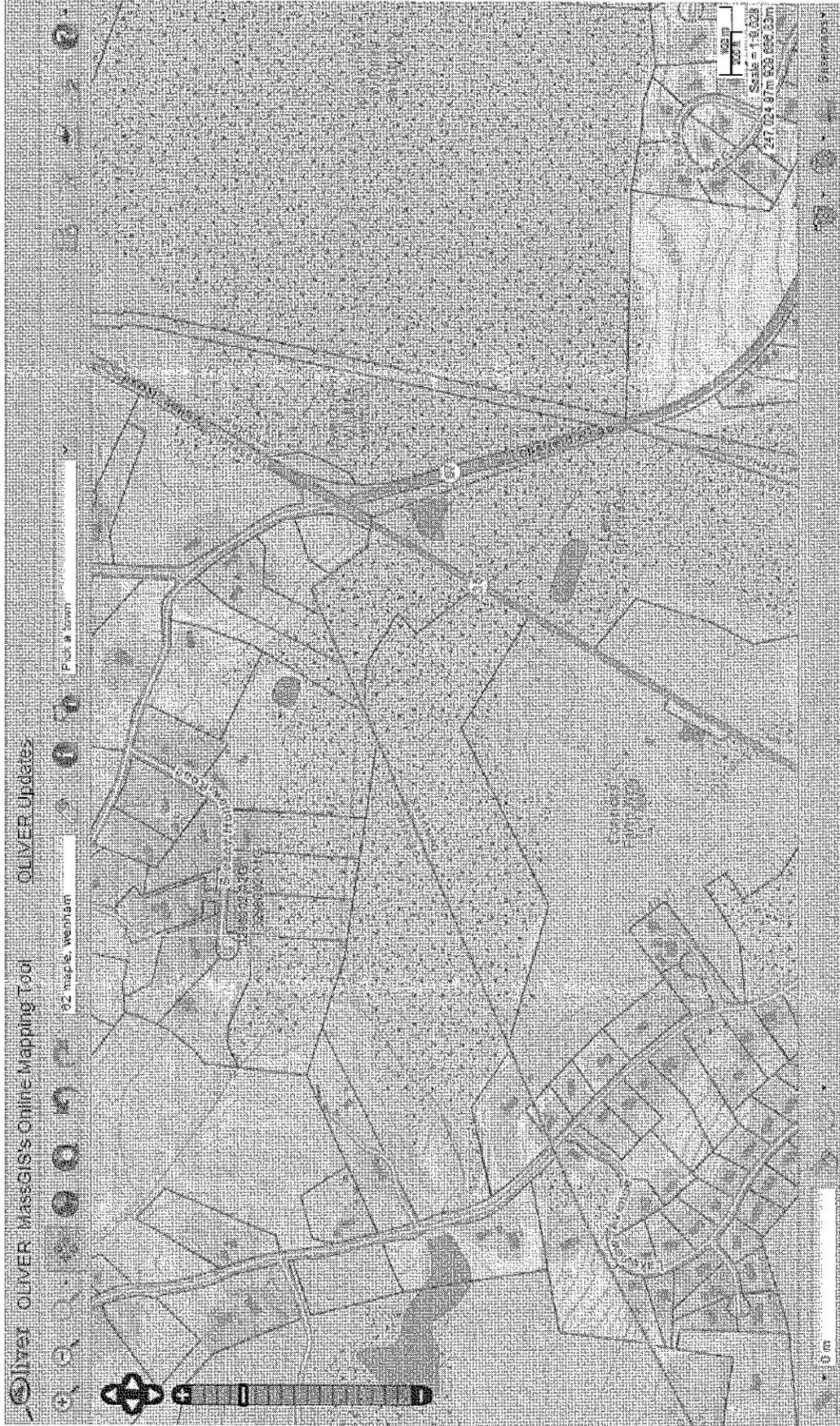
Very truly yours,

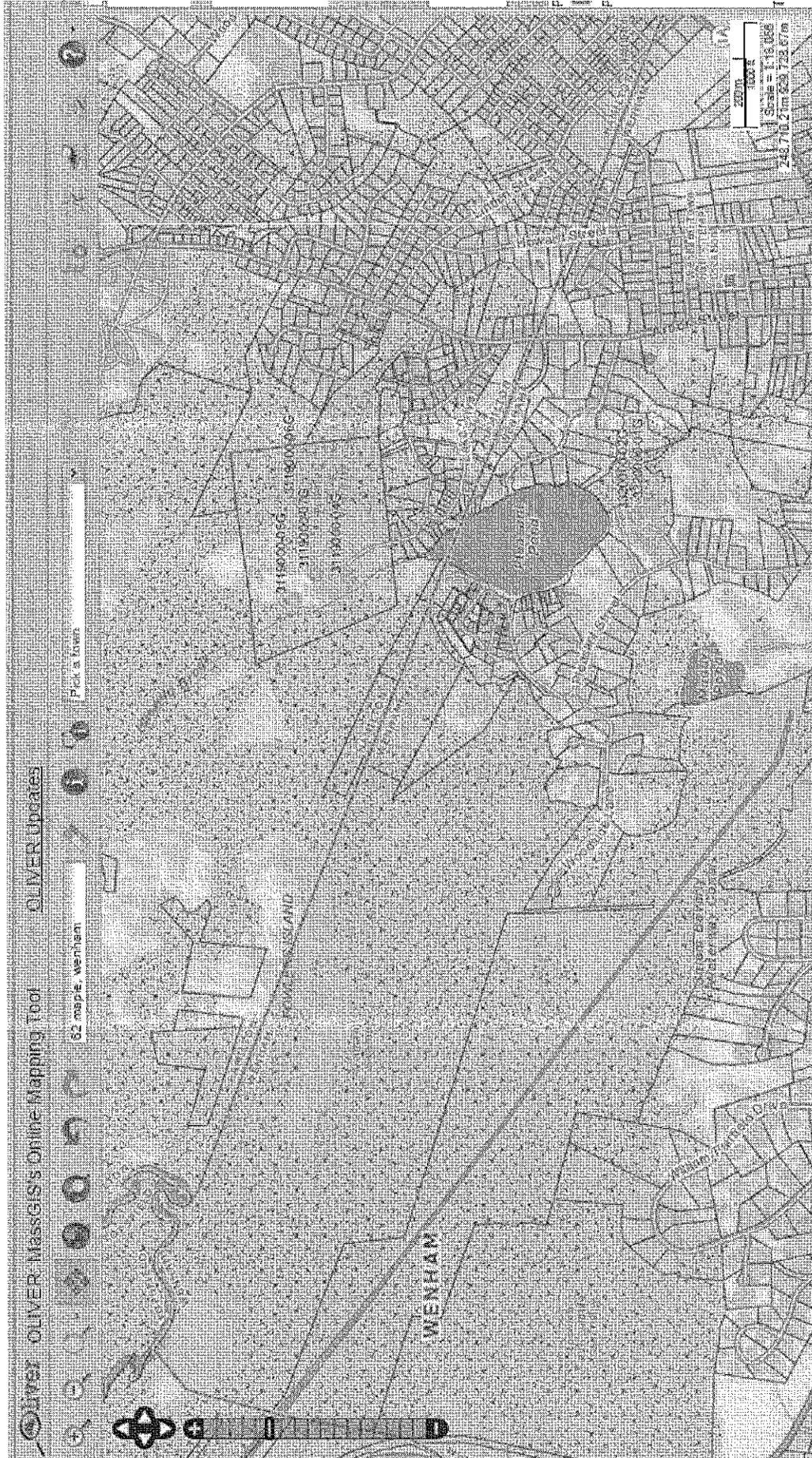

Daniel C. Hill

Enc.

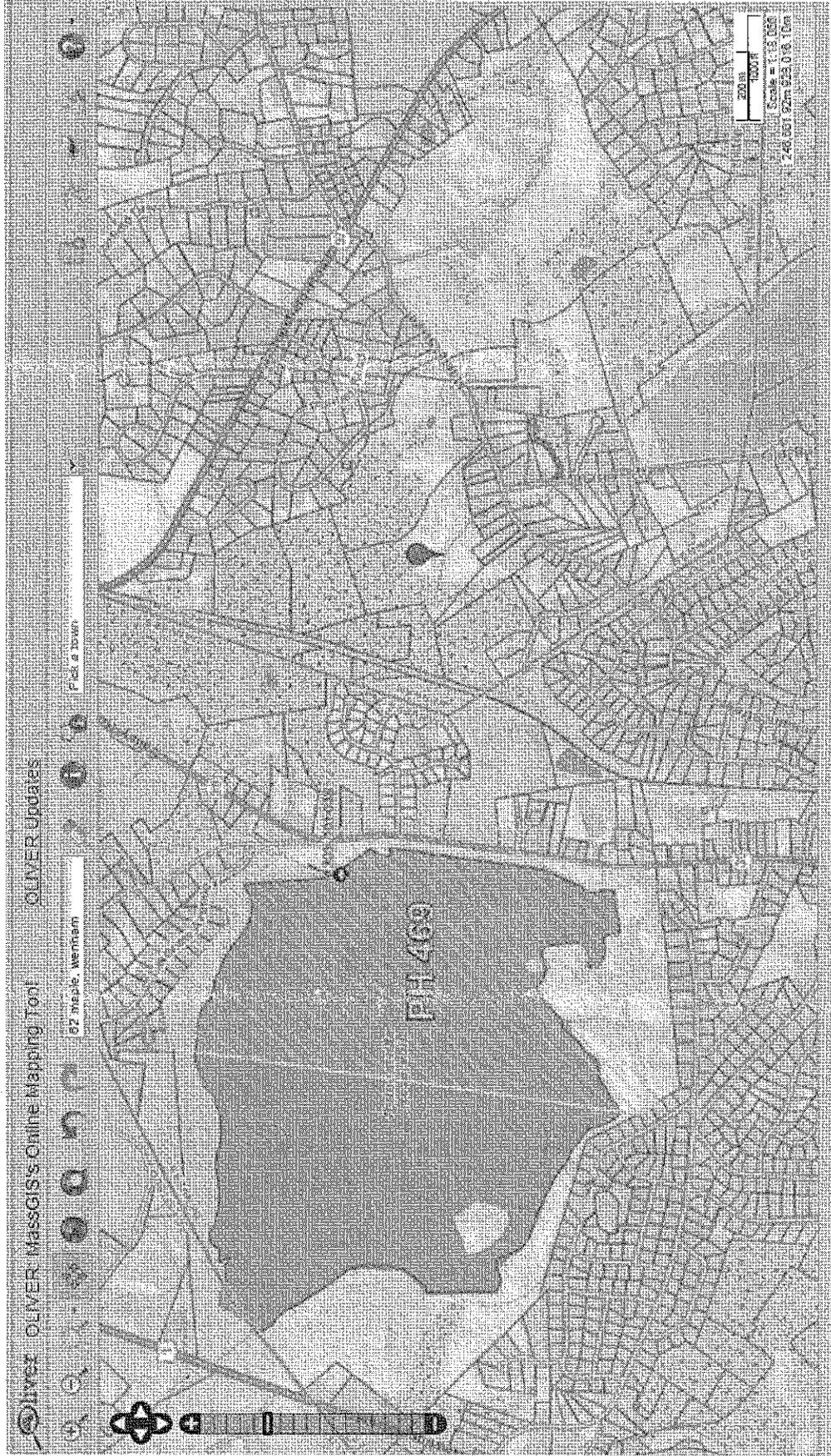
cc: Ted Regnante, Esq.
Wenham Board of Selectmen
Topsfield Board of Selectmen
Janet Carter Bernardo
Clients

MassGIS map of Sleepy Hollow wells and Pinetree Road wells.
http://maps.massgis.state.ma.us/map_ol/oliver.php
January 8, 2015





MassGIS map of Priority Habitat "PH 469"
http://maps.massgis.state.ma.us/map_ol/oliver.php
January 8, 2015



12/7/14

To: The Wenham Zoning Board of Appeals

Fr: Louis Terranova, 38 Maple St, Wenham, MA

Via: Mail and email through Emilie Cademartori, Wenham Town Coordinator

Dear Mr. Feehery, Mr. Coffey, and Mr. Hutchinson,

I am writing to you to express my concerns with the low-income housing development proposed for 62 Maple St.

I am a senior engineering manager at GE-Aviation in Lynn. I am an expert in aircraft flight and jet engine design. I have over 30 years' experience leading safety investigations and the certification of numerous jet engines with the FAA and the US Navy.

I want to point out a few facts regarding the development's proposed location in relation to the Beverly Airport:

- It would be located about a ½ mile from the closest runway and in the direct traffic pattern of the airport.
- Beverly Airport operates jet aircraft routinely.
- Please refer to the developer's application to the State page 6, question 61 (attached); when asked if the project "...is subject to noise impact from jet airports within five miles...?" the developer answered NO. The developer says this proposed site is NOT near an airport. That would be news to us as residents and to Beverly Airport!!!
- Beverly Airport is the third largest airport in the state and the 100th busiest airport in the country. The NPIAS (National Plan of Integrated Airport Systems) has designated Beverly Airport as a "reliever airport" which means that it is SIGNIFICANT to national air transportation in the US. It also means that Beverly Airport routinely accepts overflow of aircraft from Boston's Logan airport during peak traffic times. Anyone who lives or works in the area is acutely aware of how busy an airport it is.
- Planes departing Beverly on runway 34 fly over the proposed project site at altitudes of about 300 ft. Planes that approach Beverly for landing on runway 16 fly at and even lower altitude of about 150 ft. over the site. I have attached a sketch that shows these traffic patterns in relation to the proposed site.
- At a distance of 300 ft., a jet plane can produce sound levels as high as 100-120db which can cause hearing damage.
- Beverly Airport recently received \$300 million for its planned expansion, which promises to only increase noise levels and air traffic over and around the proposed development site.

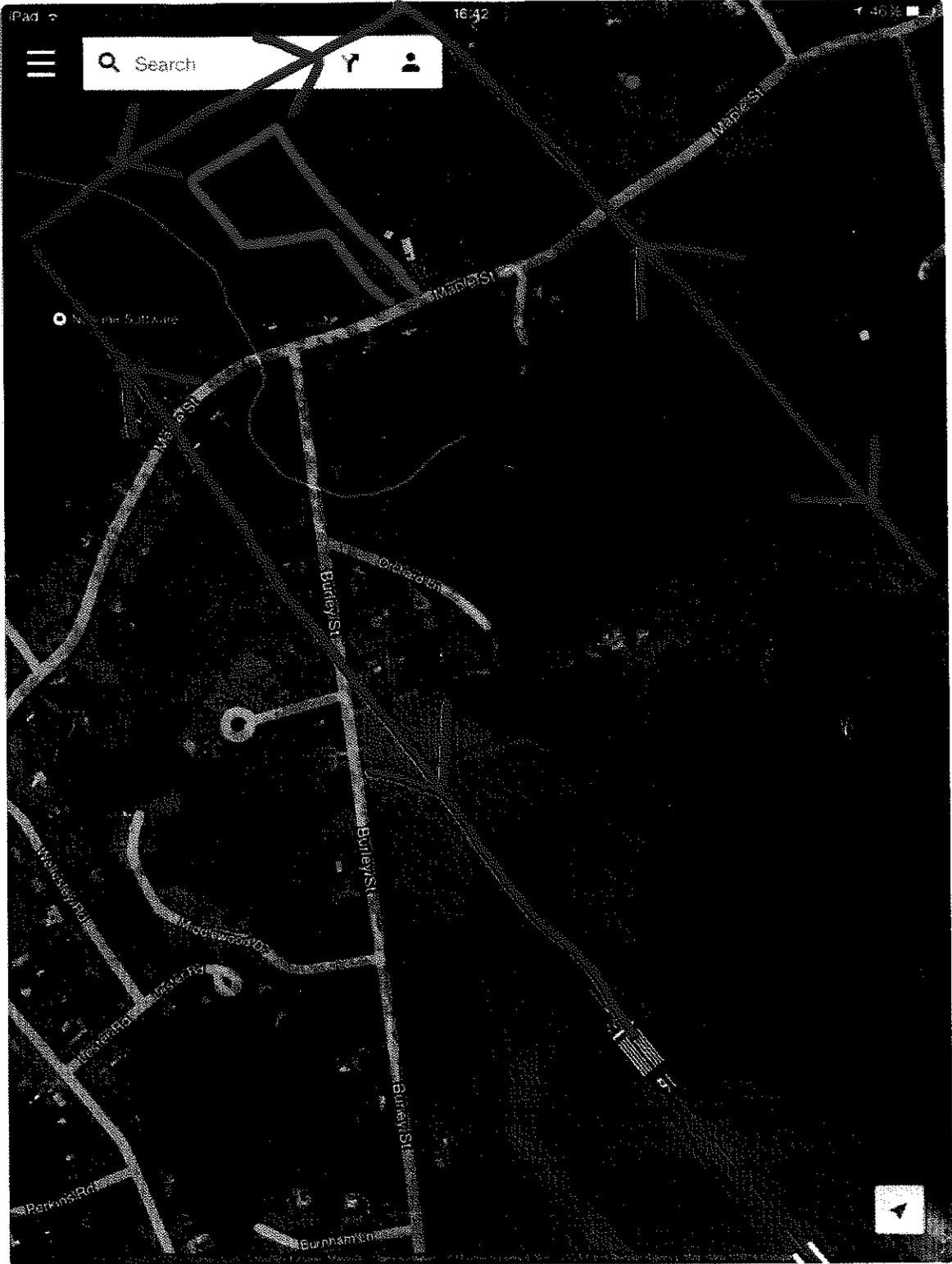
As part of the peer review process, I ask that the Zoning Board require the developer to provide a review of the safety implications of Beverly Airport flight operations near the proposed development, and to prove via data and engineering analysis that there is zero risk to the safety of any future residents at the proposed development.

Sincerely,



Louis Terranova

38 Maple St.



Environmental Information

- 50 . Is there any evidence of underground storage tanks or releases of oil or hazardous materials, including hazardous wastes, on the site or within close proximity to the site?
- 51 . Has a Chapter 21E assessment been performed?
- 52 . Does the project consist of either: (a) new construction of more than 100 units; or (b) substantial rehabilitation of more than 200 units, or where more than 10% new floor space is added?
- 53 . Does the building require lead paint abatement?
- 54 . Does the building require asbestos abatement?
- 55 . Do radon tests show radon levels exceeding four picocuries/liter?
- 56 . Is there any evidence that the premises are insulated with urea formaldehyde foam (UFFI)?
- 57 . Is the site located in an historic district, or contain buildings listed or eligible for listing in the State Register of Historic Places?
- 58 . Are there any above ground storage containers with flammable or explosive petroleum products or chemicals within 1/2 mile of the site?
- 59 . Is the site located in a floodplain or wetlands area?
- 60 . Does the site contain endangered animal or plant species?
- 61 . Is the site subject to noise impact from jet airports within five miles, major highways within 1,000 feet, or rail traffic within 3,000 feet?



November 19, 2014

**BY ELECTRONIC MAIL: ecademartori@wenhamma.gov
AND BY HAND**

Wenham Zoning Board of Appeals
Wenham Town Hall
138 Main Street
Wenham, Ma 01938

Re: Maple Woods Chapter 40B Application

Dear Members of the Zoning Board:

This firm represents several neighbors and abutters to the proposed 60-unit housing project on 3.5 acres at 62 Maple Street in Wenham. By way of introduction, I have served as counsel to local zoning boards across the Commonwealth on numerous Chapter 40B permitting and litigation matters over the last 14 years. I have litigated dozens of Chapter 40B appeals before the Housing Appeals Committee (“HAC”), the state trial courts, the Appeals Court and the Supreme Judicial Court. I would like to briefly share my thoughts on what a local zoning can and should do in the context of a comprehensive permit application, and offer recommendations for peer review consultants.

A. *The Legal Framework*

As you know, Chapter 40B developers may seek a “comprehensive” permit from the local zoning board of appeals in lieu of separate approvals from all of the other town boards, commissions and officials that would otherwise have jurisdiction over the project. A significant function of the statute is to empower the zoning board to waive any local bylaw, regulation, policy or procedure that would render the construction of the project “uneconomic.” In certain circumstances, the zoning board may be justified in denying a comprehensive permit, where the project presents unacceptable public safety, health or environmental risks, or completely abhorrent to the town’s rationally-conceived master planning interests. The role of the local zoning board, therefore, is to determine (a) whether such risks exist to justify a denial, and if not, (b) whether the applicant’s requested waivers from local bylaws and regulations are justified to make the project economic, and if so (c) whether the granting of any such waivers would, themselves, present any public safety, health or environmental risks.

Since the initial burden in an appeal is on the developer to establish that the application of local bylaws to its project renders it uneconomic, it is reasonable to grant only those waivers that are necessary to make the project financially viable. As the HAC has noted, “[T]he legislative intent of the entire statute is to permit affordable housing without undue intrusion on local prerogatives.” *Cooperative Alliance of Mass. v. Taunton Zoning Bd. of Appeals*, HAC No. 90-05, at 8, n.12 (April 2, 1992). The SJC has echoed this sentiment, observing that the legislature intentionally struck a balance “between leaving to local authorities their well-recognized autonomy generally to establish local zoning requirements ... while foreclosing municipalities from obstructing the building of a minimum level of housing affordable to persons of low income.” *Bd. of Appeals of Woburn v. Hous. Appeals Comm.*, 451 Mass. 581 (2008), citing, *Zoning Bd. of Appeals of Wellesley v. Ardmore Apartments Ltd. Partnership*, 436 Mass. 811, 822 (2002).

B. *Peer Review*

Since a zoning board’s primary responsibility is to evaluate the waivers being requested, a board is well served to retain expert “peer review” consultants to advise it on all of the key design elements and potential impacts from the proposed project. Most zoning boards hire a civil engineering peer review consultant to review the project’s conformity with the town’s various bylaws and regulations that concern design issues, such as roadway and building construction and utility infrastructure. Project applications may require specialized review depending on unique waivers or impacts.

Here, in addition to the standard general civil engineering peer review, the Board would benefit from advice from a traffic engineer and a hydrologist. You received testimony at your hearing on November 5, 2014 from neighbors and residents concerning the unsafe speeds cars travel at on Maple Street. The interaction of the Project’s elderly resident and the fast traffic on Maple Street presents real public safety concerns that should be evaluated. Other unique issues presented by this Application is the proximity of the Site to the Beverly Municipal Airport, and the natural gas pipeline that apparently bisects the Site.

Further, you heard testimony from the Project’s proponents that the Project would be surrounded by wetlands. In fact, the Project would be surrounded by a very large wetland system, including the Ipswich River Wildlife Sanctuary, which is tributary to the Ipswich River. This wetland system is likely connected hydraulically to public water supplies in Danvers (Putnamville reservoir – an “outstanding resource water” and “Zone A” surface water protection area under state law) and Topsfield (Sleepy Hollow Road municipal wells). The Zone II for the Topsfield wells extends onto the Project Site, meaning that groundwater under the Project Site is hydraulically connected to these wells. The area east of the Putnamville Reservoir, within the same wetland system, has been mapped by the state as a priority habitat for rare species.¹ The

¹ Attached to this letter is a map from MassGIS, showing the Project Site (identified by a blue balloon) with data overlays including the Topsfield wells and associated wellhead protection areas (purple circles) and Zone II (beige crosshatch), the Putnamville Reservoir, and the Priority Habitat area (yellow).

Project will be presumed under Title 5 of the State Environmental Code to generate 9,000 gallons of wastewater per day, which is proposed to be treated and infiltrated into the ground adjacent to these wetlands. While we understand that the Applicant is proposing an enhanced nitrogen-removing septic system, such systems are not as effective in removing pathogens and other contaminants. Stormwater runoff from the Project's road and parking areas is another potential source of pollution to the Ipswich River watershed.

In our opinion, groundwater quality is probably the most important environmental issue presented here, and thus we strongly urge the Board to retain a qualified hydrologist with experience evaluating impacts from development projects on drinking water resources and wetlands. We also recommend that the Board retain a traffic engineering consultant, and get advice on the appropriateness of the Project Site being near the end of the airport's runway, and on top of a natural gas pipeline. We have worked with and are pleased to recommend the following consultants for this Project application:

General Peer Review Civil Engineers:

Horsley Witten Group
90 Route 6A
Sandwich, MA 02563
Tel: (508)-833-6600
shorsley@horsleywitten.com

Michael J. Carter, PE, PLS
GCG Associates, Inc.
84 Main Street
Wilmington, MA 01887
978-657-9714
mike.carter@gcgassociates.net

Thomas C. Houston
Professional Services Corporation, PC
Ten Lincoln Road, Suite 201
Foxboro, MA 02035
Tel: (508) 543-4243
thouston@pscpc.com

Hydrologist:

Scott Horsley
Horsley Witten Group
90 Route 6A
Sandwich, MA 02563
Tel: (508)-833-6600
shorsley@horsleywitten.com

Wenham Zoning Board of Appeals
November 19, 2014
Page 4

Traffic Peer Review Engineers:

Gary Hebert or Doug Prentiss
Fay Spofford & Thordike
5 Burlington Woods
Burlington, MA 01803
Tel: (781) 221-1000

Thomas C. Houston
Professional Services Corporation, PC
Ten Lincoln Road, Suite 201
Foxboro, MA 02035
Tel: (508) 543-4243
thouston@pscpc.com

I expect that my clients will have comments to share on the merits of the comprehensive permit application at a later date, after peer review has been engaged. In the meantime, we sincerely appreciate the Board's diligence in deploying the best available resources to study this application and the significant impacts the proposed Project will have on the neighborhood and the Town generally.

Very truly yours,


Daniel C. Hill

Enc.

cc: Ted Regnante, Esq.
Wenham Board of Selectmen
Topsfield Board of Selectmen
Danvers Board of Selectmen
Clients

1 Burley Street
Wenham, MA 01984

July 17, 2014

Maple Wood is a proposed sixty unit single bedroom subsidized senior housing complex to be built at 62 Maple Street in Wenham by Harborlight Community Partners. This three plus acre site is located behind Burnett's Construction Company. It is bordered by wetlands and is in close proximity to the Great Wenham Swamp.

A major concern is location. This fragile senior population will require emergency support. Wenham's emergency response system is comprised predominately of volunteers, many of whom live and work outside the town. This location is a distance from the center of town adding to response time. Increased response time places these seniors at risk for untoward adverse events.

The Wenham fire department must also provide services for another large concentrated population at Gordon College.

Transportation is a major concern. Wenham has no public transportation and no taxi service. The Wenham Counsel on Aging has a van which operates on a limited schedule and is restricted to local travel. Harborlight will provide bus transportation on occasion. Parking will be provided for senior residents who are able to drive. The vast majority of time these residents will be unable to leave this site. A small corner store may be walking distance for a few residents. This remote location will physically and socially isolate the residents negatively impacting their quality of life.

Mosquitoes breed in bordering wet lands and the Great Wenham swamp. The proposed senior housing complex is adjacent to these wet lands thus placing these seniors at increased risk for mosquito born illnesses. It is near impossible to enjoy the great outdoors, particularly in early morning and evening. This site is located in an endemic area for Lyme disease. The area has a significant deer population. The risk for contracting diseases carried by these insects is exacerbated by this location.

This isolated location places a vulnerable population at risk for many unintended consequences.

Respectfully submitted,

Vivian Sears