



**TOWN OF WESTON
MASSACHUSETTS
BOARD OF APPEALS**

COMPREHENSIVE PERMIT UNDER M.G.L. 40B

APPLICANT: WESTON BPR LLC

LANDOWNER: Stephen G. Carter, as Trustee of Woodleigh Farms Nominee Trust, a Massachusetts nominee trust, and Bradley R. Cook and Douglas P. Gillespie, as Trustees of Steer Pasture Realty Trust, a Massachusetts nominee trust

SUBJECT PROPERTY: 0, 751 and 761 Boston Post Road, Weston, Massachusetts

DISPOSITION: The Application for a Comprehensive Permit for the Project, as amended, is granted conditioned by the findings, conclusions, requirements and statements contained within this Decision read in its entirety.

RECORD OF PROCEEDINGS: There having been presented to the Zoning Board of Appeals ("Board") a request dated May 20, 2019 by the Applicant, WESTON BPR LLC, for a Comprehensive Permit, the Board decided to hold a public hearing on said petition on Monday, June 10, 2019 at 7:30 P.M. and caused the following notice to be published in The Town Crier, a newspaper of general circulation in Weston:

**TOWN OF WESTON
MASSACHUSETTS
BOARD OF APPEALS
Hearing Notice**

Notice is hereby given that the Board of Appeals of the Town of Weston will hold a public hearing on Monday, June 10, 2019 in a Conference Room of the Weston Town Hall on an application by MCRT Investments LLC, an affiliate of Mill Creek Residential c/o Lars Unhjem, 200 Summit Drive, Suite 450, Burlington, MA, 01803 as to 751 and 761 Boston Post Road (Map 25, Lot 24, Map 26 Lot 2, Map 26 Lot 3 and Map 26 Lot 4) requesting a Comprehensive Permit under M.G.L. Ch. 40B for one hundred and eighty (180) rental housing units, forty five (45) of which will be

restricted as affordable under the terms of the Comprehensive Permit Guidelines. The petition and plans on above application with said Board of Appeals are available for public inspection in the office of the Board of Appeals on Monday through Friday, from 9 A.M. to 4:30 PM and also at <https://www.weston.org/1359/751-761-Boston-Post-Road>

Board of Appeals of the Town of Weston
By: Winifred I. Li, Chair

The Board also mailed the foregoing notice postage prepaid to [REDACTED].

On [REDACTED], 2019, the Board issued a letter to [ADD LOCAL BOARD/COMMITTEE NOTICES], requesting that they consider and comment upon the application and plans.

Pursuant to the foregoing notice, the Board opened a public hearing on Monday, June 10, 2019 at 7:30 P.M. Following the June 10, 2019 hearing, the Board conducted continued public hearings on July 8, 2019, August 12, 2019, September 23, 2019, October 23, 2019, December 10, 2019, January 27, 2020, March 4, 2020, March 12, 2020, May 12, 2020, May 27, 2020, June 16, 2020, July 21, 2020, August 11, 2020 and [REDACTED], each duly noticed.

The following members were present for all public hearing sessions:

Winifred I. Li, Chair
Stephen J. Larocque
Natalie B. Sawyer, Acting Secretary

I. BACKGROUND

1. The instant Comprehensive Permit Application (together with the revisions set forth below, the “Application”) was filed by WESTON BPR LLC (the “Applicant”) on May 20, 2019 and seeks a comprehensive permit to build “a luxury rental apartment home community featuring 180 large-format, one, two and three-bedroom apartments in flat and townhome layouts with covered parking. Modera Weston community amenities will be crafted into and around three existing structures and will include a club room, a premium 24-hour fitness center, multiple work-from-home offices, and a conference room. Modera Weston will feature an outdoor heated pool, outdoor fireplace, and grills” (the “Project”). Not less than 45 of the 180 units will be restricted as “affordable,” calculated as reserved for households with incomes of less than 80% of the area

median income. The remaining 135 units will have no restriction. The Project is proposed to be located at 0, 751 and 761 Boston Post Road in Weston.

2. The Applicant, and its consultants, submitted the following plans and materials to the Board (collectively the “Plan of Record”):

a. _____

b. _____

c. _____

[JOHN: CAN YOU PLEASE ADD? THANKS]

3. Additional documents in the file include:

a. _____

b. _____

c. _____

[JOHN: CAN YOU PLEASE ADD? THANKS]

4. Correspondence and other communications from residents and other interested parties include:

a. _____

b. _____

c. _____

[JOHN: CAN YOU PLEASE ADD? THANKS]

II. PUBLIC HEARING AND COMMENT

5. The Board held [] public hearings, duly advertised, on the following dates: June 10, 2019, July 8, 2019, August 12, 2019, September 23, 2019, October 23, 2019, December 10,

2019, January 27, 2020, March 4, 2020, March 12, 2020, May 12, 2020, May 27, 2020, June 16, 2020, July 21, 2020, August 11, 2020 and [REDACTED] (collectively, the “Public Hearing”).¹

6. On [REDACTED], 2020, the Public Hearing was timely closed.

(a) Comments and Input of Local Boards and Committees

7. The Board solicited advice and input from local boards and committees. In response to that solicitation, the Applicant met separately with several local boards and committees and made representations in support of the Application to those boards. As described in further detail below, representatives of local boards and committees appeared at the public hearings and provided comment. In addition, local boards, committees and a town working group submitted written comments, which are referenced above. As a result of this input, the Applicant revised the Application in accordance with the comments.

(b) Comments and Input of Peer Reviewers

8. The Board sought and obtained the assistance of the peer reviewers. Consultants of the Applicant met separately with the peer reviewers and made representations in support of the Application to those peer reviewers. As described in further detail below, the peer reviewers appeared at the public hearings and provided comment. In addition, the peer reviewers have submitted written comments, which are referenced above. As a result of this input, the Applicant revised the Application in accordance with the comments of the peer reviewers.

(c) Comments and Input of Residents

9. The Board sought and obtained the input of members of the public. Each of the public hearings was well-attended by members of the public, including abutters, other members of the neighborhood, and interested town residents. Attendees provided robust public comment and raised meritorious concerns about the health and safety impacts of the Application. In addition, the Board encouraged and accepted written comments from members of the public. As a result of

¹ The Applicant granted waivers of the time to close the public hearing, through and including April 7, 2020. Thereafter, the time to close the public hearing was further extended by emergency legislative action, which extended the time to close the Public Hearing until 45 days after the end of the state of emergency.

this input, the Applicant revised the Application in accordance with certain comments and safety concerns of residents.

III. STANDARD OF REVIEW

10. The Massachusetts Comprehensive Permit Law (“40B”), M.G.L. c.40B, §§ 20-23, requires a local Zoning Board of Appeals to grant a “comprehensive” single permit to an eligible developer proposing low- or moderate-income housing under certain circumstances. In so doing, 40B permits override of local requirements and regulations that are inconsistent with affordable housing needs if environmental and planning concerns have been addressed. The override of local requirements, however, is not unfettered. The Board is required to make a determination of whether the requested comprehensive permit is “consistent with local needs.” The determination is a balancing test; assessing the regional need for low- and moderate-income housing versus the need to protect the health and safety of the occupants of the proposed housing and the residents of the town.²

11. Per the direction of the Housing Appeals Committee Guidelines, this Board has taken great care to review the Application issue by issue, and at each juncture attempted to formulate solutions that are tailored to permit the project to proceed but mitigate the impact of the development in the interests of community safety. For each issue, the Board has carefully evaluated the evidence, listened to all perspectives, and given the Applicant an opportunity to respond and propose solutions. As a result, the below findings constitute the Board’s determination, after applying a thorough balancing test, of conditions which are necessary to avoid substantial harm to occupants of the proposed housing and residents of the town and, therefore, allow for the issuance of a comprehensive permit which is consistent with local needs.

12. A tremendous amount of time and effort that has been dedicated by the Applicant, residents, local boards and committees and consultants and peer reviewers throughout this process. These parties have all provided the Board with a very large amount of information, have been thorough in their presentations to the Board, and have worked (both separately and collaboratively) to identify potential solutions to relevant concerns. It is as a result of these efforts that the Board,

as intended by the statute, has been able to craft this Decision, which tailors conditions to address meaningful safety concerns while supporting the need for low- and moderate income housing.

IV. DECISION

13. Following the close of the public hearing, and after due and open deliberation, the Board voted - to adopt the following findings and grant the requested Comprehensive Permit with the Conditions as set forth below. Accordingly, the Board acts on the requested Waivers, as further set forth below.

a. Findings

14. Upon review of Application as revised (including the documents, plans, representations and other evidence), input from local boards and committees, input from town experts and peer reviewers, input from residents and other interested parties, and other information submitted both in favor of and in opposition to the Project, the Board makes the following findings:

- a. The subject property is located on approximately 61.8 acres, known as Woodleigh Farms (“Subject Property”).
- b. The Subject Property is currently owned by Stephen G. Carter, as Trustee of Woodleigh Farms Nominee Trust, a Massachusetts nominee trust, and Bradley R. Cook and Douglas P. Gillespie, as Trustees of Steer Pasture Realty Trust, a Massachusetts nominee trust, and is subject to a purchase and sale agreement with the Applicant.
- c. A Project Eligibility Letter for the proposed project was issued by MassHousing on May 17, 2019.
- d. The Applicant proposes to build 180 units of rental housing on an approximately 14 acre portion of the Subject Property (“Site”). The proposed units consist of one-, two, and three-bedroom apartment homes spread among ten townhome buildings and two flat-style apartment buildings over covered parking. A clubhouse with pool and outdoor amenities is located at the rear of the property. Historic structures (repurposed as leasing/reception offices, work-from-home spaces, and a guest suite) are located near the entrance to the property along Boston Post Road.
- e. At least 25% (or 45) of the 180 rental units shall remain permanently affordable and shall be marketed and rented to eligible households

whose annual income may not exceed 80% of area median income (“AMI”), adjusted for household size, as determined by the United States Department of Housing and Urban Development (“DHCD”), and, subject to the approval by DHCD, all of the units in the Project, not only the Affordable Units, shall be eligible to be included in the Town’s Subsidized Housing Inventory, as maintained by DHCD.

- f. Multiple historic structures are located on the Site, including structures known as the Mark Sibley/Mary Rice House, Mirick/Farnsworth House, Eleanor Raymond House and the Mark Sibley Barn.
- g. The Site contains open space in the southerly portion of the site in the vicinity of the main driveway and residence. The remainder of the Subject Property is primarily forested with considerable areas of wetlands. Wetland resources include Cherry Brook and associated riverfront area, bordering vegetated wetlands and associated 100-foot buffer zone, bordering land subject to flooding, and a vernal pool.
- h. Elevated lead and arsenic concentrations are present on the Site, in soil in an area formerly utilized as an orchard, and elevated lead concentrations in soil adjacent to a barn. The lead and arsenic concentrations in the orchard area have been attributed to the former use of lead arsenate pesticides; the lead concentrations in the barn area have been attributed to the presence of lead-based paint from the barn siding.
- i. The concentration of lead and arsenic are over the Massachusetts Contingency Plan (MCP) 310 CMR 40:000 clean up standards. However, for releases of contaminants due to former pesticide use or lead paint the MCP provides an exemption to notification to Massachusetts Department of Environmental Protection in Sections 310 CMR 40.0317(8)(c) and 310 CMR 40.0317(8)(a), respectively.
- j. While the contaminants found in the soil are exempt from notification to the Massachusetts Department of Environmental Protection, the potential health risks for the associated the lead and arsenic from the pesticides and lead paint are no different than if lead and arsenic were from sources that are regulated by the MCP .
- k. In addition to the impacted soil removal, the proposed development may require the removal of between 160,000 to 96,000 cubic yards of soil to achieve the desired grades for the development. Such a large volume of soil removal in a residential area can present hazards due to traffic, noise and dust.
- l. The Site is located on Route 20, an east/west arterial owned and maintained by the Massachusetts Department of Transportation and considered a Scenic Road.

and reasonable costs for the services paid by the Applicant. In addition, the Board employed Town Counsel, KP Law, P.C., 101 Arch Street, Boston, Massachusetts, for necessary legal assistance associated with the review of the Application and to ensure compliance with all application laws and regulations.

- s. A Road Safety Audit for the intersections of Route 20 at Highland Street and Boston Post Road and Route 20 at Love Lane was conducted by Toole Design, 2 Oliver Street, Suite 305, Boston, MA 02109, for the Massachusetts Department of Transportation, and a final report (“Weston RSA Report”) dated April 29, 2020 was submitted to the Board. The Weston RSA Report identified safety issues and suggested potential enhancements that could improve the safety issues at the intersections of Route 20 at Highland Street and Boston Post Road and Route 20 at Love Lane.
- t. A Road Safety Audit for the intersections of Route 20 at Old Connecticut Path and Route 20 at Plain Road was conducted by Toole Design, 2 Oliver Street, Suite 305, Boston, MA 02109, for the Massachusetts Department of Transportation, and a final report (“Wayland RSA Report”) dated April 29, 2020 was submitted to the Board. The Wayland RSA Report identified safety issues and suggested potential enhancements that could improve the safety issues at the intersections of Route 20 at Old Connecticut Path and Route 20 at Plain Road.
- u. The Project does not comply with certain zoning bylaw provisions. As provided in Chapter 40B, the Applicant has requested waivers from these provisions.

15. The Board voted to adopt the above findings.

b. Conditions

16. In light of the information received, the findings as set forth above, and after due and open deliberation, the Board determined that the following Conditions are appropriate and necessary to avoid substantial harm to occupants of the proposed housing and residents of the town:

(1) General Conditions

17. This Comprehensive Permit is issued for the Project, as amended and revised as referenced herein, and with the conditions as set forth herein (“Conditions”). This Decision shall

be recorded at the Middlesex South Registry of Deeds. Proof of recording shall be forwarded to the Board and the Building Inspector prior to issuance of a building permit or the start of construction.

18. This Comprehensive Permit is issued to the Applicant, WESTON BPR LLC, or an affiliate of the Applicant and as otherwise provided by 760 CMR 56.05(12)(b) et.seq. Any subsequent transfer of this Comprehensive Permit to a person or entity other than WESTON BPR LLC shall require notice to the Board and written confirmation from DHCD pursuant to 760 CMR 56.05(12)(b), that the transferee meets the project eligibility requirements in 760 CMR 56.04(1) and shall be confirmed to the Board in writing.

19. The provisions and Conditions of this Comprehensive Permit shall be binding upon the Applicant and its successors and assigns, and the authorizations and obligations hereunder shall run with the land. Any instrument for sale or transfer of rights or interests in all or any part of the Subject Property shall include a condition that all successors are bound by the terms and conditions of this Comprehensive Permit.

20. Revised plans reflecting all of the Conditions of this Comprehensive Permit shall be prepared and submitted to the Board for review and approval. To the extent the Board determines additional peer review is necessary, the Applicant shall bear the reasonable cost of the reviewer.

21. The Project shall be limited to a maximum of 180 rental units, as proposed by the Applicant on the amended plans referenced the Plan of Record. As a condition of any approval hereunder, at least 25% of the 180 units shall remain affordable (“Affordable Units”) and shall be marketed and rented to eligible households whose annual income shall not exceed 80% of AMI, adjusted for household size, as determined by the Massachusetts Department of Housing and Community Development (“DHCD”). Subject to the approval by DHCD, all rental units, not only the Affordable Units, shall be eligible to be included in the Town’s Subsidized Housing Inventory (“SHI”), as maintained by DHCD. Any increase in the number of units or unit size is a violation of the Zoning Bylaw and this Comprehensive Permit.

22. The Applicant shall notify the Town Manager of Weston when building permits and occupancy permits are issued for the Affordable Units and shall cooperate with the preparation of request forms to add all of the rental units to the Town's SHI as provided for under 760 CMR 56.03(2). The 45 Affordable Units shall remain permanently affordable for so long as the Project is not in compliance with the Town's Zoning Bylaw, or for the longest period allowed by law, if longer, so that the Affordable Units shall continue to serve the public purposes for which this Comprehensive Permit was authorized under M.G.L. ch. 40B, §§20-23.

23. The Applicant shall not take any action, or fail to take action, such that the Project would be brought out of compliance with M.G.L. ch. 40B, this Comprehensive Permit, or the applicable DHCD Regulations and Guidelines.

24. The construction or renovation and occupancy of the Project shall be in conformity with the Plan of Record, as modified to be consistent with this Decision, and there shall be no further division or subdivision of the Subject Property, or the creation of additional housing units or any other structures or infrastructure, without further approval of the Board in the form of an amendment to this Decision and pursuant to statutory requirements applicable at the time and in accordance with the terms and conditions of this Decision.

25. Because of the acute need for additional affordable housing in Weston, the Applicant shall work diligently to provide local preference to Weston residents. To the extent allowed by the Subsidizing Agency, the Applicant shall provide a preference category to the extent allowed under State and Federal law. To the extent the Subsidizing Agency requires evidence be provided in support of the Local Preference, it shall be the responsibility of the Town to provide such evidence, but the Applicant shall assist the Town in the gathering of the necessary evidence. This Condition (only) shall become void if the Subsidizing Agency does not approve this Local Preference requirement prior to such time as the Affordable Units are ready to be marketed, or shall be voidable by the Board if the preference would preclude the Affordable Units from being included on the Town's SHI. Local preference shall be given to Weston residents to the extent allowed under State and Federal law. The Applicant and such other designee approved by MassHousing shall make a diligent effort to locate eligible persons who meet the necessary qualifications as well as the applicable income requirements. Any additional costs to the Town for

establishing and monitoring a lottery system for the Affordable Units shall be borne by the Applicant.

26. To the extent allowed by the Subsidizing Agency as provided for under M.G.L. ch. 40B, an affordable restriction and regulatory agreement shall be signed with the Subsidizing Agency and the Town and shall be recorded at the Middlesex Registry of Deeds. As required by law and the Subsidizing Agency, the Applicant shall be a limited dividend organization and comply with the limited dividend requirements of M.G.L. ch. 40B, §20 and otherwise limit its profits as required under M.G.L. ch. 40B (as determined by the Subsidizing Agency) and any excess profits shall forthwith be paid by the Applicant and distributed as required by the Subsidizing Agency and in accordance with applicable law, regulations and/or guidelines. To the extent allowed under M.G.L. ch. 40B, the Town and the Board may conduct an independent audit of the Project on an annual basis to ensure compliance with profit limitation imposed by applicable law and/or regulation. If so, the Applicant shall make its books and records available to the independent auditor and shall cooperate fully with the independent auditor's reasonable requests for information.

27. The Project shall comply with all applicable rules, regulations, filing and permit requirements and certifications required by the regulations governing the Massachusetts Environmental Policy Act ("MEPA") to the extent that MEPA review is required, compliance with which shall be a condition precedent to the commencement of work authorized under this Comprehensive Permit, and no grading, land disturbance, issuance of any building permit or construction of any structure or infrastructure shall commence until any applicable requirements of MEPA have been complied with in full.

28. The Project shall comply with all applicable rules, regulations, filing and permit requirements and certifications required by regulations issued pursuant to the Massachusetts Wetlands Protection Act and the Massachusetts Endangered Species Act, compliance with which shall be a condition precedent to the commencement of work authorized by this Comprehensive Permit, and no grading, land disturbance, issuance of any building permit or construction of any structure or infrastructure shall commence until any applicable requirements of both Acts have been complied with in full.

29. The Project shall comply with all applicable rules, regulations, filing and permit requirements and certifications of the Department of Environmental Protection (“DEP”), compliance with which shall be a condition precedent to the commencement of work authorized by this Comprehensive Permit, and no grading, land disturbance, issuance of any building permit or construction of any structure or infrastructure shall commence until the requirements of DEP have been complied with in full.

30. The Applicant shall copy the Board and the Building Inspector on all testing results, official filings and other permits issued for the Project by any governing entity.

31. With the exception of the portion of the parcel transferred to the Town, as set forth in below, nothing herein may be construed as transferring responsibility for the property to the Town. The internal roadways, utilities, drainage systems, wastewater collection, and all other infrastructure shown in the Plan of Record shall remain private, and the Town of Weston shall not have, now or ever, any legal responsibility for the operation or maintenance of the infrastructure, including but not limited to snow removal and trash collection.

32. No grading, land disturbance, or construction shall commence until the Applicant or MassHousing has supplied the Board with written evidence indicating availability of qualifying program funds or conventional financing to complete the Project. The responsibilities of this condition are non-transferable and non-assignable. The Comprehensive Permit granted by this Decision shall lapse and become void and shall be considered without force or effect if the Applicant or MassHousing does not timely supply the Board with such written correspondence.

33. Prior to the issuance of any building permit, the Applicant shall certify in writing to the Building Inspector and the Board that it has complied with the below, and has fulfilled all other requirements which, pursuant to this Decision or other applicable laws or regulations, must be met in advance of a building permit.

- a. That it has delivered to the Board a certified copy of the financing contract between Applicant and the federal or state agency or conventional financing commitment providing the funding for construction of low or moderate income housing required by the Chapter 40B for a Comprehensive Permit for the Site;

- b. That it has delivered to the Board and the Building Inspector final architectural drawings for all buildings shown on the Plan of Record providing a scaled depiction of the front, rear and side elevations, duly sealed and signed by an architect registered in the Commonwealth of Massachusetts;
- c. That it has delivered to the Board and the Building Inspector full and detailed landscaping plans duly sealed and signed by Landscape Architect registered in the Commonwealth of Massachusetts that show suitable and conforming on-site landscaping and screenings, shade trees as well as the type and number, size and location of all proposed landscaping materials;
- d. That it has delivered to the Board and the Building Inspector final and detailed utilities plans and profiles including properly labeled drainage components and all site utilities; electric, gas, water supply wells, water supply lines, wastewater disposal systems and appurtenances and dwelling unit connections thereto, and to the detail required to obtain a building permit in accordance with the State Building Code;
- e. That it has delivered to the Board and the Building Inspector final and detailed plans and profiles prepared and duly sealed and signed by a structural engineer. Final plans shall be delivered to the Building Inspector for review to determine if they are in conformance with this Decision and after any necessary peer review paid for by Applicant prior to issuance of building permits. Copies of the final approved plans shall be filed with the Board;
- f. That it has delivered to the Board a written submission describing all easements and covenants affecting the use of the Subject Property, referring to such covenants and locating such easements on a site plan. The Applicant shall submit any written or recorded instruments granting or agreeing to such easements and covenants; and
- g. That it has delivered to the Town of Weston Fire Department a fire access plan for review and approval by the Fire Department as required under 527 CMR 18. A copy of the fire access plan shall be delivered to the ZBA.
- h. That it has delivered to the Board and the Building Inspector a construction and permitting schedule and has provided all associated information which may have been reasonably requested by the Town.
- i. That it has delivered to the Board and the Licensed Site Professional the Soil Management and Remediation Plan and Hazardous Waste Material Survey described below, and has received written approval of same.
- j. That it has delivered to the Board and the License Site Professional a Communication Plan related to soil management and remediation, which

shall include, at a minimum, a meeting schedule and notification procedures, and has received written approval of same.

- k. That it has delivered to the Board and the Board of Health an Infectious Disease Preparedness Plan, and has received written approval of same.
- l. That it has delivered to the Board evidence of the transfer, or deed restriction, of the 48 Acres, as described below, and that such transfer or restriction has been duly recorded.

34. Prior to starting any work under this Comprehensive Permit, the Applicant and the general contractor shall hold a preconstruction meeting with the Building Inspector, Town Engineer, and Department of Public Works representative to review the requirements in order to ensure compliance with this Decision.

35. Prior to starting any work under this Comprehensive Permit, the Applicant shall provide to the Building Inspector:

- a. The company affiliation, name, address and business telephone number of the construction superintendent who shall have overall responsibility for construction activities on site.
- b. A copy of a municipal lien certificate indicating that all taxes, assessments and charges due on the Site have been paid.
- c. Certification from the Applicant that all required federal, state and local licenses and permits have been obtained.
- d. Proof that "Dig-Safe" has been notified at least 72 hours prior to the start of any site work.
- e. Proof that street signage is in place to ensure that emergency personnel can locate the Site to provide emergency services to protect and secure the Site and construction personnel.
- f. At least 48 hour written notice. In addition, the Applicant shall provide the Building Inspector with at least 48 hours written notice prior to restarting work if activity on the Site ceases for longer than one month.

In addition, the Applicant shall provide the Building Inspector with at least 48 hours written notice prior to restarting work if activity on the Site ceases for longer than one month.

36. Prior to the occupancy or use of any building constituting a part of the Project, the Applicant shall certify in writing to the Building Inspector and the Board that it has complied with

the below, and has fulfilled all other requirements which, pursuant to this Decision or other applicable laws or regulations, must be met in advance of a certificate of occupancy.

- a. That it has delivered to the Board and the Building Inspector “As-Built Plans” showing all pavement, buildings, drainage structures, landscaping, and other infrastructure as they exist on the Site, above and below grade, including appropriate grades and elevations. The As-Built Plans shall be duly sealed and signed by a registered land surveyor or civil engineer certifying that the Project as built conforms and complies with the conditions of this Comprehensive Permit.
- b. That it has delivered to the Board and Town Engineer accurate as-built utilities plans and profiles, showing actual in-ground installation of all utilities, copies of which shall be submitted to the Weston Department of Public Works after completion of construction.
- c. That it has completed and complied with the Historic Preservation Conditions set forth below.
- d. That it has completed and complied with the Landscaping Conditions set forth below.
- e. That it has delivered to the Board and the Licensed Site Professional the Final Report with Risk Assessment, as described below and including a risk assessment posed by residual impacted soil to future residents and has received written approval of same.
- f. That it has performed, or caused to be performed, the Highland Intersection Design Work and has implemented the Love Lane mitigation strategy, or has remitted the Love Lane Implementation Costs.

37. The Applicant shall allow the Building Inspector, members of the Board, and Town staff (acting in their capacity as a member of the Board or other Town official) to enter and inspect the Project at will during construction upon reasonable notice to the Applicant.

38. This Comprehensive Permit shall lapse if the Applicant does not commence construction within three (3) years of the date it becomes final (which is the date this Decision is filed with the Town Clerk if no appeal is filed, or the date the last appeal is decided or otherwise terminated favorably to the Applicant in the event of an appeal). The Board may authorize an extension of the three (3)-year period under the applicable state regulations. Construction shall be completed within five (5) years of this Permit taking effect. No phasing of this Project shall take place without the prior approval of the Board.

(2) Architectural and Civil Conditions

39. The Applicant has represented, and the Board has considered as a part of the Application, all architectural and civil changes as set forth in the updated and revised Plan of Record referenced above and including, but not limited to, the Architectural and Civil changes set forth in the Summary of Changes submitted to the Board on July 10, 2020.³

40. The Board expressly conditions the Comprehensive Permit upon compliance with the above and, in addition, adopts each of the Conditions set forth in the Weston PB Comments to Weston Board of Appeals submitted by the Planning Board dated June 19, 2019.

(3) Construction Conditions

41. The Applicant has represented, and the Board has considered as a part of the Application, all construction changes as set forth in the updated and revised Plan of Record referenced above and including, but not limited to, the Construction, Operations and Maintenance changes set forth in the Summary of Changes submitted to the Board on July 10, 2020.

42. The Board expressly conditions the Comprehensive Permit upon compliance with the changes referenced in the foregoing paragraph.

43. The Applicant shall ensure safe and convenient vehicular access to the Site during the entire duration of the construction of the Project. No vehicle associated with the construction of the Project shall park or remain standing or idling on adjacent public roadways.

44. The Applicant shall submit a construction and permitting schedule to the Building Inspector prior to the start of construction and regular reports as appropriate or upon request by the Town with copies to the architect designated by the Building Inspector to review and control project status.

45. The Applicant shall be responsible for ensuring that nuisance conditions do not exist in and around the Site during the construction operations. The Applicant shall at all times use all reasonable means to minimize inconvenience to residents in the general area and to maintain

³ The Summary of Changes is appended as Exhibit.

security at the Site during construction. In particular, the Applicant shall implement measures to ensure that noise from Project construction activities does not exceed acceptable levels, as set forth by Federal and State regulatory agencies. The Applicant shall cease any excessively loud activities when directed by the Building Inspector.

46. The hours of operation for any construction activities on-Site shall be consistent with Article III, Section 13 of the Town of Weston General By-laws.

47. In addition to, and not in lieu of, the Applicant's obligations under the Soil Management and Licensed Site Professional Conditions below, the Applicant shall be responsible to ensure that all public ways are maintained and kept free from construction debris. The Applicant and its contractors, employees and agents shall perform cleanup of all construction debris caused by Site construction activity. The Applicant shall be responsible for prompt repair of any damage caused to roadways or any public infrastructure.

(4) Historic Preservation Conditions

48. The Applicant has represented, and the Board has considered as a part of the Application, all historic preservation changes as set forth in the updated and revised Plan of Record referenced above and including, but not limited to, the Historical changes set forth in the Summary of Changes submitted to the Board on July 10, 2020.

49. The Board expressly conditions the Comprehensive Permit upon compliance with the changes referenced in the foregoing paragraph.

(5) Soil Management and Licensed Site Professional Conditions

50. The Applicant has represented, and the Board has considered as a part of the Application, all soil management changes as set forth in the updated and revised Plan of Record referenced above and including, but not limited to, the Licensed Site Professional changes set forth in the Summary of Changes submitted to the Board on July 10, 2020.

51. As a result of arsenic and lead which has been identified at the Site, and in particular in the orchard area and around historic barns, additional Conditions are necessary to reasonably

mitigate the health and safety risks that hazardous soil, and dust during earthwork and construction, causes for existing residents and for future occupants of the housing.

52. The Board expressly conditions the Comprehensive Permit upon compliance with the above and, in addition, adopts each of the Conditions set forth in the Proposed Conditions for Permitting submitted by Peer Reviewer James A. Luker dated March 16, 2020 (the “Luker Peer Review”).

53. The Applicant shall provide funding for the services of a Licensed Site Professional (“LSP”) on behalf of the Town throughout the period of construction. The LSP shall review and approve the plans, surveys and certifications as set forth in the Luker Peer Review Proposed Conditions.

54. The Applicant shall submit a detailed Soil Management and Remediation Plan to the LSP and the Board for approval, which approval shall not be unreasonably withheld. At a minimum, the Soil Management and Remediation Plan shall include the provisions set forth in the Luker Peer Review.

55. The Applicant shall deliver to the Town a satisfactory surety instrument, that shall not expire unless and until it is satisfactorily replaced or released, in an amount to be reasonably determined by the Town Department of Public Works but not less than 2x the estimated cost to perform soil remediation work in the event that the Applicant fails to fully perform the obligations under the Soil Management and Remediation Plan, or otherwise disturbs impacted soils and fails to remediate. The surety instrument shall be fully released upon the satisfactory completion of the work in question as voted by majority vote of the Board.

(6) Landscaping Conditions

56. The Applicant has represented, and the Board has considered as a part of the Application, all landscaping changes as set forth in the updated and revised Plan of Record referenced above and including, but not limited to, the Landscaping changes set forth in the Summary of Changes submitted to the Board on July 10, 2020, as well as the Invasive Management Plan.

57. The Board expressly conditions the Comprehensive Permit upon compliance with the above.

58. The Applicant shall be responsible for maintaining landscaping and shall be responsible for trash removal, snow removal, biannual inspection and maintenance of catch basins, dry wells, annual pump out and inspection of septic systems, and other infrastructure maintenance.

(7) Land Donation to Weston Forest & Trails Condition

59. The Applicant has represented, and the Board has considered as a part of the Application, the donation of 48 acres of the Subject Property (the “48 Acres”) to Weston Forest and Trails Association (or such other division or affiliate of the Town of Weston as may be selected by the Town). In the event that Weston Forest and Trails Association declines to accept the 48 Acres, the Applicant shall place a permanent conservation restriction on the 48 Acres. The transfer, or deed restriction, shall be duly recorded prior to the issuance of any building permit for the Project.

60. The 48 Acres consist of the northerly, uplands portion of the Subject Property. The donation, or restriction, of the 48 Acres will maximize the preservation of existing natural spaces abutting town-owned forest land, prevent the disturbance of wetlands areas, and increase recreational trail areas for the benefit of both occupants of the proposed housing and existing residents of the town.

61. The Board expressly conditions the Comprehensive Permit upon compliance with the above.

(7) Traffic Safety Conditions

62. The Applicant has represented, and the Board has considered as a part of the Application, all traffic safety changes as set forth in the updated and revised Plan of Record referenced above and including, but not limited to, the Traffic/RSA changes set forth in the Summary of Changes submitted to the Board on July 10, 2020.

63. The Board expressly conditions the Comprehensive Permit upon compliance with the above and, in addition, adopts each of the Conditions set forth in the Transportation Peer

Review Comments submitted by Peer Reviewer Robert J. Michaud dated May 28, 2020 (the “Michaud Peer Review Conditions”).

64. As a result of the crash rates and safety issues identified in the RSAs, direct testimony regarding traffic safety issues, and lack of public transportation options, additional Conditions are necessary to reasonably mitigate the health and safety risks that this Project will create and/or increase for existing residents and future occupants of the housing.

65. In light of the traffic safety risks and issues in the immediate vicinity of the Site, and the Highland Street and Boston Post Road intersections serving as the “gateway” intersections principally impacted by the Project, the Applicant shall, within 180 days of the date of this Decision, complete or provide funding for an engineering, design, an associated supporting design report and a construction cost estimate (the “Highland Intersection Design Work”); all of which shall be of sufficient detail, scope and quality to permit the Town to subsequently pursue state funding for final design and construction of these needed safety improvements.

66. In light of the traffic safety risks and issues in the immediate vicinity of the Site, and the impact of the Project upon the Love Lane intersection, due to Love Lane’s: (i) proximity to the Site, (ii) narrow and curved dimensions, (iii) lack of sidewalks, (iv) residential nature, and (v) “cut-through” potential, the Applicant shall, within 180 days of the date of this Decision, prepare and submit an origin-destination (O-D) volume study to the Town, which shall identify and assess potential strategies to mitigate traffic and safety issues at the Love Lane Intersection. Upon receipt of the O-D volume study, the Town (through appropriate local approval and regulatory means as supported by the Board of Selectmen) shall review and select a traffic mitigation strategy, and shall notify the Applicant of the selected strategy and estimated cost to implement (“Love Lane Implementation Costs”). The Applicant shall be responsible for the Love Lane Implementation Costs (up to a maximum of \$_____), and shall remit such amount to the Town within 45 days of the notice.

(8) Infectious Disease Prevention

67. As a condition of the Comprehensive Permit, the Applicant shall submit a site-specific Infectious Disease Preparedness Plan to the Board of Health for review and approval. The

Infectious Disease Preparedness Plan shall provide a detailed description of measures which will be implemented by the Applicant in the event of an incident, such as COVID-19, which poses an immediate safety risk to occupants of the housing and/or to the community as a result of “community spread.” The Infectious Disease Preparedness Plan shall further comply with all local, state and/or federal law, regulations and/or guidelines regarding infectious disease prevention best practices for multi-unit housing. The Applicant shall be responsible for ongoing review, updates and implementation of the Infectious Disease Preparedness Plan, and shall provide all plan updates to the Board of Health.

c. Waivers

68. The following waivers of the Zoning By-Laws requested by the Applicant are acted upon as follows:

a. §V.B: Uses

Multifamily dwellings not permitted in the Single Family Residence District A or B.

Voted : Waiver GRANTED to permit the construction of the multifamily apartment buildings and accessory building structures as shown on the Plan of Record, as conditioned above and as amended to comply with this Decision.

b. §V.G.1: Wetlands and Flood Plain Protection Districts A & B

No construction requiring any utility is permitted in the Wetlands and Flood Plain Protection Districts A and B, unless the Planning Board, pursuant to a Special Permit or Site Plan Approval, as applicable, determines that all utilities are located, protected and constructed as to minimize or eliminate flood damage and that methods of disposal for sewage, refuse, and other wastes and methods of providing drainage are adequate to reduce flood hazards and prevent pollution.

Voted : Waiver GRANTED to permit the construction of the multifamily apartment buildings and accessory building structures as shown on the Plan of Record, as conditioned above and as amended to comply with this Decision.

c. §V.G.2.b(i): Wetlands and Flood Plain Protection District A

No Dumping or filling or relocation of earth materials is permitted in the Wetlands and Flood Plain Protection District A.

Voted **-**: Waiver GRANTED to permit excavation and grading as shown on the Plan of Record, as conditioned above and as amended to comply with this Decision.

d. §V.I.3.a: Earth Removal

Unless permitted by the Planning Board, pursuant to a Special Permit or Site Plan Approval, as applicable, the removal of earth shall only be permitted where the removal of material from a property does not exceed the import of material associated with:

- *construction or alteration of a way (including, a driveway);*
- *construction of installation of a residential septic or drainage system, underground fuel storage stank or utility on the same premises that the system would be serving; and/or*
- *the removal of unsuitable material.*

Voted **-**: Waiver GRANTED to permit the removal of earth as shown on the Plan of Record, as conditioned above and as amended to comply with this Decision.

e. §V.I.5: Construction Trailer

The Inspector of Buildings may permit, upon written application, the location of a construction trailer or trailers on a lot or parcel of land, which construction trailer may be used for a period not exceeding six months as the offices and headquarters for the contractor or contractors engaged in construction on such lot or parcel of land. A permit issued by the Inspector of Buildings can be renewed for additional 6 month periods.

Voted **-**: Waiver GRANTED IN PART to permit the Building Inspector to issue additional permit renewals as may be necessary to allow construction trailers on the Site for the duration of construction of the Project.

f. §VI.E(2): Height of Pitched Roofs

37 feet or 2.5 stories, whichever is less.

Voted **-**: Waiver GRANTED to allow an approximately 54.49 ft. building and an approximately 52.75 ft. building as shown on the Plan of Record, as conditioned above and as amended to comply with this Decision..

g. §VI.B(2): Minimum Setback from Lot Line

Single Family District A: 45 ft.

Single Family District B: 35 ft.
Multiple Dwelling District A: 65 ft.
Multiple Dwelling District B: 100 ft.

Voted : Waiver GRANTED to allow a 33.5 ft. setback from the side lot line along 775 Boston Post Road as shown on the Plan of Record, as conditioned above and as amended to comply with this Decision.

h. §VI.F.3: Maximum FAR

0.10

Voted : Waiver GRANTED to allow a FAR of 0.14 as shown on the Plan of Record, as conditioned above and as amended to comply with this Decision.

i. §VII.B: Sign Regulations

The following signs are permitted in residence districts without a permit: (i) one temporary nonilluminated sign advertising sale or rent of premises, and (ii) nonilluminated sign or name plate not more than 2 square feet indicating persons occupying the premises. The Planning Board, through a Special Permit or Site Plan Approval, as applicable, may permit larger signs, but not larger than 20 square feet in area and 10 feet in dimension.

Voted : Waiver GRANTED IN PART to permit nonilluminated signage of typical size associated with a multifamily development.

69. The following waivers of the General Town By-Laws requested by the Applicant are acted upon as follows:

a. Article XI: Material Removal By-Law

Removal of soil, loam, sand or gravel from any Land not in public use is prohibited, unless expressly allowed by Section VI.I(3) of the Zoning Bylaw or authorized by a Special Permit.

Voted : Waiver GRANTED, to the extent necessary in light of the waiver of the zoning by-law set forth above, to permit the removal of soil as shown on the Plan of Record, as conditioned above and as amended to comply with this Decision.

b. Article XXIII: Scenic Roads By-Law

Any repair maintenance, reconstruction or paving work to be done within the Scenic Road Boundary that involves (i) cutting down or

removing significant trees, or (ii) tearing down, burial, relocation or destruction of stone walls or portions thereof requires prior written approval of the Planning Board after a public hearing.

Voted : Waiver GRANTED to permit the work to be done within the Scenic Road Boundary as shown on the Plan of Record, as conditioned above and as amended to comply with this Decision.

c. Article XXVII: Stormwater and Erosion Control By-Laws

A Major Permit from the Stormwater Permitting Authority is required for certain land disturbance activities, including, without limitation, any land disturbance (i) exceeding an area of 5,000 SF, or more than 20% of a parcel or lot, whichever is less and (ii) creation of new impervious surface area greater than 2,500 SF. A public hearing is also required for Major Permits where the design standards cannot be met.

Voted : Waiver GRANTED to permit land disturbance activities as shown on the Plan of Record, as conditioned above and as amended to comply with this Decision.

d. Article XXVI: Demolition Delay

The demolition of any building constructed before 1945, and located within an area listed on the National Register of Historic Places is subject to review by the Weston Historical Commission.

Voted : Waiver GRANTED to permit demolition as shown on the Plan of Record, as conditioned above and as amended to comply with this Decision.

70. The following waivers of additional Town Rules and Regulations requested by the Applicant are acted upon as follows:

a. Site Plan Approval Rules and Regulations

Requirement for Site Plan Approval, to the extent applicable.

Voted : Waiver GRANTED to permit the construction of the multifamily apartment buildings and accessory building structures as shown on the Plan of Record, as conditioned above and as amended to comply with this Decision.

b. Board of Health Regulations

The requirements to comply with the local Board of Health Regulations for Sewage Disposal Systems.

Voted : Waiver GRANTED with respect to Board of Health Regulations for Sewage Disposal Systems to permit construction as shown on the Plan of Record, as conditioned above and as amended to comply with this Decision.

c. Tree Removal Policy for Landowners

Landowners must obtain prior permission from the Conservation Commission prior to any tree or brush removal or trimming, vegetation removal or cutting, lawn expansion, soil grading and construction) in the following areas:

- *Wetland Resource Area (defined as 100 year flood zone, wetlands, streams, ponds and marshes); Riverfront Areas (land within 200 feet of a perennial stream);*
- *Buffer zones; and*
- *25-Foot No Disturb Zone*

Voted : Waiver GRANTED to permit the removals as shown on the Plan of Record, as conditioned above and as amended to comply with this Decision.

d. Weston Conservation Commission 25-ft No Disturb Zone

No work of any kind (e.g., tree or brush removal or trimming, vegetation removal or cutting, lawn expansion, soil grading, and construction) is permitted within the 25-Foot No Disturb Zone and permission is required from the Conservation Commission prior to any removal of trees within such Zone.

Voted : Waiver GRANTED to permit the work as shown on the Plan of Record, as conditioned above and as amended to comply with this Decision.

e. Model BOH Regulation for Private Wells

A permit from the Board of Health is required prior to the commencement of construction of a private well.

Voted : Waiver GRANTED to permit the construction as shown on the Plan of Record, as conditioned above and as amended to comply with this Decision.

f. General

Local requirements, codes, bylaws, and regulations, to the extent applicable.

Voted **-**: Waiver DENIED without prejudice to specific waivers being requested in the future.

I hereby certify that the foregoing is a True Record of the Board's vote taken on _____, 2020, to grant the Comprehensive Permit, with conditions.

Attest: _____
Natalie B. Sawyer, Acting Secretary

Date of Decision: _____, 2020

Filed with Town Clerk on: _____, 2020

Posted on: _____, 2020

Notice sent to Applicant, via certified mail, on: _____, 2020

Notice sent to interested parties, via first-class mail, on: _____, 2020

DRAFT