

**TOWN OF HOLLISTON
ZONING BOARD OF APPEALS**

703 Washington Street
Holliston, MA 01746
(508)429-0635

**COMPREHENSIVE PERMIT FINDINGS AND DECISION
708 PRENTICE STREET**

Decision Date: 11 September 2006

Applicant: Greenview Realty, LLC

Applicant's Address: 189 Hartford Avenue, Suite 2-1
Bellingham, MA

Owner(s): R&C and C&R Trust

Subject Property: 708 Prentice Street

Assessors Identification: Map 7, Block 3, Lots 19.1, 21.1, 22.1, 28 and 37

Zoning District: Agricultural-Residential A District (AR-1)

2008 SEP 11 AM 8:57
OFFICE OF THE
TOWN CLERK
HOLLISTON, MASS.

PROCEDURAL HISTORY

1. On or about January 19, 2005, Green View Realty, LLC, of 189 Hartford Avenue, Suite 2-1, Bellingham, MA 02019, (hereinafter, the Applicant), applied for a comprehensive permit from the Zoning Board of Appeals ("ZBA" or "Board"), pursuant to G.L. c. 40B, to construct an affordable housing project at 708 Prentice Street at the southwest corner of Marshall and Prentice Streets in Holliston. The Applicant proposed to construct "for sale" 200 condominium dwelling units to be called "Cedar Ridge Estates" (the "Development"). The locus contains approximately 52 +/- acres of land, being Assessors Map 3, Block 3, Lots 19.1, 21.1, 22.1 and 37. The Applicant subsequently added additional property as set forth herein (hereinafter, the Subject Property). The original application to Massachusetts Housing Agency ("MassHousing") described the Development as 120 two-bedroom units and 80 three-bedroom units. The Subject Property is zoned Agricultural-Residential A as set forth in the Holliston Zoning By-Law.
2. A duly advertised public hearing was opened on March 9, 2005, and continued to the following dates: April 27, 2005, June 8, 2005, June 29, 2005, August 30, 2005, September 28, 2005, October 25, 2005, November 8, 2005, December 6, 2005, January 4, 2006, January 25, 2006, February 28, 2006, March 21, 2006, April 12, 2006, May 24, 2006, June 7, 2006, June 26, 2006, July 20, 2006 and August 8, 2006.

The Board conducted a site visit in June 2005 during which the historical extent of illegal dumping was readily observable.

3. The public hearing was terminated on August 2, 2006.
4. The documents and plans set forth on Exhibit A were received during the public hearing.

FINDINGS

5. The Board retained the following consultants to assist in the review of the application:
 - a. Civil and Traffic Engineers: Professional Services Corporation (“PSC”), Inc., Foxborough, MA
 - b. Special Legal Counsel: Blatman, Bobrowski & Mead, LLC, Concord, MA
 - c. Pro Forma: MHJ Associates, Brookline, MA
 - d. Environmental and Hydrogeologic: Haley & Aldrich, Boston, MA
6. The proposed Development was reviewed by the following municipal officers or agencies:
 - a. Board of Health
 - b. Planning Board
 - c. Board of Water Commissioners
 - d. Building Inspector
 - e. Conservation Commission
 - f. Board of Selectmen
 - g. Town Manager
 - h. Police Department
 - i. Fire Department

Jurisdictional Prerequisites

7. The Subject Property was used throughout the 1970's and the 1980's as a disposal site for the illegal disposal of tires and construction debris. Site assessment under the Superfund Program began in the 1980's by the U.S. Environmental Protection Agency (“EPA”). In 1989, the Massachusetts Department of Environmental Protection (“DEP”) designated the site a Public Involvement Site. Since the 1980's, more than 340 drums containing tar and other contaminants, more than two million tires, construction

debris, solid waste, and more than 70 tons of contaminated soil have been removed from the Subject Property. However, the Subject Property remains contaminated with significant amounts of construction and other waste material and is unsafe, in its current state, for residential development and the site is not in compliance with state or federal environmental regulations. Also, a residual plume of TCE still emanates from the Subject Property, headed generally in the direction of a municipal Water Supply Well #4.

8. The Subject Property is more thoroughly described in the Certificate on the Expanded Environmental Notification Form issued by the Commonwealth's Executive Office of Environmental Affairs ("EOEA"), dated December 16, 2005, which is attached hereto as Exhibit B, and incorporated by reference in this Decision.
9. As a result of the clean-up over the last fifteen years, DEP has a lien of \$3.4 million (continuing to increase for accrued interest) on the Subject Property.
10. More than two years ago, on August 24, 2004, MassHousing issued the original project eligibility letter ("PEL") for the proposed Development. In that very different housing market and based on the information then available, MassHousing apparently determined that it was worth the environmental risk to reclaim this contaminated site in order to facilitate the repayment of the DEP lien. Its other reasons for issuing the PEL are unknown. In any event, MassHousing deemed that Brownfield reclamation could be merged with affordable housing without unreasonable risk, despite the fact that there are no other examples of such merger at the scale and density proposed here.
11. As set forth below, the Board does not agree. Much has been learned about the Subject Property since August 24, 2004. For all of the reasons set forth below, the Board does not find the site safe or suitable for the proposed residential development. The Board also finds that these local concerns outweigh the need for the proposed affordable housing.
12. The Board first contests the existence of a "subsidy" as that term is used in G.L. c. 40B for the reasons set forth in paragraphs 12-15, below. On June 7, 2006, MassHousing extended the PEL, after review by EOEA during the Massachusetts Environmental Policy Act ("MEPA") process and over the strenuous objections of the Holliston Board of Selectmen, "until the comprehensive permit decision becomes final." At the time of this extension of the PEL, the application to MassHousing was still based on a project with 480 bedrooms, contained in 120 two bedroom units and 80 three bedroom units.
13. Subsequently, during the peer review of the Development by the Board's fiscal analyst, the Board learned that the Applicant had changed the proposed Development by

increasing the number of three bedroom units to 150 units and decreasing the number of two bedroom units to 50 units. This constitutes an overall increase of 70 bedrooms. The Applicant did not inform the Board of this change, despite the fact that this change increased the number of bedrooms by more than 10%, a threshold for “substantial change” as set forth in 760 CMR 31.03.

14. The Board via Special Counsel immediately notified MassHousing of the substantial increase in bedrooms and density and requested the opening of a 30 day “comment period.” MassHousing denied the Board’s request.
15. Instead, on July 31, 2006, MassHousing deemed its original PEL of August 24, 2004, as extended on June 7, 2006, “still valid.” The MassHousing determination was made without due process afforded by the provisions of 760 CMR 31.03. Consequently, the Board challenges the existence of a valid “subsidy” or PEL as required by 760 CMR 31.01 and denies the comprehensive permit because of this jurisdictional defect.
16. The Applicant alleged “control of the site” as that term is used in 760 CMR 31.01, by virtue of a purchase and sale agreement dated January 3, 2005, submitted with the application. As part of the Subject Property, the Applicant claims to control a certain 2.55 acre parcel. However, the Applicant was failed to conclusively demonstrate that such 2.55 acre parcel was under its control. Similarly, the Applicant claims to have a right of way, the bridle path, over a 1.49 acre parcel. The Applicant demonstrated control over an easement, but there is no conclusive proof that such easement is the so-called bridle path. Consequently, the Board challenges the existence of site control as required by 760 CMR 31.01 and denies the comprehensive permit because of this jurisdictional defect.

Massachusetts Contingency Plan (MCP)

17. The proposed Development is a Disposal Site as defined by 310 CMR 40.00, the Massachusetts Contingency Plan (“MCP”), and is under the regulatory jurisdiction of the DEP.
18. The evidence submitted to the Board during the public hearing process indicates that the Applicant has had only informal discussions with DEP as to compliance with the MCP and other applicable regulations. The Applicant compiled certain available data; however, nothing exists in writing (i.e., an Administrative Consent Order) that would prescribe the jurisdiction of the DEP, EPA and other regulatory agencies and define the path toward regulatory compliance with the MCP and other applicable regulations. Accordingly, the Board finds that the Applicant has not advanced sufficient evidence to

- (a) define the scope, schedule, and budget of these remedial and compliance efforts;
- (b) evaluate how these efforts may affect the project and integrate these efforts into the overall project schedule and pro forma, and
- (c) provide sufficient information to show that the project could be successfully executed in compliance with applicable regulations.

In short, the Applicant presented a "best case scenario" for reclamation and did not address the many uncertainties supported by the evidence.

19. Based on the testimony of its peer reviewer for environmental regulatory compliance, Joel Mooney of Haley & Aldrich, who is a Professional Engineer and a Licensed Site Professional ("LSP") the Board finds that the following specific gaps in information exist at the time of its decision. The following list of information gaps is not intended to be exclusive:
- a. The Subject Property is not currently in regulatory compliance, and is subject to the authority of the EPA and various DEP Bureaus, including Waste Site Cleanup, Solid Waste and Resource Protection, and the Holliston Conservation Commission. The roles and respective oversight responsibility of these regulators has not been defined, nor has the Applicant developed enough information to allow for such definition. As a result, the Board finds that the uncertainty of going forward presents an unacceptable risk to public health and safety.
 - b. Defining the nature and extent of the contamination on the Subject Property is the foundation that the subsequent Response Actions are built upon; however, this information is not available. As a result, informed conclusions as to the actual cost and methods required to remediate the site are unknown. More study, regulatory interaction, and analyses are required to develop the foundation for those decisions.
 - c. The Applicant has acknowledged that the site needs to follow the MCP phased approach; however, the Applicant has not become a Responsible Party and made a commitment to DEP to perform the work.
 - d. The risk to health, welfare, and the environment must be identified through Comprehensive Response Actions under the MCP and brought into regulatory compliance prior to other activities on the Site and the commitment for this regulatory compliance sequence needs to be memorialized. Neither of these has been done. Securing an Administrative Consent Order would have made such matters clear.

- e. Further assessment and evaluation is required to determine the nature and extent of contamination, and to develop data for risk characterizations. Successive investigation activities would be required to obtain the data, which would include but not be limited to:
 - i. Physical limits of debris in the ground;
 - ii. TCE/VOCs in soil, sediment within wetlands, and sediment in the pond;
 - iii. Extent of off-site migration and the effects of VOC groundwater plume (AOC 1), and hydro-geological conditions;
 - iv. PAHs in soil due to prior on-site burning;
 - v. Other areas not already investigated must be checked to establish a baseline, since on-site disposal activities were uncontrolled;
 - vi. Extent of asbestos in soils, and
 - vii. Ecological-risk at pond and wetlands.
 - f. Abutting the site are public (Town of Holliston) and private water supplies in both Holliston and Hopkinton. The Applicant provided inadequate evidence to show what impacts site reclamation will have on these water sources.
20. The Applicant has proposed to clean up the existing TCE plume emanating from the Subject Property by means of a technology that requires pilot testing to adequately demonstrate feasibility.
21. The Applicant relied heavily on data obtained in the 1980's, although some information of more recent vintage was included. The Board finds that insufficient evidence was presented to establish the full extent of existing contamination, the risks inherent in cleaning it up, and potential alternatives in the event unexpected obstacles are encountered during the clean up.
22. For all the reasons set forth above, the Board finds that the Applicant has not made a prima facie case that the proposed Development complies with the relevant state health and safety standards and regulations set forth in the MCP.
23. For all the reasons set forth above, the Board finds that in the event the HAC deems the standards of the MCP to be satisfied, these local health and safety concerns outweigh the need for affordable housing.

Groundwater Discharge Permit (GDP)

24. The proposed on-site wastewater disposal system is regulated by 314 CMR 5.00, governing Groundwater Discharge Permits.
25. The evidence submitted to the Board during the public hearing process indicates that the Applicant has had only informal discussions with DEP and the Holliston Water Board as to a groundwater discharge permit (“GDP”). Only a conceptual layout of the wastewater treatment plant and associated infiltration beds and a preliminary analysis of the resulting discharge from the wastewater system were submitted to the Board.
26. As set forth in the EOECA Certificate, Exhibit B, page 7, it is generally acknowledged that the wastewater discharge would migrate towards the Cedar Swamp aquifer. The aquifer contains the Town’s Water Supply Well #4. Well #4 provides approximately 25% to 50% of the average daily demand for drinking water in the Town.
27. The wastewater discharge will first reach an existing capped solid waste facility, which is situated down gradient between the Subject Property and Well #4. The Applicant provided no information that would allow the Board to assess the impact of this wastewater plume on the existing solid waste facility and consequent impacts on Well #4. Specifically, the Board heard no evidence as to the impact of the wastewater discharge on the contaminated groundwater already emanating from the existing solid waste facility and moving toward Well #4.
28. The EOECA Certificate and the data provided to the Board were based on a Development containing 120 two-bedroom units and 80 three-bedroom units, generating a projected 58,000 gallons of wastewater per day (“gpd”). At the last minute, the Applicant added 70 bedrooms to the Development, increasing the wastewater flow by an additional 7,700 gpd. No analysis was performed as to this increase.
29. Based on the testimony of its peer reviewers, Joel Mooney and Mark Kelley of Haley & Aldrich, the Board finds that the following additional specific gaps in information exist. The following list of information gaps is not intended to be exclusive:
 - a. Characterization of subsurface (soil, rock, and groundwater) conditions, particularly the fractured bedrock characteristics of the area
 - b. Groundwater characteristics and quality
 - c. Groundwater mounding and separation
 - d. Groundwater mounding effects due to wastewater treatment plant discharge and

- e. any potential mobilization of contamination due to that discharge
 - f. Off-site impacts due to nitrate migration
 - g. Historical summary of existing site conditions defining the nature and extent of any release(s)
 - h. Regional survey to location of public and private water supply wells including water quality data
 - i. Subsurface investigation by drilling and installing groundwater monitoring wells, infiltration testing, and water quality testing
 - j. Groundwater mounding analysis and groundwater travel time estimates to closest private or public water supply well or other sensitive receptor
 - k. Complete engineering report for wastewater treatment facility design
 - l. Final plans and specifications for effluent disposal area
 - l. Groundwater monitoring plan including baseline water quality and future monitoring locations and testing parameters
30. Both the Board of Water Commissioners and the Board of Health recommended, for the reasons set forth above, that the comprehensive permit be denied. The Town of Hopkinton, through testimony provided by its Board of Selectmen, also recommended denying the comprehensive permit..
31. For all the reasons set forth above, the Board finds that the Applicant has not made a prima facie case that the proposed Development complies with the relevant state health and safety standards set forth in the GDP process.
32. For all the reasons set forth above, the Board finds that in the event the HAC deems the standards of the GDP to be satisfied, the local concerns outweigh the need for affordable housing.

Solid Waste

33. As set forth in the EOECA Certificate, Exhibit B, page 8, the Applicant proposes to relocate a significant volume of illegally dumped waste in a “main fill area” on the site. In essence, the applicant proposes a new landfill on the locus, which requires a permit from the DEP. DEP has not issued such permit.
34. The proposed landfill activity is also a violation of the Town’s by-laws regarding use of property as a landfill. No waiver was requested. The Applicant would not agree to relocate this solid waste off-site.
35. The Applicant proposes to cap this main fill area and maintain it as open space. DEP

has not approved such proposal.

36. No evidence was submitted to the Board regarding any emergency spill prevention, contamination clean up plan, or post-closure monitoring with regard to the proposed main fill area.
37. For all the reasons set forth above, the Board finds that the Applicant has not made a prima facie case that the proposed Development complies with the relevant state health and safety standards set forth in the solid waste disposal process.
38. For all the reasons set forth above, the Board finds that in the event the HAC deems the standards of the solid waste disposal process to be satisfied, the local concerns outweigh the need for affordable housing.

Wetlands

39. As set forth in the EOECA Certificate, Exhibit B, page 6, up to 16,000 square feet of the bordering vegetated wetlands in AOC-5 may be impacted by solid and hazardous waste. No final assessment of the impact of the solid and hazardous waste contamination was provided as evidence to the Board.
40. The Applicant proposed to obtain an order of conditions from the Holliston Conservation Commission, pursuant to 310 CMR 10.00. The Applicant indicated during the public hearing that it would remediate the existing problem by filling a portion of the wetlands, working in the protected resource area, and/or fencing the contaminated area.
41. The Applicant provided no evidence to the Board that either of these proposed activities would be permitted by 310 CMR 10.00, the DEP, or the Holliston Conservation Commission.
42. The Applicant did not complete the wetlands delineation process with the Holliston Conservation Commission.
43. The Conservation Commission recommended the denial of the comprehensive permit due, in part, to the proposed location of structures in protected areas.
44. For all the reasons set forth above, the Board finds that the Applicant has not made a prima facie case that the proposed Development complies with the relevant state health and safety standards set forth in 310 CMR 10.00.

45. For all the reasons set forth above, the Board finds that in the event the HAC deems the standards of 310 CMR 10.00 to be satisfied, the local concerns outweigh the need for affordable housing.

Traffic and Other Issues Related to Motor Vehicles

46. The proposed Development is forecast to generate over 1100 vehicle trips per day on both weekdays and Saturdays. The Board's peer reviewer, PSC, Inc., utilized a MEPA-recognized 5% threshold for determining if an intersection will be impacted due to the projected site traffic. The Applicant's traffic consultant found an increase in the morning peak hour of 2.7% and an increase in the evening peak hour of 2.8%.
47. The Level of Service ("LOS") at the Prentice Street at Highland Street intersection will remain unchanged at a LOS 'F' and the Highland Street approaches will remain at LOS 'A'. However, the Applicant did not assess the delay time at Prentice Street. Also, the Applicant did not address evening peak hour conditions at Hollis and Highland Streets.
48. Given the anticipated distribution of traffic to/from the east on Prentice Street, it was recommended by PSC that the Prentice Street intersections with Mill Street and the Pine Crest Golf Club driveway intersection be included in the Traffic Study Area. Safety and capacity issues at these locations should be evaluated and addressed at these additional locations. The applicant chose not to provide the requested additional information.
49. The Marshall Street approach operates at a LOS F during the weekday evening and Saturday midday peak hours under peak soccer field use. An analysis of 2010 Build with peak soccer conditions was not provided for the site driveway intersections in order to ensure acceptable operation at the site driveway locations with the Development in place.
50. In the *Sight Distance* section of the Applicant's Traffic Study, the recommended Intersection Sight Distance ("ISD") is not met looking to the north at the proposed site driveway #1 and looking to the south at the proposed site driveway #2 due to the vertical alignment of Marshall Street. The study states, "although these directions do not meet the recommended intersection distances they do meet the minimum distances for vehicles to stop and do not represent a safety concern." PSC did not concur with creating major new intersections in locations where sufficient intersection sight distance to insure safety is not provided.

51. As stated in the *Sight Distance* section of the Traffic Study, at the intersection of Marshall Street and Prentice Street, intersection sight distance looking to the west is hindered by both vegetation on Prentice Street and the vertical alignment of Prentice Street. The study further states, “it is our observation that the sight distance at the intersection is an existing problem, and the proposed development will not worsen the sight distance condition.” PSC concurred that there is an existing site distance issue at this location, but noted that the Development will add a substantial amount of its traffic (70% per the study) through the Marshall Street and Prentice Street intersection, increasing risk to safety and exacerbating existing problems.
52. As stated in the Applicant’s Traffic Study, *Future Build Conditions: Trip Distribution and Assignment*, “the assignment of resulting percentages to/from local communities was based on existing travel patterns and logical travel routes and the assumption that the majority of drivers will seek the most efficient travel route to and from the site.” These assignments are presented on Figure 4 and indicate that 40 percent of the site traffic is expected to and from the east on Prentice Street, 30 percent to and from the west on Prentice Street and 30 percent to and from the south on Marshall Street. Based on the existing roadway network, the distribution calculated by the Traffic Study does not appear reasonable to PSC; specifically the large volume assigned to Marshall Street. No further justification for this trip distribution was provided.
53. The internal circulation proposed by the Applicant does not provide adequate access for fire, police, and emergency vehicles. The proposed dead ends exceed local standards.
54. The Development does not provide adequate parking for residents and visitors. No change to the parking plan was provided when the project was enlarged by 70 bedrooms.
55. The Subject Property is isolated from municipal buildings, recreational opportunities, and services. Two hundred dwelling units are proposed without pedestrian connection to such facilities, whether by sidewalks or by means of public transportation. The Board finds that this represents a risk to public health and safety, particularly with regard to the many children who will reside on the locus.
56. For all the reasons set forth above, the Board finds that the Applicant has not made a prima facie case that the proposed Development complies with the relevant state health and safety standards for traffic and highway safety.
57. For all the reasons set forth above, the Board finds that in the event the HAC deems the standards of traffic and highway safety to be satisfied, the local concerns outweigh the need for affordable housing.

Stormwater Management

58. The stormwater management system as currently designed, will significantly and directly impact existing resource areas. Two of the largest basins on the project will either completely subsume isolated resource areas (Basin 7P) or will directly impact existing groundwater hydrology (Basin 4P). Stormwater management basins were not designed with a minimum buffer that allows for vehicular access around the entirety of each basin for future maintenance. The 50-foot no disturbance zone that is required by local regulations was not provided.
59. Neither basin has been equipped with a sediment forebay. It is not clear that there is provision for either in-line or off-line oil-water separation to remove hydrocarbons. Prior to each stormwater discharge to the basins, a vortex-type oil and sediment removal system should be provided prior to outfall into each basin. None was provided.
60. It appears that a portion of Drainage Basin 2P near the Prentice Street/Marshall Street intersection extends off the property. The Applicant also failed to verify that Basin 7P grading is contained within the project boundary.
61. The plan identifies all the on-site basins that accommodate runoff as 'drainage basins'. Whether retention, detention or a combination of both, for these basins to be effective, they must be empty prior to a storm event. As designed, both basins intercept a groundwater base flow. All basins and recharge structures must be designed such that spring high groundwater is below the bottom of the basin. Soils and groundwater information should be provided for each proposed basin area for review. None was provided.
62. Both basins should be graded using side slopes of roughly 3 horizontal to 1 vertical (3:1). It appears that the basins use side slopes of 2 horizontal to 1 vertical (2:1). The embankments shown are not stable.
63. For all the reasons set forth above, the Board finds that the Applicant has not made a prima facie case that the proposed Development complies with the relevant state health and safety standards set forth in the DEP's Stormwater Management Policy.
64. For all the reasons set forth above, the Board finds that in the event the HAC deems the standards of the DEP's Stormwater Management Policy to be satisfied, the local concerns outweigh the need for affordable housing.

Housing Design and Layout

65. The Applicant has proposed townhouse style structures. The Planning Board recommended a reduction in the number of units. For the reasons set forth below under the caption “Financial Feasibility,” the Applicant rejected such recommendation. As a result, the buildout is so dense that some units back up on one another. The entire site, with the exception of the main fill area and the resource areas, will have to be clear cut and filled to accommodate this proposed density.
66. The Applicant proposes to locate 16 dwelling units in immediate proximity to Marshall Street; in some cases, the back walls of the units will be 30 feet from the street, creating a totally foreign appearance in this neighborhood of single family homes.
67. The Applicant will need to use a membrane to protect some of the dwelling units from the impacts of the hazardous materials located on the Subject Property. The Board finds that the membrane technology has not been demonstrated to be effective with regard to the Subject Property and that the creation of such housing is not in compliance with applicable standards.

Recreation and Open Space

68. As set forth in the EOECA Certificate, Exhibit B, page 4, the proposed housing will “occupy virtually the entire buildable site.”
69. The Applicant made no attempt to “explore a reduction in buildings ... with clustering and alternative site layouts to reduce environmental impacts” as set forth in the EOECA Certificate.
70. Instead, at the last minute, the Applicant *increased* the proposed density by 70 bedrooms; this redefined the Development as 150 three bedroom units (up from 80) and 50 two bedroom units (down from 120).
71. The Applicant made a cursory presentation to the Board regarding the impact of these additional three bedroom units would have on the number of children residing on the Subject Property.
72. The Board finds that each three bedroom unit is statistically likely to have one child; that additional children will reside in the two bedroom units; that the Applicant has

proposed virtually no open space or recreational opportunities for such children or for their parents; and that the open space and recreational needs of the residents fall far below any acceptable standard. In fact, the open space, in the form of the capped main fill area, the leach field for the wastewater system, and the fenced wetlands area, constitute attractive nuisances that represent an unwarranted risk for the children and inhabitants of the Development.

Financial Feasibility

73. Based upon information provided by the Applicant, the Board's peer reviewer, Michael Jacobs, determined that a developer's profit of 12.6% was possible. However, Mr. Jacobs relied on certain assumptions in reaching this conclusion. Any change of circumstances will result in less profit and less financial feasibility.
74. In fact, the representatives of the Applicant conceded at the public hearing that if the Development did not have 150 three bedroom units and 50 two bedroom units, the Development would be "financially infeasible" with a profit of less than 2.0%.
75. In the run of the mill 40B development, such financial uncertainty is a risk for the developer, not the Board. In the instant matter, however, unforeseen circumstances that end up costing the Applicant more money create a risk for all of the citizens of Holliston. An unfinished Development is a potential disaster on numerous fronts, from TCE clean up to wastewater plume contamination of Well #4.
76. The Applicant has absolutely no experience in developing a project of this magnitude or complexity, thus increasing the odds of financial infeasibility.

Regional Housing Need

77. The Board finds that there is insufficient regional housing need for this Development to proceed. The Board has recently approved two Chapter 40B projects. The uncertainty of this Development's impact on public health and safety, when weighed against the relatively small local need for housing, presents an entirely unacceptable risk.

Conclusion

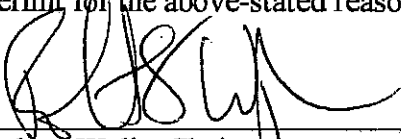
For all of the reasons set forth above, the board finds that the proposed Development is not consistent with local needs.

DECISION

Pursuant to G.L. c. 40B, the Zoning Board of Appeals of Holliston, after public hearing and findings of fact, hereby denies the comprehensive permit because the proposed Development is not consistent with local needs for all of the reasons set forth above.

RECORD OF VOTE

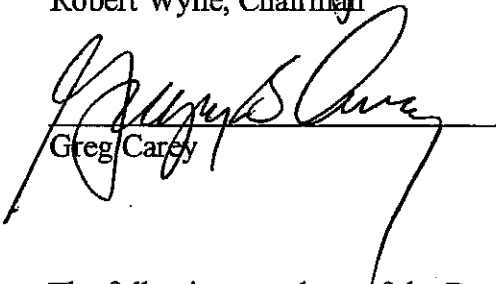
The following members of the Zoning Board of Appeals vote to deny the comprehensive permit for the above-stated reasons:



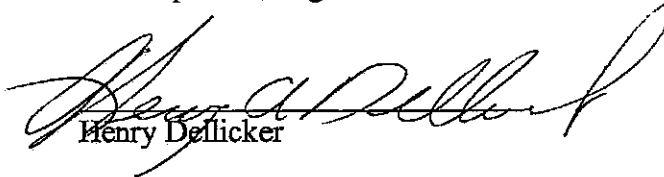
Robert Wylie, Chairman



Christopher Flanagan



Greg Carey



Henry Dellicker

The following members of the Board of Appeals vote to grant the comprehensive permit subject to conditions not herein set forth:

Filed with the Town Clerk on 11 Sept, 2006.

Jacqueline Dellicker, Town Clerk

Copy of Findings and Decision mailed to:

EXHIBITS

- A DOCUMENTS AND PLANS
- B EOEА CERTIFICATE



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EXHIBIT A – Cedar Ridge File Inventory

I. Applicant's Supplemental Material

A. Material from Robert Fasanella, Esq. of Rubin and Rudman, LLP

- Supplemental memorandum regarding additional research on Holliston property dated August 5, 2005.
- Correspondence dated February 2, 2006.
- Correspondence to Kathy Tomasetti dated May 10, 2006.
- Correspondence regarding Environmental and Title Insurance dated June 1, 2006.
- Correspondence regarding additional site control documentation dated July 20, 2006.

B. Material from Coler and Colantonio

- Correspondence regarding abutting monitoring well access dated September 28, 2006.
- Traffic Study dated October, 2005.
- Supplemental Investigation & Revised Remedial Plan with Associated Cost Estimates dated November 1, 2005.
- Correspondence regarding responses to traffic peer review dated November 30, 2005.
- All Boards Presentation dated February 28, 2006.
- Correspondence regarding response to comments from All Boards meeting dated March 21, 2006.
- Correspondence regarding response to questions from March 21, 2006 hearing dated March 27, 2006.
- Correspondence regarding response to comments from All Boards meeting dated April 6, 2006.
- Correspondence regarding clarification of selected laboratory analytical data dated June 18, 2006.
- Certificate of Analysis provided by Alpha Analytical Laboratories stamp dated June 8, 2006.
- Zoning Regulations Exemption Summary stamp dated June 27, 2006.
- Subdivision Rules and Regulations Waiver Request Summary dated July 24, 2006.

C. Material from Green View Realty

- Pro Forma stamp dated May 17, 2006.
- Correspondence to Richard Herlihy, MassHousing dated July 11, 2006.
- Fiscal Impact Analysis for 4 Development Scenarios stamp dated July 20, 2006.

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- Correspondence to Richard Herlihy, MassHousing dated July 11, 2006.
- Fiscal Impact Analysis for 4 Development Scenarios stamp dated July 20, 2006.
- Purchase & Sales Agreement for 123 Marshall St. between Greg & Christa Canavan and J. Michael Norton stamp dated July 20, 2006.

**Exhibit A - Cedar Ridge Comprehensive Permit Application
File Inventory**

- Addendum to Purchase & Sales Agreement for 123 Marshall St. between Greg & Christa Canavan and J. Michael Norton stamp dated July 20, 2006.
- Purchase and Sales Agreement for 95 Marshall St. between Robert H. Norton and J. Michael Norton stamp dated July 20, 2006.
- Addendum to Purchase and Sales Agreement for 95 Marshall St. between Robert H. Norton and J. Michael Norton stamp dated July 20, 2006.
- Correspondence to Ann McCobb, Board of Health from J. Michael Norton dated July 24, 2006.

D. Plans and Architectural Drawings

1. Plan set titled "Cedar Ridge Estates, Chapter 40B Housing Development" prepared by Coler & Colantonio dated January 19, 2005 consisting of the following sheets:

- C1 – Cover Sheet
- C2 – Key Sheet
- C3 – C8 - Existing Conditions (sheet 1-6)
- C15 – C20 – Grading & Drainage (sheet 1 – 6)
- C21 – C26 – Utility Plan (sheet 1 – 6)
- C27 – C32 – Erosion Control Plan (sheet 1 – 6)
- C41 – C46 – Detail Sheets (sheet 1 – 6)
- C49 – Environmental Plan

2. Aerial Layout Plan prepared by Coler & Colantonio dated November 8, 2005 (one sheet)
3. Expanded Aerial Plan prepared by Coler & Colantonio dated November 8, 2005 (one sheet)
4. Planting Plans dated August 2, 2006
5. Revised Concept plan prepared by Coler & Colantonio dated May 4, 2006 (one sheet)
6. Revised Concept Plan prepared by Coler & Colantonio dated May 22, 2006 (one sheet)
7. Bird Property Surficial Geology, May 2006 (one sheet)

II. Peer Review Correspondence

- Environmental Review from Joel Mooney, P.E., LSP of Haley & Aldrich dated June 29, 2005.
- Memorandum from Mark Bobrowski dated August 14, 2005.
- Memorandum from Thomas Houston of Professional Services Corporation, PC dated November 7, 2005.
- Comprehensive Permit Review of Site Plan dated December 16, 2005 from Professional Services Corporation, PC.
- Environmental Updated from Joel Mooney, P.E., LSP of Haley & Aldrich dated March 21, 2006.
- Hydrogeological Review from Mark Kelley, P.E. of Haley & Aldrich dated May 24, 2006.
- Financial Analysis prepared by Michael Jacobs of MHJ Associates dated June 20, 2006.

Exhibit A - Cedar Ridge Comprehensive Permit Application File Inventory

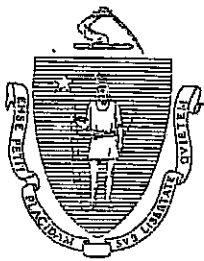
III. Correspondence from Town and State Departments and Agencies

- Interim Summary Report for the Charles Bird Removal Site prepared for the EPA dated March, 1997.
- Correspondence to HHAC from DEP dated June 24, 2005.
- Correspondence to Executive Office of Environmental Affairs from the Division of Fisheries and Wildlife dated November 22, 2005.
- Correspondence from Metrowest Growth Management Committee dated December 8, 2005.
- Correspondence from the Charles River Watershed Association dated December 9, 2005.
- Correspondence from Metropolitan Area Planning Council dated December 13, 2005.
- Secretary of Environmental Affairs Expanded Environmental Notification Form Certificate dated December 16, 2005.
- Correspondence from the Board of Selectmen dated December 15, 2003.
- Correspondence from Jane Pierce, Conservation Agent dated March 2, 2005.
- Correspondence from the Board of Health dated July 15, 2005.
- Correspondence from the Board of Health dated August 17, 2005.
- Correspondence from Michael Cassidy, Fire Chief dated December 5, 2005.
- Correspondence from the Board of Selectmen dated December 5, 2005.
- Correspondence from the Conservation Commission dated December 6, 2005.
- Correspondence from Ron Sharpin, Water Superintendent dated December 8, 2005.
- Correspondence from the Board of Health dated December 8, 2005.
- Correspondence from Paul LeBeau, Town Administrator dated December 12, 2003.
- Email from Michael Cassidy, Fire Chief dated February 27, 2006.
- Memorandum from Jane Pierce, Conservation Agent dated February 27, 2006.
- Correspondence from Michael Cassidy, Fire Chief dated December 5, 2005.
- Memorandum from Michael Cassidy, Fire Chief dated February 27, 2006.
- Email from Paul LeBeau, Town Administrator dated February 28, 2006.
- Email from Tom Smith, Acting Highway Superintendent dated February 28, 2006.
- Correspondence from the Planning Board dated February 28, 2006.
- Correspondence from the Board of Water Commissioners dated March 1, 2006.
- Correspondence from the Board of Selectmen dated March 15, 2006.
- Memorandum from Police Officer, David Gatchell dated May 12, 2006.
- Email from Michael Cassidy, Fire Chief dated May 24, 2006.
- Correspondence from Richard Maccagnano, Board of Health dated May 24, 2006.
- Project Risk presentation from the Board of Water Commissioners dated May 24, 2006.
- Memorandum from the Conservation Commission dated June 14, 2006.
- Correspondence from the Hopkinton Board of Selectmen dated June 21, 2006.
- Correspondence from Karen Sherman, Town Planner and Peter Tartakoff, Building Inspector dated July 12, 2006.
- Correspondence from the Hopkinton Board of Health dated July 13, 2006.
- Correspondence from Sarah Hall of MassHousing dated July 19, 2006.
- Correspondence from Sarah Hall of MassHousing dated July 20, 2006.
- Correspondence from the Board of Water Commissioners dated July 20, 2006.
- Correspondence from Richard Herlihy of MassHousing dated July 31, 2006.
- Correspondence from Elizabeth Bourque-Theiler, Board of Health dated August 2, 2006.

**Exhibit A - Cedar Ridge Comprehensive Permit Application
File Inventory**

IV. Public Comments

- Correspondence from Holliston Hopkinton Action Committee dated: December 12, 2003, December 12, 2003 (to Richard Herlihy of MassHousing), February 14, 2004, March 4, 2004, June 17, 2004, August 16, 2004 (to Ellen Roy Hertfelder of the Executive Office of Environmental Affairs), August 16, 2004 (to Richard Herlihy of MassHousing), March 2, 2005, April 1, 2005, May 12, 2005, May 25, 2005, May 31, 2005, July 13, 2005, July 18, 2005, August 1, 2005, August 10, 2005, August 15, 2005, August 24, 2005, September 12, 2005, September 26, 2005 (to the Holliston Water Commissioners), September 28, 2005, November 9, 2005, November 23, 2005, March 15, 2006, March 31, 2006, April 7, 2006, May 24, 2006, May 25, 2006, June 8, 2006, June 20, 2006, July 7, 2006, July 10, 2006, and July 27, 2006



The Commonwealth of Massachusetts

Executive Office of Environmental Affairs

100 Cambridge Street, Suite 900

Boston, MA 02114-2524

MITT ROMNEY
GOVERNOR

KERRY HEALEY
LIEUTENANT GOVERNOR

STEPHEN R. PRITCHARD
SECRETARY

Tel. (617) 626-1000
Fax. (617) 626-1181
<http://www.mass.gov/envir>

2005 DEC 28 AM 11:16
OFFICE OF THE
TOWN CLERK
HOLLISTON, MASS.

December 16, 2005

CERTIFICATE OF THE SECRETARY OF ENVIRONMENTAL AFFAIRS
ON THE
EXPANDED ENVIRONMENTAL NOTIFICATION FORM

PROJECT NAME: Cedar Ridge Estates
PROJECT MUNICIPALITY: Holliston
PROJECT WATERSHED: Charles/Concord
EOEA NUMBER: 13666
PROJECT PROPONENT: Green View Realty, LLC
DATE NOTICED IN MONITOR: November 9, 2005

Pursuant to the Massachusetts Environmental Policy Act (G.L. c. 30, ss. 61-62H) and Section 11.06 of the MEPA regulations (301 CMR 11.00), I hereby determine that this project **requires** the preparation of an Environmental Impact Report (EIR).

Project Description

As described in the Expanded Environmental Notification Form (EENF), the project involves the remediation of an historic solid waste landfill and subsequent construction of a residential condominium complex under the state's Comprehensive Permit framework (Chapter 40B). The proposed project, Cedar Ridge Estates, will consist of a 200-unit residential condominium complex consisting of 54 townhouse style buildings, associated roadways and driveways, recreational facilities, a sewerage treatment facility, and stormwater management structures on an approximately 52.5-acre site located off Prentice Street in Holliston, MA. The proposed new roadway winds through the property and has multiple access roads to Marshall Street.

The historical land use of the site was primarily associated with limited forestry, farming and agricultural practices up until the mid 1960s, at which point a gravel mining operation was

The two-step EIR process is essential to resolving potential environmental impacts posed by significant projects like the proposed Cedar Ridge Estates, to ensure adequate public review and comment on project design and associated impacts, and to develop sufficient information for the Massachusetts permitting agencies to use in their permitting decisions. The EENF did not contain sufficient information describing and analyzing the project, its alternatives and environmental impacts, and mitigation measures as required for EENF submittals. In addition, there is a general lack of specific information about the project in the EENF as a result of the proponent's early stage in the site assessment process. I am therefore requiring that this information be presented in the DEIR. The Scope for the Draft EIR is included below.

While I am denying the request for a Single EIR, I acknowledge the proponent's efforts in developing the EENF, which contained considerable information that has been particularly helpful in understanding the project and defining the scope of the EIR. Should the DEIR resolve the substantive issues outlined below, I will consider the procedural options available to me at 301 CMR 11.08 (8)(b)(2) as they relate to the Scope for the Final EIR.

The project site is a complex site with a long history. It has been contaminated with the dumping of hazardous waste, construction and demolition debris, and tire storage. There are residual levels of tetrachloroethylene (TCE) and other organic compounds in a groundwater plume that emanates from the site towards the Cedar Swamp aquifer which serves the Town of Holliston's Public Water Supply Well #4. The project site also overlaps a Zone II Water Supply Protection Area. I am sensitive to the need for affordable housing in the region and realize the environmental benefits that will result from the remediation of the project site. Nonetheless, no matter how worthy a potential project may be, MEPA imposes a requirement on project proponents to understand and fully disclose the potential impacts of a project, both positive and negative; to study feasible alternatives to a project; and to avoid, reduce, or mitigate environmental impacts to the maximum extent feasible.

SCOPE

General

The DEIR should follow the general guidance for outline and content contained in Section 11.07 of the MEPA regulations, as modified by this Scope. The DEIR should include a copy of this Certificate and a copy of each comment received. The proponent should circulate the DEIR to those parties that commented on the EENF, to the Town of Hopkinton, to any state agencies from which the proponent will seek permits or approvals, and to any parties specified in Section 11.16 of the MEPA regulations. A copy of the DEIR should be made available for public review at the Holliston Public Library.

Project Description and Permitting

The DEIR should include a thorough description of the project, including a detailed description of construction methods and phasing. The DEIR should provide a history of the site

The proponent should respond to comments concerning the proposed detention basin near Marshall Street and the TCE plume's source. Sampling of the pond and a discussion of potential impacts from the detention basin on 21E releases should be included in the DEIR. The pipe in the pond referenced at p. 40 of the Phase II report should be investigated further.

The proponent should respond to comments from the Town of Holliston with regard to the width of proposed roadways in the DEIR. The EENF states that the proposed roadway will be 1.39 miles in length and 22 feet in width with one-foot Cape Cod berm shoulders. The Town of Holliston Fire Department has stated that this is narrower than the National Fire Protection Association (NFPA) Standard and is not acceptable. The Town has stated in its comments that it will be requiring a roadway width of 24 feet, consistent with the NFPA Standard. The DEIR should discuss the increase in impervious surface that will result from the increased width in roadways. The DEIR should also address discrepancies in the EENF related to roadway width versus driveway width, and should present any further increases in impervious surface as a result of this discussion.

The DEIR should contain a draft of the stormwater management plan. It should discuss whether the internal roads will be conveyed to the Town, and what entity will be responsible for the ongoing operation and maintenance of structural BMPs. If the roads will be maintained by the proponent, the stormwater management plan should include internal roadway sweeping, catch basin cleaning and snow removal.

I encourage the proponent to consider LID techniques in site design and storm water management plans. LID techniques incorporate stormwater best management practices (BMPs) and can reduce impacts to land and water resources by conserving natural systems and hydrologic functions. The primary tools of LID are landscaping features and naturally vegetated areas, which encourage detention, infiltration and filtration of stormwater on-site. Other tools include water conservation and use of pervious surfaces. Clustering of buildings is an example of how LID can preserve open space and minimize land disturbance. LID can also protect natural resources by incorporating wetlands, stream buffers, and mature forests as project design features. For more information on LID, visit <http://www.mass.gov/envir/lid/>. Other LID resources include the national LID manual (Low Impact Development Design Strategies: An Integrated Design Approach), which can be found on the EPA website at: <http://www.epa.gov/owow/nps/lid/>.

Rare Species

The NHESP has stated that portions of the property are located within Priority and Estimated Habitat (WH 245 & PH 909) as indicated in the Massachusetts Natural Heritage Atlas. The project is located within the actual habitat of the Spotted Turtle (*Clemmys guttata*), a species that is listed as "Special Concern" in accordance with the Massachusetts Endangered Species Act (MESA) (M.G.L. c. 131A) and its implementing regulations (321 CMR 10.00). NHESP has stated that the project as currently proposed may result in a prohibited "take" of the Spotted Turtle. Proposed work, including remediation and restoration of contaminated areas has the potential to kill or harm Spotted Turtles when moving between wetlands on the project site, and to disrupt estivation, feeding and possibly nesting behavior.

the proposed project area at the anticipated post development demand flow, while maintaining compliance with the Public Water System's Water Management Registration and/or Permit requirements. Additional consideration for requirements for fire flow, minimum distribution pressure and storage pressure should also be adequately addressed. The proponent should respond to comments from the Charles River Watershed Association (CWRA) with regard to water conservation measures. The DEIR should also explain discrepancies between its estimate of 42,000 gpd of water use and 58,000 gpd of wastewater.

The proposed project includes the construction of 1.29 miles of water main lines. The project requires a Distribution System Modification permit (BRP WS 32) from DEP. The proponent should note comments from DEP with regard to the submission of the permit application.

Many commenters have raised concerns about the impact of the proposed project on the Town of Holliston's Water Supply Well #4. Well #4 provides approximately 25 percent of the average daily demand for drinking water in the Town of Holliston. The proponent should undertake a detailed hydrogeologic study that considers the potential of public water supply contamination as a result of the proposed project. Groundwater and soil sampling should be conducted in the Zone II area down gradient of the project site to determine if any contaminants have migrated off site towards the water supply well. I direct the proponent to coordinate with DEP in the development of the hydrogeologic study. The proponent should also discuss what provisions will be set in place for providing a reliable warning if contamination occurs.

Wastewater

The projected 58,000 gallons per day (gpd) of wastewater for the project will be treated on site at a privately owned wastewater treatment facility (WWTF). The EENF did not provide sufficient detail about the design of the WWTF. The plans submitted with the EENF showed the leach field immediately adjacent to wetlands and a stormwater detention basin. The DEIR should include a hydrogeological study that evaluates the impact of the leach field on the adjacent wetlands, stormwater detention basin and on the contaminants present at the site. The study should include a particle tracing analysis to document the pathway of contaminants and time of travel. Again, I direct the proponent to coordinate with DEP in the development of the study.

Several comments on the EENF refer to a letter issued by DEP on November 8, 1999 when the Town of Holliston's Comprehensive Wastewater Management Plan was undergoing MEPA review (EOEA #11581). The letter indicates that the Bird property (Cedar Ridge Estates project site) should not be considered as a potential wastewater disposal site because of concerns about cost recovery, liability, and the impact of a new groundwater discharge that could create a detrimental change in the movement of any contaminated ground water plume from the 21E site. DEP has indicated to MEPA at this time that this recommendation was made because other sites were potentially available, and there was no responsible party willing or able to cleanup the site and conduct the studies necessary to determine that groundwater discharge will not pose a risk to human health or the environment. If the project proceeds, the developer will be responsible for site cleanup and for completing all work necessary to obtain a groundwater discharge permit.

Transportation

The proponent has conducted a traffic study for the project in conjunction with the local Comprehensive Permit application to the Holliston Zoning Board of Appeals and submitted the study with the EENF. The project does not abut any state roadways and does not require a permit from the Massachusetts Highway Department (MHD). However, as MEPA jurisdiction over the project is broad, the proponent should address issues related to the project's impacts on traffic in the DEIR. The proponent should submit a copy of the traffic study with the DEIR, with any revisions suggested by the ZBA. The proponent should also respond to comments from the Town of Holliston, the Metrowest Growth Management Committee and the Metropolitan Area Planning Council about transportation.

Sustainable Design

The proponent should evaluate sustainable design alternatives that can serve to avoid or minimize potential environmental impacts. Such alternatives may also reduce project development and long-term operational costs. The DEIR should discuss sustainable design alternatives evaluated by the proponent and describe measures proposed to avoid and minimize environmental impacts.

I encourage the proponent to consider high-performance/green building and other sustainable design measures to avoid and minimize environmental impacts. Such measures may include:

- Leadership in Energy and Environmental Design (LEED) certification;
- water conservation and reuse of wastewater and stormwater;
- use of renewable energy;
- ecological landscaping;
- optimization of natural day lighting, passive solar gain, and natural cooling;
- an annual audit program for energy and water use, and waste generation;
- energy-efficient Heating, Ventilation and Air Conditioning (HVAC), lighting systems, and appliances, and use of solar preheating of makeup air;
- use of building supplies and materials that are non-toxic, made from recycled materials, and made with low embodied energy;
- incorporation of an easily accessible and user-friendly recycling system infrastructure into building design; and
- implementation of a solid waste minimization and recycling plan.

In addition, I encourage the proponent to consider LID techniques in site design and storm water management plans. LID techniques incorporate stormwater best management practices (BMPs) and can reduce impacts to land and water resources by conserving natural systems and hydrologic functions. The primary tools of LID are landscaping features and naturally vegetated areas, which encourage detention, infiltration and filtration of stormwater on-site. Other tools include water conservation and use of pervious surfaces. Clustering of buildings is an example of how LID can preserve open space and minimize land disturbance. LID can also

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12/6/2005 Town of Holliston, Conservation Commission
12/8/2005 Town of Holliston, Board of Health
12/8/2005 Town of Holliston, Water Department
12/8/2005 Metrowest Growth Management Committee
12/8/2005 Tom Oertel
12/9/2005 Cathy Tomasetti
12/9/2005 Charles River Watershed Association
12/12/2005 Department of Environmental Protection, Central Regional Office
12/13/2005 Metropolitan Area Planning Council

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