

November 4, 2024

Dillon G. Brown
781.843.5000 ext. 130
dbrown@meeb.com
admitted in: MA

SENT VIA EMAIL

George Chimento, Chair
Town of Dover Zoning Board of Appeals
Dover Town House
5 Springdale Avenue
P.O. Box 250
Dover, MA 02030
gchimento@doverma.gov

RE: Comprehensive Permit Application: 81 & 85 Tisdale Drive, Dover, MA 02030

Dear Members of the Zoning Board of Appeals:

Please be advised that this firm represents the Board of Trustees of the County Court Condominium Trust (the “Board” and/or “Condominium Trust”), which is the organization of Unit Owners of the County Court Condominium (the “Condominium”) a fifty-six (56) Unit residential Condominium located along Tisdale Drive, Dover, Massachusetts 02030. The Condominium directly abuts the proposed Project Site located at 81 & 85 Tisdale Drive, Dover, Massachusetts 02030 (the “Project Site” and/or “81 & 85 Tisdale Drive”) which are currently occupied by two (2) single family homes that are not comprised within the Condominium. The Applicant, Tisdale Land, LLC (the “Applicant” and/or “Developer”) has proposed to construct a forty-two (42) Unit apartment complex with sixty-five (65) parking spaces at 81 & 85 Tisdale Drive (the “Project”), all of which the Developer intends to access exclusively via Tisdale Drive located on Condominium Property. A public hearing before the Town of Dover Zoning Board of Appeals (the “ZBA”) is scheduled for November 4, 2024 at 7:00PM to review the Developer’s Comprehensive Permit Application.

Pursuant to M.G.L. c. 40B §§ 20-23, the ZBA may grant the requested Comprehensive Permit if the proposed Project is “consistent with local needs.” Such legal standard balances the Town of Dover’s need for affordable housing against the valid health, safety, design, and/or open space concerns of the community. As set forth herein, given the detrimental impact that an abutting apartment complex would have on all Condominium residents, by no means is the Developer’s application consistent with local needs. Accordingly, please be advised that the Condominium Trust hereby **OPPOSES** the Project, as currently designed, and respectfully requests that the ZBA deny the Developer’s Comprehensive Permit Application for the following reasons, the majority of which echo the concerns raised by the Town of Dover Board of Selectmen in that

certain correspondence to the Massachusetts Housing Finance Agency dated October 27, 2023, whereby the Board of Selectmen requested the denial the Developer's Project Eligibility Letter.

First and foremost, Tisdale Drive is a private roadway owned by the Condominium Trust and therefore the Developer has no legal right to access the same without the consent of the Association. Specifically, pursuant to a certain Decision of the Dover Zoning Board of Appeals dated October 4, 1991 and recorded with the Norfolk County Registry of Deeds in Book 9069, Page 549, the Condominium Declarant was granted a comprehensive permit to develop the Condominium, which included the construction of a private roadway to be known as Tisdale Drive (a copy of the ZBA Decision dated October 4, 1991 is attached hereto as Exhibit A).

The road pavement and subgrade in the Project shall be built to Town of Dover specifications, as modified hereby and by the covenant dated July 7, 1988 between the Applicant and the Planning Board (executed in connection with subdivision approval for Woodland Estates). Tisdale Drive and Bullards Highway (if constructed) will initially be private ways and shall be maintained by the Applicant (or the condominium association). Nothing herein shall prevent the Board of Selectmen from laying out or the Town of Dover from accepting such roads as public ways in the future.

As a result, Tisdale Drive is located entirely within the boundaries of Condominium Property and constitutes a portion of the common area. More importantly, Tisdale Drive was constructed in 1993 to specifically (and exclusively) serve the Units within the Condominium. As such, absent an express grant from the Condominium Trust, the Developer has absolutely no legal right to utilize any portion of Tisdale Drive for access to the proposed Project. In fact, a title search confirms that the Association has never granted the Owners of either 81 and/or 85 Tisdale Drive access over Condominium Property to utilize the two (2) single family homes. While the chain of title for 81 Tisdale Drive does reference a right for the Owners to use Tisdale Drive for purposes of accessing a public way (i.e. Rt. 109), the aforementioned grant is undoubtedly subject to legal challenge because such easement was not granted by the Condominium Trust (i.e. the owner of the private roadway).

Despite the Developer's inability to access the private roadway, Tisdale Drive is currently unequipped to serve a project of this magnitude. Here, Tisdale Drive is a small, 22ft. wide road that ends in a cul-de-sac. As currently designed, the roadway does not permit the flow of two-way traffic. Consequently, the addition of 65+ vehicles on Tisdale Drive each day, especially during rush hour, will undeniably increase traffic in an area that suffers from congestion on a daily basis given its proximity to Rt. 109. Such limitations substantially jeopardize the health and safety of all Condominium residents. In particular, the Condominium houses several children within the Dover-Sherborn school system. Unfortunately, Tisdale Drive is simply not wide enough to accommodate the traveling of school buses (the cul-de-sac does not enable school bus to turn around and exit the premises). Thus, students are forced travel along Tisdale Drive each day to a small bus stop located along the state highway. Because there are no sidewalks constructed on Condominium Property, by default, all children walk (or ride their bikes) on the private roadway itself. Hence, increasing the number of vehicles utilizing Tisdale Drive undoubtedly endangers the children residing on Condominium Property. Likewise, the limited

width of the roadway does not provide emergency vehicles with a sufficient means of access to homes located on Tisdale Drive. Given these limitations, firetrucks and snow plows will have great difficulty serving the apartments within the proposed development.

Additionally, pursuant to Section 185-34 of the Town of Dover Zoning Bylaw, residential developments must provide for at least two (2) parking spaces per dwelling unit. Here, the Applicant has proposed the construction of forty-two (42) residential apartments, which would result in the need for a total of eight-four (84) parking spaces. Yet, the Developer has merely proposed the construction of only sixty-five (65) parking spaces and claims, without any legal or factual support for the same, to have adhered to the Town of Dover Zoning Bylaw. As such, the Applicant falls drastically short of the requisite number of parking spaces needed to serve the tenants and guests of such a large community. Such failure is only exasperated by the fact that there is no public transit located within miles of 81 & 85 Tisdale Drive thereby necessitating the need for a car on-site. Because the Project lacks the sufficient number of parking spaces needed to serve the proposed apartment complex, residents unable to secure a space in the parking lot will undoubtedly resort to parking their vehicles at what limited parking that remains on Condominium Property to the detriment of the Association.

More importantly, as the ZBA is certainly aware, for years, the Condominium Trust has had limited access to water without resolution. The Association receives its water from private underground water wells administered by the Aquarion Water Company (“Aquarion”). Unfortunately, Aquarion has persistently failed to provide the Condominium with an ample water supply and safe drinking water. Particularly, Unit Owners routinely suffer from low water pressure which has prohibited residents from properly cooking, cleaning, and/or otherwise bathing within their own homes. Moreover, without a sufficient water supply, the fire department does not have the resources available to respond to emergencies and extinguish fires on Condominium Property. To make matters worse, Condominium residents have also reported several instances of discolored (i.e. brown) water discharged from their sinks, bathtubs, and washing machines. The Association’s water quality became so poor that Aquarion was forced to provide residents with bottled water while the company purportedly investigated the issue without success. As such, it is evident that the Town of Dover and/or Aquarion is currently unable to provide the future residents of 81 & 85 Tisdale Drive with water in any sufficient capacity. In fact, Aquarion admitted such inability when it informed the Applicant that it could only provide limited water supply to its abutting development at 61-63 County Street, Dover, Massachusetts 02030 (“Red Robin Pastures”). Specifically, Aquarion informed the Developer that water serviced to Red Robin Pastures must be limited to 65 gpd, could not be used for fire suppression or irrigation, and would likely require the installation of a water main.

Therefore, the Applicant does not meet the legal requirements needed for the issuance of a comprehensive permit. For the reasons stated herein, namely the Project’s foreseeable harm to the Condominium residents, the Condominium Trust opposes the proposed development at 81 & 85 Tisdale Drive and respectfully requests that the ZBA deny Tisdale Land, LLC’s Comprehensive Permit Application. Our office will be in attendance and voice the Association’s concerns during the ZBA hearing scheduled for November 4, 2024.

Thank you for your time and consideration. Please contact me if you have any questions or concerns.

Very truly yours,

MARCUS, ERRICO, EMMER
& BROOKS, P.C.

A handwritten signature in blue ink, appearing to read "Dillon G. Brown".

Dillon G. Brown

DGB/emw

cc: Board of Trustees of the County Court Condominium Trust

9069

N O T
A N
O F F I C I A L
C O P Y

84315

N O T
A N
O F F I C I A L
C O P Y34-
PL 25, Received May 26, 1989
Judit Block 549
Town Clerk
DoverRECORDED
BOSTON COUNTY REGISTRY OF DEEDS
REGISTRATION ATTACHED
9069 549

TOWN OF DOVER

BOARD OF APPEALS

DARCY T. HANNON, REGISTRAR

RECORD AND DECISION

Subject Property: Approximately 11 acres of land off County Street, Dover, Massachusetts

Name of Applicant: 71 Realty Trust

Nature of Petition: Application for Comprehensive Permit

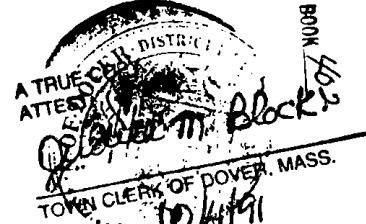
Hearing Dates: November 21, 1988, December 5, 1988, January 9, 1989, February 1, 1989, March 22, 1989 and April 1, 1989

I. INTRODUCTION

Pursuant to notice in the Dover Sherborn Suburban Press, a newspaper of general circulation in the Town of Dover, published on November 3 and 10, 1988, and notice sent by mail, postage prepaid to all interested parties, all as required by law, a public hearing was held on November 21, 1988, on the application of 71 Realty Trust filed on October 26, 1988 for a comprehensive permit, pursuant to Massachusetts General Laws, Chapter 40B, Sections 20 through 23 (the "Act") authorizing the Applicant to construct and operate a residential condominium development (the "Project") to be known as "County Court" on approximately 11 acres of land located off County Street (the "Site"). Present at the hearing were Henry W. Minot, Jr., Chairman; Chester F. Heinlein, Jr., Member; David W. Lewis, Jr., Member; Jane D. Moore, Clerk and Associate Member; and Priscilla Jones, Associate Member.

In accordance with the Act, by memorandum dated November 1, 1988, the Board notified the following local boards of the filing of the application for a comprehensive permit and requested that each of the following local boards or its representative attend the hearing and provide the Board of Appeals with recommendations and comments:

- Board of Selectmen
- Planning Board
- Board of Health
- Conservation Commission
- Dover Housing Partnership
- Superintendent of Streets
- Building Inspector
- Police Chief
- Fire Chief
- Dover School Committee
- Dover Sherborn Regional School Committee



RECEIVED
OCT - 9 PM 2:59
RECORDED

REFER TO PLAN NO. 674 OFF PL. BOOK 162
10/24/91

9069
N O T
A N
O F F I C I A L
C O P Y

N O T
A N
O F F I C I A L
C O P Y

- 550

- Finance Committee on Roads
- Council on Aging
- Long Range Planning Committee
- Land Use Committee

At the November 21, 1988 session, the Applicant, represented by Michael Sinclair of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. (attorney), Patrick Garner of Patrick C. Garner, Inc. (site engineer) and Bennett Sewell of SEA Consultants Inc. (traffic consultant) gave an overview of the Project. In response to comments from neighbors and other interested persons, Mr. Sewell agreed to prepare a revised traffic report. William Beck of Haley & Aldrich (hydrogeologist) advised the Board that a draft hydrogeologic impact study was being prepared by Haley & Aldrich and would be available in several weeks. The Selectmen informed the Board that they had hired IEP, Inc. to review the Haley & Aldrich report on behalf of the Town.

After the Applicant had completed its presentation, the Board heard from the Planning Board. The Planning Board had previously granted subdivision approvals for the Site and for an adjacent parcel owned by David MacCready and Craig Rafter ("MacCready/Rafter"). Those approvals were for the construction of an 8 lot single family home subdivision on the Site ("Woodland Estates") and a 9 lot single family home subdivision on the MacCready/Rafter parcel ("Brook Run Estates") and were granted subject to the condition that uniform and interconnected roadway and drainage systems be built. Traffic through the Site would access Draper Road via "Schaffner Lane" located on the MacCready/Rafter parcel and on land owned by William Warwick to the west of the Site (the "Warwick Parcel"), and via "Bullards Hillway", to be built on the Site and across the southern portion of the Warwick Parcel. The Town had previously been granted roadway easements over the Warwick Parcel. The Planning Board recommended that the comprehensive permit be denied unless the Project were modified in accordance with certain recommendations listed in a letter dated November 7 to the Board; primarily that the density be reduced from 68 to 42 units, that secondary access be provided via Bullards Hillway, that water be provided by the Dover Water Company and that the roadways be public ways. The Planning Board also requested that a scale model of the Project be prepared. The hearing was then continued to December 5, 1988.

At the December 5 session, Mr. Sewell reported that a revised traffic report was not finished, but would be ready in about ten days. The Applicant reported that the hydrogeologic report was not yet complete, but that a draft report would be available for review by IEP shortly. The remainder of the hearing consisted of presentations from various town boards including the Board of Health, the Conservation Commission, the Dover Housing Partnership Committee, the Superintendent of

A TRUE COPY
ATTEST:
Judith M. Block
TOWN CLERK OF DOVER, MASS.
10/4/91

N O T
A N
O F F I C I A L
C O P Y

N O T
A N
O F F I C I A L
C O P Y

551

Streets, the Building Inspector, Dover School Committee, the Council on Aging, the Land Use Committee and the Board of Selectmen.

The Conservation Commission noted that it had denied the Applicant's request for an order of conditions for the roadway work related to the Tisdale Drive connection to Schaffner Lane called for by the subdivision approvals of Woodland Estates and Brook Run Estates. The denial by the Conservation Commission is being appealed, but unless the Conservation Commission decision is overturned, the previously approved roadway system cannot be built. The Applicant has not yet filed a notice of intent for the Project.

The Selectmen raised several concerns including the potential for groundwater contamination, the source of water, the existence of secondary access, the Project's density and the need for units designed for the elderly. The Board then heard from the Walpole Town Planner (who advised the Board that Walpole did not have sufficient water capacity to service the Project and that Walpole was unwilling to provide water to the Project) and from various neighbors and interested persons. Kenneth May, an attorney for MacCready/Rafter, stated that they opposed the Project and believed that construction of the Project would violate certain agreements between MacCready/Rafter and the Applicant regarding their subdivision approvals. The hearing was then continued to January 9, 1989.

At the January 9, 1989 session, Mr. Sinclair advised the Board that final traffic, drainage and hydrogeologic reports and a scaled model of the Project would be available in a couple of weeks. The Board then asked questions regarding the Project and entertained comments and questions from neighbors and interested persons. The hearing was continued to February 1, 1989. During the next two sessions (on February 1 and March 22, 1989), a revised traffic report was submitted as well as the preliminary hydrogeologic and drainage reports. Discussions at these two sessions centered primarily on the Project's drainage system, the proposed septic system, plans for secondary and emergency access and density. The final Traffic Study concluded that the "additional traffic generated by the condominium units in County Court and the potential future single family residences will have a minimal impact upon the traffic along Route 109" and that "Due to this minimal impact, mitigation measures for the vehicle traffic congestion by the County Court developer are not required."

At the conclusion of the March 22 session, the hearing was continued to April 1 at which time the Board visited the Site with the Applicant, its representatives, members of various Town Boards, abutters and interested members of the community. At the April 1 session, the public hearing was closed but the public

A TRUE COPY
ATTEST:

Judieta M. Block
TOWN CLERK OF DOVER, MASS.
10/4/91

9069
N O T
A N
O F F I C I A L
C O P Y

N O T
A N
O F F I C I A L
C O P Y

552

meeting was adjourned to April 3, 1989 for deliberations. Deliberations were held on April 3, 1989 and were successively continued to April 5, 1989, April 11, 1989, May 4, 1989, May 11, 1989, May 18, 1989 and May 24, 1989. All members and associate members of the Board faithfully attended all sessions of the hearing, except that Jane Moore was unable to attend the March 22 session. On May 24, 1989, the Board voted to grant a comprehensive permit subject to the conditions contained herein. The Board notes that, according to the Act, a decision was to have been rendered by the Board on or before May 11, 1989. This deadline was twice extended by mutual agreement between the Board and the Applicant to May 19 and May 26, respectively.

Over the course of the public hearing, the Board received numerous written comments and reports. A chronological list of the written materials received by the Board is attached as Exhibit A. The materials underlined on Exhibit A represent the Applicant's final proposal.

Numerous plans were also submitted to the Board on behalf of the Applicant. A list of the plans received by the Board is attached as Exhibit B. The plans underlined on Exhibit B (the "Plans") represent the Applicant's final proposal.

II. DISCUSSION

During the course of the hearing, the Board received many thoughtful comments and observations from various local boards in Dover and Walpole, from neighbors of the project and from other interested persons. In response to these comments, the Applicant has made several modifications to its original proposal and has agreed to the conditions below.

Several issues during the course of the hearing generated the most discussion and concern. Those were: (1) the source of domestic and emergency water supply, (2) the design of the on-site septic disposal system and its impact on groundwater, (3) the design of the surface water drainage system, (4) the availability of secondary access and (5) the Project's density. Those issues are discussed below.

Water Supply

The Site is part of a larger area which, in 1982, suffered groundwater contamination from a leak from an underground gasoline tank at a nearby gas station. The use of wells for drinking water is forbidden in that area. The Town of Dover has no public water system. Service from the privately owned Dover Water Company is not currently available to the Site. Furthermore, as of the commencement of the public hearing, the Applicant had no assurances that water would be available for the Project. This raised many legitimate concerns. *Due to the
TRUE COPY
ATTEST:*

Dudette M. Block
TOWN CLERK OF DOVER, MASS.
10/4/91

N O T
A N
O F F I C I A L
C O P Y

N O T
A N
O F F I C I A L
C O P Y

553

gasoline tank leak, special legislation was passed in 1982 (Chapter 403 of the Acts of 1982) which, among other things, required the Town of Walpole, upon the request of the Dover Board of Selectmen, to supply water to new buildings constructed on certain parcels located in Dover. In December of 1988, Section 2 of Chapter 403 of the Acts of 1982 was amended to require the consent of the Walpole Board of Sewer and Water Commissioners before Walpole would be required to supply water to new buildings located in Dover. The Board received oral and written testimony from the Town of Walpole indicating that Walpole would be unwilling to supply water to the Project. However, the Board was informed that, although a final contract had not been signed, the Applicant and the Dover Water Company had agreed to the basic terms for the extension of Dover Water Company service for domestic use to the Site.

The Dover Water Company does not believe that it has sufficient capacity for use in the event of fire at the Site. The Board understands that, notwithstanding the 1988 amendment to Chapter 403 of the Acts of 1982, the Town of Walpole is required to supply water to the Site in case of fire. Evidence was presented to the Board that for developments such as the Project (i.e., two-story buildings separated by at least 31 feet and two hour fire separation between dwelling units), a fire flow range of 750 gpm to 1,000 gpm at a residual pressure of 20 psi is required. The Board received a report dated June 6, 1988 prepared by Norwood Engineering indicating that the fire flow from the Walpole water main in County Street is 766 gpm at a residual pressure of 20 psi. A letter dated June 27, 1988 from Leonard Anderson, Walpole Fire Chief, to the Town of Walpole Planning Board notes that during the test an available manually operated fire pump was not activated and that the pump would "surely improve pressure and flow" but that the extent of improvement is not known. A report dated November 18, 1988 prepared by Camp Dresser & McKee, Inc. on behalf of the Applicant, evaluating the adequacy of water supply for the Project, states that "It appears that the existing Walpole water system from North Street to County Street has sufficient capacity to meet the water needs of the Tisdale Drive development." Based upon all of the above, the Board believes that sufficient emergency water capacity exists.

The Project will contain three on-Site fire hydrants in the locations shown on the Plans. In the event of a fire, the Applicant suggests that a fire hose could be run from the existing Walpole fire hydrant on County Street to the line serving those three fire hydrants. The Dover Fire Chief has indicated that this arrangement is acceptable. Both the Applicant and the Board of Selectmen, however, believe that it would be preferable if a permanent connection were made between the Walpole water main and the fire hydrants to be located on

A TRUE COPY
ATTEST:
Dover m. Block
TOWN CLERK OF DOVER, MASS.
10/4/91

9069
N O T
A N
O F F I C I A L
C O P Y

N O T
A N
O F F I C I A L
C O P Y

554

Site. The Applicant has indicated that it will pay for such a permanent connection if the Selectmen are able to make appropriate arrangements with the Town of Walpole.

Septic Systems

The Project calls for the disposal of sewage through the use of a series of on-site septic systems with leaching fields, trenches, pits or chambers. Concern was voiced that discharges from these systems might contaminate the groundwater of abutters, the groundwater of proposed locations for Dover Water Company supply wells and/or Tubwreck Brook. Concern was also raised that the mounding of groundwater resulting from septic system discharges would artificially increase the groundwater level such that compliance with certain Dover Board of Health regulations would be impossible for both the Applicant and abutters.

A hydrogeological investigation report dated February 1, 1989 prepared by Haley & Aldrich on behalf of the Applicant indicated that nitrate nitrogen concentrations resulting from the Project's proposed septic systems would range from 8.6 mg/l 50 feet away to 5.9 mg/l at 350 feet. These estimates were based on certain assumptions (described as conservative by Haley & Aldrich) regarding the groundwater flow (generally northeast), renovation rate of initial nitrate concentration before it reaches the groundwater (75%), effluent rate (150 gpd per bedroom; 20,400 gpd for the Project) and soil permeability. The United States Environmental Protection Agency has established a safe drinking water quality standard for nitrate concentration of 10 milligrams per liter. The February 1, 1989 Haley & Aldrich Report recommended that some of the septic systems should be relocated to the northern part of the Site to take advantage of more permeable soils and that annual inspections and cleanout of the septic systems be conducted.

The February 1 Haley & Aldrich Report was reviewed by IEP. In response to concerns raised by IEP, Haley & Aldrich submitted a revised report dated March 10, 1989 using more conservative assumptions (renovation rate of 35% instead of 75%). The revised Haley & Aldrich report indicated that the discharge from the Project's septic systems could result in a nitrate concentration of 13.1 mg/l at the northeast boundary. The Board received oral testimony that neither Haley & Aldrich nor IEP believed a level of 13.1 mg/l would actually occur. IEP believed that, due to the very conservative nature of each assumption used in the Report, it was likely that a nitrate level of less than 10 mg/l would result. IEP suggested that a more refined modeling analysis be done to generate a more accurate picture of the nitrate levels which would actually result from the Project's septic systems. The modeling done by Haley & Aldrich had assumed that all of the

A TRUE COPY
ATTEST:
Robert M. Block
TOWN CLERK OF DOVER, MASS.
10/4/91

N O T
A N
O F F I C I A L
C O P Y

N O T
A N
O F F I C I A L
C O P Y

555

Project's septic discharges would come from one central location and did not account for the fact that the Project's actual septic systems would be dispersed throughout the Site.

In response to the comments made by IEP, Haley & Aldrich refined its modeling to reflect the actual proposed septic system locations. The final revised Haley & Aldrich report, dated March 31, 1989, indicated that a nitrate level range of 2 to 5 mg/l is predicted at the northeastern edge of the Site and that, within the wetlands area, a nitrate level range of 2 to 6 mg/l is predicted. Both ranges are below the EPA drinking water quality standard of 10 mg/l. Also, both ranges fall within the acceptable "safety margin" described in the IEP Report. That revised modeling was based on 68 units and incorporated the conservative assumptions for flow rates (150 gpd per bedroom), transmissivities (150 gpd per foot) and renovation rates (35%). The Haley & Aldrich Report concluded that the Project would generate "reasonable nitrate concentrations well within the water quality standards of 10 mg/l. The bordering wetlands will further mitigate the potential impacts of the effluent through nutrient uptake and biodegradation."

IEP submitted a final written report to the Board undated, but received by the Board on April 1, 1989. IEP noted that "the conservative nature of the modeling . . . will act to provide a safety margin for nitrate concentrations. An additional safety factor would be provided by reducing the number of units to 56 . . .". IEP's report concluded by stating that it "feels the project is viable at the 56 unit level given compliance with [certain conditions mentioned in its Report].". In response to these and other concerns, the Applicant has offered to reduce the number of units from 68 to 56 provided that all other conditions of this permit are acceptable to it. The conditions mentioned in IEP's Report have been made conditions to this permit pursuant to Section V, paragraph 14.

The Board also received a written report, dated March 22, 1989 from Goldberg, Zoino & Associates on behalf of the Dover Water Company. The Goldberg Zoino Report addressed the possibility of contamination of Dover Water Company wells. That Report substantially corroborated the results of the Haley & Aldrich Reports. The Goldberg Zoino Report recommended that some of the leaching fields located in the northwest portion of the Site be moved to the northeast. As noted above, the Applicant has offered to eliminate twelve of the units (and their septic systems) and has agreed to relocate some of the other septic systems.

The Board also received two hydrogeologic reports from Dr. Jerome B. Carr of Carr Research Laboratory, Inc. on behalf of MacCready/Rafter. Each of those reports raised questions about the Haley & Aldrich report. Several of the comments and

TRUE COPY
ATTEST
Dorothy M. Block
TOWN CLERK OF DOVER, MASS.
10/4/91

N O T
A N
O F F I C I A L
C O P Y

N O T
A N
O F F I C I A L
C O P Y

suggestions made in the Carr Research Laboratory reports have been incorporated herein as conditions. Dr. Carr expressed concern about the fact that a nitrate level of 28 mg/l was reported from one of the test wells (B2-OW) and recommended that the test be repeated. Haley & Aldrich believed that this result was due to laboratory error or laboratory contamination. The test has been repeated with results of .25 mg/l. Dr. Carr also notes that many communities have established nitrate guidelines for groundwater of 5 mg/l. At this time, Dover has established no such standard. However, pursuant to Section V, paragraph 15 of this Permit, annual monitoring of nitrate levels will be conducted under the supervision of the Board of Health. In addition, pursuant to Section V, paragraph 16, the Board has required the Applicant, under certain circumstances, to pay for the extension of Dover Water Company service to two neighboring lots. Such extension of Dover Water Company service would eliminate any risk of nitrate contamination in the source of drinking water for those lots.

The other concern raised about the Project's septic system was that of "mounding". Section 15.02 (17)(b) of the Dover Board of Health Regulations provides that "leaching areas (pits, galleries, fields, chambers, trenches, or other) shall not be constructed where there is less than five feet of naturally occurring pervious soil between the bottom of the proposed leaching facility and the maximum groundwater elevation." Mounding is the rise in the water table level in the area immediately below and adjacent to a septic system caused by septic system discharges. Depending upon existing water levels, a rise in the water table could prevent compliance with the Dover Board of Health requirement that the bottom of a leaching structure be at least five feet above the groundwater level. The Applicant requested an exception from Section 15.02(17)(b) and proposed to design its septic systems in accordance with Title V regulations which require a four foot separation between the bottom of a leaching structure and the groundwater level. The reports prepared by Haley & Aldrich and IEP indicate that the mounding impact of the project's septic systems will not create a serious problem either for the Project's septic systems or future septic systems on neighboring properties. Both the Carr Research Laboratory report and the IEP report note that because groundwater levels this year are unusually low, a correction factor must be applied so that the actual siting decisions made by the Board of Health will accurately anticipate a return to more normal water levels in the future. The Board understands that the Dover Board of Health, when siting and reviewing septic systems, does in fact apply such a correction factor. Also, the Applicant has agreed to conduct additional percolation tests this spring and, if the results permit it, will install its leaching structures in accordance with Dover Board of Health requirements.

A TRUE COPY
ATTEST:

Quinton M. Block

TOWN CLERK OF DOVER, MASS.

10/4/91

N O T
A N
O F F I C I A L
C O P Y

N O T
A N
O F F I C I A L
C O P Y

557

Drainage System

The Board received a preliminary report of the Project's drainage system dated January 26, 1989 prepared by Patrick C. Garner, Inc. That report was reviewed by IEP which provided its conclusions and recommendations to the Board by letter dated February 22, 1989 to the Board of Selectmen. The Report submitted by IEP indicates that the proposed drainage system is adequate and will be able to handle the 100 year storm provided that nine conditions listed in its report are met. Those nine conditions are incorporated into this permit pursuant to Section V, paragraph 7. Several concerns about the proposed stormwater drainage system were raised by MacReady/Rafter. Their land currently receives runoff from the Site. The primary concern was that stormwater from the Site would be funneled and channeled from a single discharge point which might possibly impact their land. The Board received testimony from IEP that it did not anticipate such a problem would arise. However, in response to these concerns, the Applicant redesigned a portion of its drainage system so that instead of a single discharge pipe for excess stormwater from the northern half of the Site, stormwater will now be discharged from two pipes approximately 20 feet apart, thereby dispersing the outflow over a larger area and mitigating any potential funneling effect. Furthermore, stone riprap will be provided at the discharge areas which will further reduce the velocity of the discharge. In addition, a condition to this permit requires that, based upon current best engineering practice, the Project's stormwater drainage system be designed to the criterion that neither the net peak flow nor the overall volume of runoff from the Site be increased over existing conditions. The condition to this permit contained in Section V, Paragraph 7, calls for review by the Town's consultant of final plans for the Project's stormwater drainage system for compliance with this design criterion.

Secondary Access

As noted above, in August of 1988, the Planning Board granted subdivision approval for an 8 lot subdivision on the Site. A condition of that subdivision approval was the construction of a roadway system connecting with Brook Run Estates. Secondary access from the Site to Draper Road would have been provided through Schaffner Lane and Bullards Hillway. However, Schaffner Lane is not part of the Site and the Applicant currently has no assurances that Schaffner Lane will be built. Accordingly, the Applicant proposes to build Tisdale Drive with a cul de sac at the end. If Schaffner Lane is built (and Bullards Hillway has not been built, see below), the Applicant will, if able to obtain required approvals, eliminate the cul de sac and connect Tisdale Drive to Schaffner Lane.

A TRUE COPY
ATTEST:

Decolte M. Block
TOWN CLERK OF DOVER, MASS.
10/4/91

N O T
A N
O F F I C I A L
C O P Y

N O T
A N
O F F I C I A L
C O P Y

558

Bullards Hillway, as approved by the Planning Board, would have extended from the Site to Draper Road through an easement previously granted to the Town of Dover by William Warwick. During the hearing, the Conservation Commission raised several concerns about the construction of Bullards Hillway. However, the Board of Appeals received correspondence from the Planning Board (together with a letter from Charles Miller of Haley & Ward, Planning Board consultants) recommending the construction of Bullards Hillway and noting that, in his opinion, the environmental concerns raised by the Conservation Commission can be adequately addressed by careful design of the roadway. The Board also received correspondence from the Board of Selectmen recommending that if Schaffner Lane could not be constructed or if approval to connect Tisdale Drive to Schaffner Lane could not be obtained by the Applicant, then Bullards Hillway should be built. The Applicant does not currently have the right to construct Bullards Hillway. The easement granted by William Warwick was granted to the Town of Dover, not to the Applicant. Therefore, the construction of Bullards Hillway by the Applicant is contingent upon further action by the Town. The Applicant also indicated that, if the connection to Schaffner Lane could not be made or if Bullards Hillway could not be built, it would be willing to construct a gravel or stone dust, perimeter road around the Site affording access by emergency vehicles to all sides of the buildings. This option does not provide general secondary access but does provide an alternative means of access for emergency vehicles.

Although the Board is not completely happy with the available options for secondary access, it does not believe that the lack of a perfect solution is sufficient reason to deny a permit for the Project. Based upon all of the evidence received by the Board and after extensive discussions with the Applicant, the Board believes that the alternatives described in Section V, paragraphs 8, 9 and 10, adequately address the issues of secondary and emergency access.

Density

A major issue raised by virtually all local boards and many concerned citizens is the density of the Project. The Applicant proposed to construct a 68 unit condominium development on 11 acres. Some of the concerns about the Project's density were directly related to the issues surrounding the Project's drainage and septic system designs. Other concerns centered around aesthetics and overcrowding. In response, the Applicant has offered to reduce the number of units from 68 to 56, provided that all conditions to this permit are acceptable to it. Table A illustrates the breakdown of the 56 units by unit type (as shown on the Plans), phase, number of affordable units and number of bedrooms, baths and liveable square footage.

ATTEST
Judie M. Block
TOWN CLERK OF DOVER, MASS.
10/4/91

N O T
A N
O F F I C I A L
C O P YN O T
A N
O F F I C I A L
C O P Y

559

TABLE A

Type of Unit	Phase			Total # of Units	# of Bedrooms	# of Baths	Liveable Sq. Footage	
	I	II	III					
HOUSING B	1	0	1	2	3	1 1/2	1,400	
AUTHORITY B	0	1	0	1	2	1 1/2	1,400	
(low-income rental)				3(5%)				
HOP - ASSISTED B	3	3	2	8	2	1 1/2	1,400	
ASSISTED B	2	2	2	6	3	1 1/2	1,400	
				14(25%)				
				17(30%)				
MARKET UNITS	A	10	8	6	24	2	2 1/2	1,850
	B	2	2	3	7	2	2 1/2	1,600
	C	2	3	3	8	1*	1 1/2	1,250
		20	19	17	56(100%)			
				39(70%)				
				56(100%)				

* Convertible to 2-bedroom units

III. FINDINGS

The Board received evidence of the Applicant's status as a limited dividend organization. The Declaration of Trust creating the Applicant was submitted together with an amendment thereto which limits the dividend on owner's equity to no more than allowed by the applicable statute (G.L. c. 40B) and regulations governing the pertinent housing program (i.e., HOP). The amendment requires the Applicant to comply in all respects with that statute and the regulations. This permit requires the Project to be undertaken by a limited dividend organization in accordance with the regulations of the Massachusetts Housing Finance Agency and HOP. Accordingly, the Board finds that it received sufficient evidence of the Applicant's organization as a limited dividend organization under the Act.

The Board received evidence as to the Applicant's ownership interest in the Site. An affidavit signed by the Applicant was submitted stating that it owns the Site and referred to the deeds by which Applicant acquired the Site. The Board finds that it received sufficient evidence of Applicant's interest in the Site.

The Board received written communications from the subsidizing agency indicating that the Site is acceptable. A letter dated October 14, 1988 from the Massachusetts Housing Finance Agency to the Applicant stated that "the project proposed

ATTEST:

Julie M. Block
TOWN CLERK OF DOVER, MASS.
10/4/91

N O T
A N
O F F I C I A L
C O P Y

N O T
A N
O F F I C I A L
C O P Y

on the site is generally acceptable, complies with the requirements of the HOP Program and will therefore be eligible to apply for funding." The Board finds that it has received a written communication from the applicable subsidizing agency indicating that the Site is acceptable.

The Board finds that Dover currently has no low or moderate income housing units as defined under the Act. Currently, EOCD estimates that the Town of Dover has an unmet need of 162 low to moderate income family units. Oral testimony from the Dover Housing Partnership Committee and correspondence from the Board of Selectmen corroborate the need for affordable housing in Dover. The addition of the Project to the Dover housing market will help alleviate this unmet need.

The Board finds that the Town of Dover does not meet the statutory threshold criteria under the Act of having 10% of its housing units or 1.5% of its land area (zoned for residential, commercial or industrial use) in low or moderate housing use. The Board also finds that construction of the Project will not result in the commencement of construction of low or moderate income housing on .3% of such land area in a single calendar year.

The Board finds that the submissions made by the Applicant satisfy the requirements of 760 C.M.R. 31.02.

For the reasons set forth in the above findings and for the reasons set forth in the discussion contained in Section II, the Board finds that the granting of this comprehensive permit is reasonable and consistent with local needs as those terms are defined in the Act.

IV. DECISION

The Board unanimously votes to grant to the Applicant a Comprehensive Permit to construct and operate the Project in accordance with the Plans and this Permit, and to grant relief from local permits and approvals as described in Section VI. The Comprehensive Permit is subject to the conditions contained in Section V. The Board does not believe that imposition of these conditions will render the Project "uneconomic". The Board notes that since the Town of Dover has not met its statutory threshold criteria described above, its decision in this case is affected by the understanding that it is constrained in making a decision to balance concerns about the Project against the need for affordable housing in Dover.

V. CONDITIONS TO THE COMPREHENSIVE PERMIT

1. No more than 56 units shall be built. Of the 56 units, there will be 8 three-bedroom, 8 one-bedroom and 40 two-bedroom units. Two one-bedroom units will be constructed in Phase 1, and

A TRUE COPY
ATTEST:

Gretta M. Block
TOWN CLERK OF DOVER, MASS.
10/4/91

N O T
A N
O F F I C I A L
C O P Y

N O T
A N
O F F I C I A L
C O P Y

561

three one-bedroom units will be constructed in each of Phases II and III. Each of Phases I, II and III will consist of approximately equal numbers of units. The one-bedroom units, to contain approximately 1,250 square feet, are to be marketed at no more than \$195,000. If a Phase I one-bedroom unit cannot be sold (i.e., a purchase and sale agreement signed by a purchaser) within six months after completion of the model unit (end of rough carpentry for the remaining units in the cluster of which the model unit is a part), the Applicant may reconfigure the ground level of the unit, finish the second level and sell it as a two-bedroom unit. If neither Phase I one-bedroom unit is sold within such six-month period, the Applicant will not be required to build any one-bedroom units in Phases II and III. If 2 out of 3 Phase II one-bedroom units do not sell within the six month period following the execution by a purchaser of a purchase and sale agreement for the first unit in Phase II (i.e., the twenty-first unit in the development), no Phase III one-bedroom units will be required and the Applicant may reconfigure the ground levels of such Phase II units, finish the second levels and sell them as two-bedroom units. The Applicant will cooperate with the Selectmen or other appropriate Town boards or committees in implementing a marketing plan for the one bedroom units.

2. The Project shall be built by the Applicant, which shall be a limited dividend organization in accordance with applicable standards of the Massachusetts Housing Finance Agency and HOP. Unless changes are approved by the Board, the Project shall be developed by the Applicant and the development team described in the Application. This Permit is not assignable (including the transfer of any legal or beneficial interest in the Applicant or the Site) without the prior written consent of the Board. Notwithstanding the foregoing, the transfer of this Permit to the Applicant's construction lender (the "Lender") or to any acquirer of the Site pursuant to foreclosure or other such proceedings pursuant to the mortgage granted to the Lender shall not be prohibited assignments, provided that the Lender or such other acquirer delivers to the Board a written agreement to be bound by all of the provisions of this Permit.

3. Affordable units and prices therefor shall be provided in accordance with guidelines of the HOP Program. Subsidy financing shall be provided under the HOP Program. If such financing is not granted, the Project shall not be built without further approval of the Board. HOP units will be constructed proportionately in each Phase. The Applicant and the Project shall conform to HOP guidelines regarding low-income rental units. All two-bedroom affordable (HOP) units will be designed to be suitable for conversion to use by the elderly (i.e., so that upon the request of a buyer, the unit could be reconfigured to provide one ground floor bedroom).

A TRUE COPY
ATTEST:

Frances M. Block

to
TO THE CLERK OF DOVER, MASS.

10/4/91

N O T
A N
O F F I C I A L
C O P Y

N O T
A N
O F F I C I A L
C O P Y

562

4. The Project shall be designed in accordance with the Plans.

5. Water for domestic use shall be supplied by the Dover Water Company. Water for emergency purposes shall be obtained from the existing Walpole fire hydrant in County Street. Three fire hydrants are to be located on-Site in the locations shown on the Plans. If the Dover Board of Selectmen are able to make appropriate arrangements with the Town of Walpole, the Applicant shall, at its expense (but subject to applicable public bidding requirements and Town Meeting approval, if required), permanently connect the Walpole water main currently existing in County Street to the water line serving the Site and the Project's three fire hydrants.

6. All buildings shall be separated by at least 32 feet and the buildings shall be located and the Project landscaped to permit access by fire equipment (including the Town of Dover ladder truck) to all sides of the buildings. No building shall contain more than two stories and a basement. An eight inch concrete block wall shall separate each unit within each building structure. Wood shingles shall not be used.

7. The Project's storm water drainage system shall be designed in general accordance with the Report dated January 26, 1989, prepared by Patrick C. Garner, Inc., and accompanying plans. The system for excess runoff from the northern half of the Project shall contain no fewer than two outfalls as shown on the Plans. At those outfalls, a riprap apron shall be provided to prevent erosion and to disperse and slow down the outflow. Based upon current best engineering practice, the Project's drainage system shall be designed to the criterion that neither the net peak flow nor overall volume of runoff from the Site onto bordering properties shall be increased over existing conditions.

Final plans for the Project's drainage system shall incorporate the suggestions and comments contained in the letter dated February 22, 1989 from IEP, Inc. to the Dover Board of Selectmen. The nine conditions contained in the IEP letter are incorporated herein by reference and are made conditions to this permit. Final plans for the Project's drainage system shall be subject to the review and approval of IEP, Inc. or such other consultant designated by the Board of Selectmen and reasonably satisfactory to the Applicant. As part of such review, the consultant shall ensure that the design criterion specified above shall be met.

At the expense of either the Applicant or the Condominium Association, the drainage system shall be properly maintained and inspected twice a year by an independent contractor selected by the Applicant or the Condominium Association and reasonably

A TRUE COPY

ATTEST:

Clerk M. Block

CLERK OF DOVER, MASS.

10/4/91

9069
N O T
A N
O F F I C I A L
C O P Y

N O T
A N
O F F I C I A L
C O P Y

563

acceptable to the Board of Selectmen. In connection with each inspection, the inspector shall prepare a written report and submit copies to the Board of Selectmen, Board of Health and Conservation Commission. The condominium documents shall require such maintenance and inspection and the anticipated costs of such maintenance and inspections shall be included within the Condominium budget.

8. If possible, the Applicant shall provide secondary access to Draper Road, preferably through the completion of the Tisdale Drive/Schaffner Lane connection. If the Tisdale Drive/Schaffner Lane connection is built, the Applicant will not be required to build Bullards Hillway, and if Bullards Hillway is built, the Applicant will not be required to build the Tisdale Drive/Schaffner Lane connection. The Board of Selectmen has agreed to cooperate with the Applicant in connection with whatever approvals are needed for the construction and use of the Tisdale Drive/Schaffner Lane connection or Bullards Hillway for the Project, including any required easements (or a license to use the existing easement granted to the Town of Dover) over the Warwick Parcel. If possible, construction of the Tisdale Drive/Schaffner Lane connection shall be completed prior to the issuance of any certificates of occupancy for Phase II (i.e., certificates of occupancy for the twenty-first unit). However, if, at the time the first unit in Phase II is otherwise sufficiently complete so that a certificate of occupancy could legally be issued, the Applicant has been unable, after reasonable efforts, to obtain: (a) either (i) Conservation Commission or DEQE approval to construct the Tisdale Drive/Schaffner Lane connection in the location approved by the Planning Board or (ii) Planning Board approval and approval from MacCready/Rafter or the then owner(s) of the lots in the MacCready/Rafter subdivision of a new location outside the Conservation Commission's jurisdiction, and (b) reasonable assurances that Schaffner Lane will, in fact, be built, then the deadline for completing the Tisdale Drive/Schaffner Lane connection will be extended to a date prior to the issuance of any certificates of occupancy for Phase III (i.e., certificates of occupancy for the fortieth unit) and the Applicant will be entitled to receive certificates of occupancy for the units in Phase II if, as and when all requirements for their issuance (other than the construction of the Tisdale Drive/Schaffner Lane connection) have been met.

Furthermore, if at the time the first unit in Phase III is otherwise sufficiently complete so that a certificate of occupancy could legally be issued, the Applicant has been unable, after reasonable efforts, to obtain: (a) either (i) Conservation Commission or DEQE approval to construct the Tisdale Drive/Schaffner Lane connection in the location approved by the Planning Board or (ii) Planning Board approval and approval from MacCready/Rafter or the then owner(s) of the lots in the MacCready/Rafter subdivision of a new location outside the

A TRUE COPY
ATTEST:
Gwendolyn M. Block
TOWN CLERK OF DOVER, MASS.
10/4/91

9069
N O T
A N
O F F I C I A L
C O P Y

N O T
A N
O F F I C I A L
C O P Y

564

Conservation Commission's jurisdiction, and (b) reasonable assurances that Schaffner Lane will, in fact, be built, the Applicant will be entitled to receive certificates of occupancy for the units in Phase III if, as and when all requirements for their issuance (other than the construction of the Tisdale Drive/Schaffner Lane connection) have been met.

The Board of Selectmen may thereafter independently (but with the Applicant's cooperation) pursue obtaining the required approvals for the construction of the Tisdale Drive/Schaffner Lane connection or making the appropriate arrangements for the construction of Bullards Hillway. If, within 6 months after the issuance of the final certificate of occupancy for Phase III (i.e., the fifty-sixth unit), the Board of Selectmen is able to obtain approvals necessary for the construction of the Tisdale Drive/Schaffner Lane connection or makes necessary arrangements for the Applicant to construct Bullards Hillway, the Applicant will construct either the Tisdale Drive/Schaffner Lane connection or Bullards Hillway (but not both) as the case may be, at its sole cost and expense. Bullards Hillway will be built only if approvals for the Tisdale Drive/Schaffner Lane connection cannot be obtained. If, however, after such 6-month period, the Board of Selectmen has been unable to obtain such approvals or make such arrangements, then the Applicant shall have no further obligation to build Bullards Hillway or the Tisdale Drive/Schaffner Lane connection, but, pursuant to the easements described in paragraph 9 below, the Town of Dover shall have the continuing right (but not the obligation) to construct either or both the Tisdale Drive/Schaffner Lane connection or Bullards Hillway. The 6-month period referred to in the immediately preceding sentences shall be extended for such period of time as the Board of Selectmen has been delayed or prevented by litigation in obtaining any necessary approvals for the construction and use of the Tisdale Drive/Schaffner Lane connection or Bullards Hillway, as set forth herein.

It is the intent of this Paragraph 8 that all efforts to obtain the necessary approvals for the construction and use of the Tisdale Drive/Schaffner Lane connection be exhausted before the Applicant shall build Bullards Hillway. Furthermore, if the Applicant constructs either the Tisdale Drive/Schaffner Lane connection or Bullards Hillway, the Town of Dover shall have the continuing right (but not the obligation) to build the other.

If constructed, the maximum allowable grade on Bullards Hillway shall be 9%, with adequate provision for safely slowing down and stopping at the top and bottom of the grade. Final plans for the construction of Bullards Hillway shall be submitted to the Superintendent of Streets for review and comment prior to the commencement of construction.

TRUE COPY,
ATTEST,
Diedra M. Block
TOWN CLERK OF DOVER, MASS.
10/4/91

N O T
A N
O F F I C I A L
C O P Y

N O T
A N
O F F I C I A L
C O P Y

565

9. Prior to (i) the issuance of any building permit for the Project and (ii) the Applicant's granting of a mortgage to any construction lender, the Applicant shall grant easements to the Town of Dover which would permit the Town to either extend Bullards Hillway to Tisdale Drive (in the area shown as "50' Access Easement" on the Plans) or connect Tisdale Drive (if initially built ending in a cul de sac) to Schaffner Lane. Such easements shall be reasonably satisfactory in form and substance to Town Counsel and shall be recorded at the Norfolk County Registry of Deeds. Such easements shall be prior to (i) the Project's Condominium documents and (ii) any mortgages covering the Site.

10. In addition to the landscaping requirements of paragraph 6, the Site shall be graded and landscaped and trees will be removed to permit passage by emergency vehicles, including the Town of Dover ladder truck, from County Street along the easterly edge of the Site and to the rear of the Site along the westerly boundary. Such landscaped passage area shall be located as close as possible to the ends of the building clusters, i.e., as far as possible from the property line, in order to maximize retention of existing trees and to maximize the width of the "buffer zone" called for in Paragraph 28. The boundaries of the passage area shall be appropriately marked by bushes, plantings or other markers where necessary.

Such passage area shall provide access by emergency vehicles to the Project's paved areas substantially as shown on the Plans. No gates shall be required between the passage area and the above-described paved areas; except that a gate will be provided at the beginning of the passage area at County Street. The passage area shall afford a turning radius sufficient for the Town of Dover ladder truck (a 31 foot radius). The passage area need not be plowed in the winter, but shall be kept clear of structures, rocks, furniture or other obstructions. The condominium documents shall reflect the requirements of this condition and shall be enforceable by the Town of Dover Fire Chief.

11. During icy or snowy weather, the roadways and parking areas may be treated with sand. Salt and other chemical deicers shall be not used unless, in order to ensure the safety of motorists, the Applicant and the Board of Selectmen agree that salt or other chemical deicers should be used on Bullards Hillway (if built). The condominium documents or other recordable instrument satisfactory to Town Counsel shall so provide.

12. The road pavement and subgrade in the Project shall be built to Town of Dover subdivision specifications, as modified hereby and by the covenant dated July 7, 1988 between the Applicant and the Planning Board (executed in connection with subdivision approval for Woodland Estates). Tisdale Drive and

A TRUE COPY
ATTEST:

Judith M. Block
TOWN CLERK OF DOVER, MASS.
10/4/91

N O T
A N
O F F I C I A L
C O P Y

N O T
A N
O F F I C I A L
C O P Y

566

Bullards Hillway (if constructed) will initially be private ways and shall be maintained by the Applicant (or the condominium association). Nothing herein shall prevent the Board of Selectmen from laying out or the Town of Dover from accepting such roads as public ways in the future.

13. To the extent that Tisdale Drive or any part thereof is constructed as shown on the previously approved subdivision plans for Woodland Estates, nothing in this Decision shall be construed as altering any rights afforded to abutters to the east of the Site by virtue of the fact that some or all of those lots may have frontage on a way shown on a plan approved and endorsed in accordance with the Subdivision Control Law.

14. Under the supervision of the Dover Board of Health, new percolation tests shall be performed to determine the actual Groundwater levels of the Site and whether Dover requirements as to the distance between the bottom of a leaching field and the groundwater can be satisfied. To the extent possible, Dover requirements shall be met. In any event, Title V requirements shall be met.

Except as noted above, the Project's septic systems shall be designed in accordance with Dover Board of Health requirements.

At the expense of the Applicant or the Condominium Association, all septic systems shall be properly maintained and shall be inspected and the septic tanks shall be cleaned at least annually. Inspections shall be performed by an independent contractor acceptable to the Board of Health. In connection with each inspection, the inspector shall prepare a written report and submit copies to the Board of Health and Conservation Commission. The condominium documents shall require such maintenance and inspection and the anticipated costs of such maintenance and inspections shall be included within the Condominium budget.

15. Test well B-3 shall be maintained to test for nitrate nitrogen levels. An additional test well, suitable for taking groundwater samples, may be installed by the Dover Board of Health on the Site near the point at which the line of the 100' buffer zone of the bordering vegetated wetland intersects with the northerly property line, but such test well shall be at least 50' from the property line. The Applicant will pay the first \$1,500 of the cost of installing such additional test well, and the Town of Dover will pay all costs in excess of that amount. Testing of ground water at the test well(s) in accordance with standard EPA methods under supervision of the Dover Board of Health will be carried out by the Applicant (or the condominium association) annually commencing upon issuance of the first certificate of occupancy for a unit in Phase II (i.e., the twenty-first unit) and continuing until 5 years after completion and 95% occupancy of the final Phase of the Project. If nitrate nitrogen levels at each

A TRUE COPY
ATTEST:

Judie M. Block
TOWN CLERK OF DOVER, MASS.
10/4/91

N O T
A N
O F F I C I A L
C O P Y

N O T
A N
O F F I C I A L
C O P Y 567

test well remain equal to or less than 6 mg/l during such 5 year testing period, no further testing will be required. Thereafter, the Dover Board of Health will have the right to test the monitoring well(s) for nitrate nitrogen at reasonable intervals, at its own expense.

16. If, during the period commencing upon the issuance of the first certificate of occupancy for a unit in Phase II (i.e., the twenty-first unit) of the Project until 5 years after 95% occupancy of the final Phase, nitrate nitrogen levels in either test well should ever register more than 6 mg/l, the Applicant (or the condominium association) shall perform such tests monthly during the next 12 months. If, during such twelve month period, nitrate nitrogen levels at either test well (i) show a statistically significant increasing trend over such 12 month period, in the reasonable judgment of the Dover Board of Health; or (ii) exceed 7 mg/l in at least two monthly tests, the Applicant shall offer to extend the Dover Water Company line from the Site to lots 16 and 17 of the Brook Run Estates subdivision (currently owned by Mr. MacCready and Mr. Rafter). Prior to the issuance of any certificate of occupancy for units in Phase III (i.e., the fortieth through fifty-sixth units) of the Project, the Applicant will provide a bond in a form acceptable to Town counsel and in an amount deemed sufficient, in the reasonable opinion of the Dover Water Company, to cover the cost of extending such line, as security for this obligation. Such bond shall be released on the first to occur of (i) extension of the Dover Water Company line to lots 16 and 17; (ii) the rejection by the then owners of lots 16 and 17 of the Applicant's offer to extend such line; or (iii) the expiration of the five-year period referred to herein.

17. Neither the Town of Dover nor any of its elected or appointed representatives, boards, agencies, employees, agents or independent contractors shall have any liability to any party for any error or omission in the design or construction of, or for any operational malfunction in, the on-site septic systems or storm drainage systems serving the Project or their associated pipes, conduits, manholes, leaching fields or tanks and the like.

18. No garbage grinders shall be permitted in any of the Project's units. This condition shall be incorporated into the Condominium documents and shall be enforceable by the Dover Board of Health.

19. An instrument shall be recorded at the Norfolk Registry of Deeds amending the covenant dated July 7, 1988 between the Applicant and the Planning Board (executed in connection with Subdivision approval for Woodland Estates). The Covenant shall be amended only to the extent that it is now inconsistent with the provisions of this Decision. The instrument shall be in form satisfactory to the Applicant and to Town Counsel.

ATTEST:
TRUE COPY

Audette M. Block
TOWN CLERK OF DOVER, MASS.
10/4/91

N O T
A N
O F F I C I A L
C O P Y

N O T
A N
O F F I C I A L
C O P Y

568

20. Except for the relief granted by the Board in Section VI of this Decision, the Applicant shall comply with all provisions of the Dover zoning by-law, general by-laws, and all of the rules and regulations of the Planning Board and the Board of Health.

Construction of the Project shall fully comply with all applicable federal and state laws, ordinances and regulations, including without limitation, the Massachusetts Inland Wetlands Protection Act, administered by the Town of Dover Conservation Commission.

21. Contract documents, including working drawings and specifications for the Project shall undergo the usual and customary review and approvals by the Inspector of Buildings, the Board of Health, the Fire Chief, the Superintendent of Streets and any other applicable local inspector or Board. The usual fees for such permits shall be paid unless other arrangements are approved by the Board of Selectmen. Construction of the Project shall be subject to on-site compliance inspections by Dover officials in the customary manner. At the request of either the Board of Selectmen or the Board of Appeals, the Applicant shall permit a "clerk-of-the-works" to oversee construction of the Project. The cost of any such clerk-of-the-works shall be paid for by the Town.

22. Prior to the start of construction, to secure the full and faithful performance of all obligations of the Applicant to construct roadways, the Project's drainage system and all other utilities for the use and enjoyment of the Project, the Applicant shall provide evidence satisfactory to Town Counsel of either: (i) a performance bond (ii) a deposit of money or negotiable securities or (iii) an agreement between the Applicant and its lender regarding the retainage of funds otherwise due to the Applicant from the Lender to secure such construction. Any of the three alternatives described above shall be in amount, form and substance reasonably satisfactory to Town Counsel, to safely secure the full completion by the Applicant of all such improvements. It is the intent of this condition to provide the Applicant with the alternatives for securing such performance available to a developer of subdivision under subsections (1), (2) and (4) of the fifth paragraph of G.L. c. 41, §81U. Such security shall be reduced or released in the customary manner.

23. Smoke detectors and heat sensors shall be installed in each dwelling unit in accordance with applicable laws, regulations or requirements.

24. Each unit will contain an individual fire detection system which will be electronically linked to the Fire Department. Such system shall be designed to the satisfaction of the Dover Fire Chief.

A TRUE COPY
ATTEST:

Judie M. Block
TOWN CLERK OF DOVER, MASS.
10/4/91

N O T
A N
O F F I C I A L
C O P Y

N O T
A N
O F F I C I A L
C O P Y

25. A sheltered school bus stop shall be provided as shown on the Plans.

26. All utilities necessary for the use and enjoyment of the Phase I units shall be completed before certificates of occupancy are issued for Phase I units. All utilities necessary for the use and enjoyment of the Phase II units shall be completed before certificates of occupancy are issued for Phase II units. All utilities necessary for the use and enjoyment of Phase III units shall be completed before certificates of occupancy are issued for Phase III units.

27. The Applicant shall cooperate with the Board of Selectmen or other applicable Town Board to establish a Resident Selection Plan and in obtaining preference for Dover residents under the HOP guidelines for the rental units and the affordable condominium units.

28. To the extent consistent with the conditions contained in paragraphs 6 and 10, the Applicant shall provide a twenty foot wide "buffer zone" of trees or bushes around the perimeter of the Site (except where Tisdale Drive abuts the Site's boundaries). Six foot high wooden fences will be constructed substantially in the areas shown on the Plans to separate the Site from the properties now owned by Mr. George Vounatsos, Mrs. Arnold Fisher and 61 County Street Realty Trust.

29. Clear cutting of trees shall be avoided. The procedures contained in Guidelines for Soil and Water Conservation, USDA, SCS, Amherst, Mass. Oct. 1977 shall, at a minimum, be followed for tree cutting.

30. One hundred forty parking spaces shall be provided. Fifty-six of the 140 spaces are the one-car garages provided with each unit.

All parking for construction workers shall be provided on-site. No parking shall be permitted on County Street.

31. Before recording, the condominium documents shall be submitted to Town Counsel for review to ensure that they are consistent with the conditions contained herein.

32. Prior to the issuance of any building permit for the Project, final plans shall be submitted to the Board for review as to their general consistency with this Decision. Such review shall include approval of the design of a permanent sign for the Project (one sign permitted; not to exceed 24 square feet). The Applicant may erect one sign during construction of the Project, not to exceed 24 square feet, which will be removed upon completion of the Project.

A TRUE COPY
ATTEST:

Quidette M. Block
TOWN CLERK OF DOVER, MASS.
10/4/91

N O T
A N
O F F I C I A L
C O P Y

N O T
A N
O F F I C I A L
C O P Y

9069

570

4. Section 7.5
(Use Variance)

Use variance procedure
satisfied through
comprehensive permit process

SUBDIVISION RULES AND REGULATIONS

1. Section V.C.1.a.
(Streets; location)

Exception granted to permit
block of greater than 1200
feet by construction of
Tisdale Drive

2. Section V.C. 4.b.
(Streets; grade)

If Bullards Hillway is
constructed, an exception is
granted to permit a maximum
grade of 9%.

3. Section V.E.
(Open Space)

No park or open areas to be
required other than as shown
on Plans

BOARD OF HEALTH

1. Section 15.02(17)(b)
(Leaching Structures)

Leaching structures to be
designed in accordance with
Section V, paragraph 14 of
this Permit.

This comprehensive permit shall not take effect until a
notice of Decision, certified by the Town Clerk as required by
G.L. c. 40A, Section 11, has been recorded in the Norfolk
Registry of Deeds.

A TRUE COPY
ATTEST:
Judie M. Block
TOWN CLERK OF DOVER, MASS.
10/4/91

9069
N O T
A N
O F F I C I A L
C O P Y

N O T
A N
O F F I C I A L
C O P Y

571

33. By accepting this permit, the Applicant agrees to the terms, covenants, conditions and agreements contained herein.

34. This Comprehensive Permit shall expire five years from the date hereof unless certificates of occupancy for all 56 units have been issued by that time. The Applicant may apply to the Board for reasonable extensions to this Comprehensive Permit for good cause.

VI. Exceptions to the General By-Laws, Wetlands Protection By-Laws, Zoning By-Laws, Subdivision Rules and Regulations and Board of Health Regulations Granted by the Board are as follows:

GENERAL BY-LAWS

1. Section VII.3
(Access to Public Street)

Permit from Supt. of Streets required for driveway or access to a public street granted as part of this permit.

WETLANDS PROTECTION BY-LAWS

1. Section 4.C
(Application)

Application for comprehensive permit to serve as Application to the Conservation Commission.

ZONING BY-LAWS

1. Section 3.2.29
(Use)

Exception granted to allow multi-family use in R-1 zone

2. Section 6.2.1
(Signs)

Exception granted to allow construction period and permanent signs up to 24 square feet.

3. Section 7.2
(Building Permit Requirements)

Exception granted to allow issuance of building permit subject to exceptions granted herein.

A TRUE COPY
ATTEST:

Deidre M. Block
TOWN CLERK OF DOVER, MASS.

10/4/91

9069

N O T
O F F A N
I C I A L
C O P Y

N O T
O F F A N
I C I A L
C O P Y

572

The foregoing is a true copy of the Record and Decision
issued by the Board of Appeals of Dover.

Date: May 26, 1989

Henry W. Minot
Henry W. Minot, Jr., Chairman

Copies of this Decision and all plans referred to in the
Decision were filed with the Planning Board and the Town Clerk on
May 26, 1989.

A TRUE COPY
ATTEST:
Quidette M. Block
TOWN CLERK OF DOVER, MASS.
10/4/91

9069
N O T
A N
O F F I C I A L
C O P Y

N O T
A N
O F F I C I A L
C O P Y

573

EXHIBIT A

List of Written Materials Submitted

- Internal Memorandum - Mass. Housing Partnership dated August 22, 1988 regarding County Court Site Application.
- County Court Development Pro Forma dated October 24, 1988
- Application for Comprehensive permit dated October 26, 1988
- Traffic Impact Report dated October 1988 from SEA
- Letter dated November 7, 1988 from the Dover Planning Board to the Dover Board of Appeals
- Letter dated November 7, 1988 from Michael Sinclair to Norman P. Cohen
- Letter dated November 16, 1988 from A. B. Glidden, Chairman, Dover Conservation Commission, to Henry Minot, chairman, Dover Board of Appeals
- Letter dated November 17, 1988 from Haley and Ward, Inc. to the Dover Planning Board
- Letter dated November 18, 1988 from Camp Dresser & McKee to Peter Hingorani
- Letter dated November 21, 1988 from Mass. Housing Partnership to Michael Sinclair
- Letter dated November 21, 1988 from Dover Board of Selectmen to Henry Minot, Chairman, Dover Board of Appeals
- Letter dated November 30, 1988 from Patrick Garner to Henry Minot, Chairman, Dover Board of Appeals
- Letter dated December 2, 1988 from Phyllis B. Fisher to the Dover Board of Appeals
- Statement dated December 5, 1988 to Board of Appeals from Dover Housing Partnership
- Letter dated December 5, 1988 from Michael Sinclair to the Dover Board of Selectmen, together with a report dated November 18, 1988 from Camp, Dresser & McKee, Inc.
- Letter dated December 5, 1988 from the Dover Board of Health to the Dover Board of Appeals
- Letter dated December 5, 1988 from the Dover Land Use Committee to the Dover Board of Appeals
- Letter dated December 5, 1988 from Kenneth Mickiewicz to the Dover Board of Appeals
- Letter dated December 5, 1988 from Michael Sinclair to Henry Minot, Chairman, Dover Board of Appeals, with enclosures
- Letter dated December 13, 1988 from A. B. Glidden, Chairman, Dover Conservation Commission, to the Dover Board of Appeals
- Letter dated December 13, 1988 from James R. Merriam, Walpole Town Administrator to Henry W. Minot, Chairman Dover Board of Appeals
- Letter dated December 27, 1988 from Diane Chabot to Henry Minot, Chairman, Dover Board of Appeals

A TRUE COPY
ATTEST:

Judith M. Block
TOWN CLERK OF DOVER, MASS.
10/4/91

9069
N O T
A N
O F F I C I A L
C O P Y

N O T
A N
O F F I C I A L
C O P Y

574

- Letter dated December 28, 1988 from W. Roger Warwick to Henry Minot, Chairman, Dover Board of Appeals
- Letter dated December 28, 1988 from W. Roger Warwick to the Dover Board of Appeals
- Letter dated December 30, 1988 from Dianne Chabot to Henry Minot, Chairman, Dover Board of Appeals
- Letter dated December 30, 1988 from IEP Inc. to Norman Nicholson, Dover Board of Selectmen
- Letter dated December 30, 1988 from Michael Sinclair to Henry Minot, Chairman, Dover Board of Appeals
- Supplemental Traffic Impact Report dated January 1989 from SEA
- Letter dated January 20, 1989 from Dover Board of Selectmen to Catherine Racer
- Letter dated January 24, 1989 Patrick Garner to the Dover Conservation Commission
- Report (Hydrologic Study) (stamped and signed) dated January 26, 1989 prepared by Patrick Garner
- Letter dated January 26, 1989 from Dianne Chabot to the Dover Planning Board
- Letter dated January 26, 1989 from Michael Sinclair to Henry Minot, Chairman, Dover Board of Appeals, with enclosures
- Letter dated January 31, 1989 from SEA to Henry Minot
- Memorandum dated January 31, 1989 from Dover Board of Selectmen to Dover Board of Appeals together with a report dated January 18, 1989 from Haley and Ward, Inc. to the Dover Board of Selectmen
- Report (Hydrogeologic Investigation) dated February 1, 1989 prepared by Haley & Aldrich
- Letter dated February 1, 1989 from P.L. Hingorani to Henry Minot, Chairman, Dover Board of Appeals
- Letter dated February 14, 1989 from Vincent J. O'Brien to the Dover Board of Appeals
- Memo dated February 15, 1989 from the Dover Conservation Commission to the Dover Board of Selectmen
- Letter dated February 27, 1989 from 71 Realty Trust to Mr. Jonathan Fryer of the Dover Water Company
- Letter dated March 6, 1989 from Haley and Ward to the Dover Planning Board transmitted to the Dover Board of Appeals by cover letter dated March 10, 1989 from the Planning Board
- Transmittal Letter dated March 8, 1989 from Patrick Garner to All Individuals & Parties reviewing "County Court" Affordable Housing Proposal containing Utilities Plan revision 3/8/89
- Report (evaluation of revised septic system leaching field locations) dated March 10, 1989 prepared by Haley & Aldrich
- Letter dated March 15, 1989 from Dover Conservation Commission to Patrick Garner

A TRUE COPY
ATTEST:

Quinton M. Block
TOWN CLERK OF DOVER, MASS.
10/4/91

N O T
A N
O F F I C I A L
C O P Y

N O T
A N
O F F I C I A L
C O P Y

575

- Letter dated March 16, 1988 from George Vounatsos to Henry Minot, Chairman, Dover Board of Appeals
- Letter dated March 17, 1989 from Dianne G. Chahot to Henry Minot, Chairman, Dover Board of Appeals
- Letter dated March 21, 1989 from Patrick Garner to Boynton Glidden, Chairman, Dover Conservation Commission
- Letter dated March 21, 1989 from Herbert Green, Chairman, Dover Planning Board to Henry Minot, Chairman, Dover Board of Appeals
- Report dated March 22, 1989 from Carr Research Laboratory, Inc. entitled "Water Quality Issues, County Court Housing Project, Dover, Massachusetts"
- Report dated March 22, 1989 from Goldberg, Zoino & Associates, Inc. to Ms. Ruth F. Fryer, Dover Water Company
- Report dated March 22, 1989 from R.F. Merrikin Associates to the Dover Board of Appeals
- Letter dated March 23, 1989 from A. Boynton Glidden, Chairman, Dover Conservation Commission, to the Dover Zoning Board of Appeals
- Report (on VHS modeling of nitrate concentrations) dated March 31, 1989 prepared by Haley & Aldrich
- Report undated (but received on April 1, 1989) prepared by IEP (including letter dated February 22, 1989 from IEP to Dover Board of Selectmen)
- Letter dated March 31, 1989 from Kenneth S. May to the Dover Board of Appeals
- Report dated March 31, 1989 from Carr Research Laboratory, Inc. entitled "Nitrate Limitations on Development, County Court, Dover, Massachusetts."
- Report undated (but received April 1, 1989) from R. F. Merrikin Associates to the Dover Board of Appeals
- Letter dated April 6, 1989 from Haley & Aldrich to Dover Zoning Board of Appeals
- Letter dated April 11, 1989 from Michael Sinclair to Henry Minot, Chairman, Dover Board of Appeals
- Letter Report dated May 3, 1989 prepared by Haley & Aldrich
- Letter dated May 11, 1989 from the Dover Board of Selectmen to the Dover Board of Appeals

A TRUE COPY
ATTEST:
Judette M. Block
TOWN CLERK OF DOVER, MASS.
10/4/91

N O T
A N
O F F I C I A L
C O P YN O T
A N
O F F I C I A L
C O P YEXHIBIT BList of Plans Submitted

- Existing Conditions Plan, dated April 1988 revised October 7, 1988 prepared by Patrick C. Garner, Inc.
- Woodland Estate Subdivision Plan dated June 19, 1987 revised through June 6, 1988 prepared by R.F. Merrikin Associates, Sheet 3 of 8
- Locus Plan dated October 25, 1988 prepared by SEA Consultants Inc.
- A1 Plans/Section Unit A dated October 25, 1988 prepared by SEA Consultants Inc.
- A2 Plans/Section Unit B dated October 25, 1988 prepared by SEA Consultants Inc.
- A3 Plans/Section Unit B-Split dated October 25, 1988 prepared by SEA Consultants Inc.
- A4 Elevation-6 Unit Building dated October 25, 1988 prepared by SEA Consultants Inc.
- Plan, undated of One Bedroom Units, Types A, B, B-Split and one bedroom elderly-one level (71 Fealty Trust).
- Sketch one bedroom type A for elderly, dated January 4, 1989, revised January 5, 1989 prepared by SEA Consultants Inc.
- Vicinity Map dated September 6, 1988 prepared by Patrick C. Garner, Inc.
- Site Plan dated April, 1988 revised through October 7, 1988 prepared by Patrick C. Garner, Inc. and Robert W. DeWolfe, LA
- Site Plan dated November 16, 1988 prepared by Patrick C. Garner, Inc.
- Landscape Site Plan dated November 16, 1988 prepared by Patrick C. Garner, Inc.
- Plan of Bullards Hillway undated prepared by Charles Miller
- Utility Plan dated April, 1988 revised through October 7, 1988 prepared by Patrick C. Garner, Inc. and RWDW, Ltd.
- Plan dated November 16, 1988, entitled "Utilities Plan, Proposed Multi-Family Site Plan, Dover, Massachusetts" as revised January 25, 1989, February 6, 1989, March 8, 1989, March 21, 1989, April 19, 1989, March 28, 1989, May 1, 1989, May 5, 1989, May 8, 1989, May 11, 1989 and May 22, 1989 prepared by Patrick C. Garner, Inc.
- Utilities Plan dated November, 1988 revised on January 16, 1989 to show cul-de-sac on Tisdale Drive and emergency access drive, prepared by Patrick C. Garner, Inc.
- Scale Model of the Project
- Drawings (two sheets) dated May 3, 1989, entitled "Affordable Housing Proposal, County Court, Dover, Massachusetts", prepared by B.D. Nayak showing typical one bedroom elderly unit.

A TRUE COPY
ATTEST:

Judette M. Block
TOWN CLERK OF DOVER, MASS.
10/4/91