

## NOTICE OF DECISION

You are hereby notified that the Board of Appeals has rendered a decision on the application for

- an Appeal
- a Special Permit A1
- a Special Permit A2 (Site Plan Review)
- a Variance
- a Comprehensive Permit

filed by HINGHAM AFFORDABLE HOUSING TRUST

for a Comprehensive Permit pursuant to M.G.L. Chapter 40B, Sections 20 through 23, Local Initiative Program (LIP), as amended, for the construction of 8 units of housing (2 affordable) on the 3.09 acre site at **80 BEAL STREET**.

- granting
- granting upon conditions
- denying

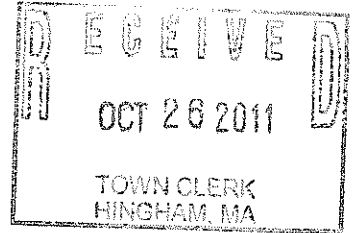
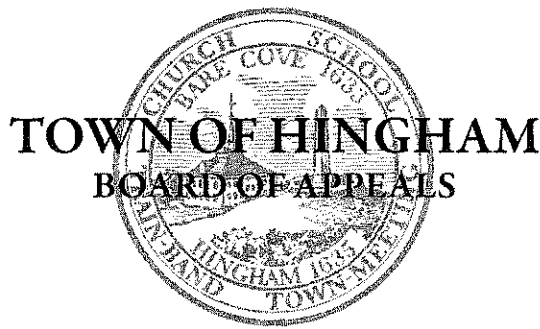
The decision is a public document, and may be obtained at the Board of Appeals office, Town Hall, 210 Central Street, Hingham.

Appeals, if any, shall be made pursuant to Section 17 of Chapter 40A of the General Laws, as inserted by Chapter 808 of the Acts of 1975 and as the same may be amended, and shall be filed within twenty days after the date of filing of the decision in the office of the Town Clerk, which said filing was made on October 26, 2011.

Joseph W. Freeman (Kag)  
Clerk, Board of Appeals

October 26, 2011  
(Date of this Notice)





**IN THE MATTER OF:**

**Applicant and Property Owner:** Hingham Affordable Housing Trust

**Premises:** 80 Beal Street  
Hingham, MA

**Deed Reference:** Plymouth County Registry of Deeds Book 38142 Page 254,

**SUMMARY OF PROCEEDINGS:**

This matter came before the Zoning Board of Appeals on the application of Hingham Affordable Housing Trust (the "Applicant") for a Comprehensive Permit pursuant to Massachusetts General Laws Chapter 40B, Sections 20 through 23, Local Initiative Program (LIP), as amended, ("the Statute") for the construction of eight (8) units of housing (two (2) affordable) (the "Project") on the 3.09 acre site at 80 Beal Street (the "Site"), in the Official and Open Space District.

Public hearings on the matter were duly noticed and held before the Hingham Zoning Board of Appeals (the "Board"). The Hingham proceedings commenced on July 14, 2011 and continued on September 21, 2011 and October 12, 2011. All public hearings before the Board were held at Hingham Town Hall before a panel consisting of regular members W. Tod McGrath, Chairman, Joseph M. Fisher and associate member Alan M. Kearney.

**FACTUAL BACKGROUND:**

The entire Site consists of 3.09 acres of land at 80 Beal Street, in Hingham, MA. The site consists of one lot of land, and is currently improved by a two story residential structure which will be razed. Plans entitled "Town of Hingham Affordable Housing Trust, 80 Beal Street, Hingham, MA 02043 dated May 25, 2011 (revised through September 19, 2011) and prepared by a team consisting of Strelakovsky Architecture, Coyle & Caron, LLC and Merrill Associates" (hereinafter, the "Plan") depict the Site and the proposed development plans and are attached hereto as Attachment B. The Site is situated in an Official and Open Space District. The site is flat, with access to/from Beal Street. Utilities are available from Beal Street. Access to the Site will be moved from the Western corner of the Site further to the East, as shown on the Plan. The site contains mature trees and the rear of the Site is woodlands. There is a small amount (285 square feet) of wetlands to the rear of the property on the East.

The Applicant will not develop the Project, but will put the Project out for public bid and award the Project to a developer after issuance of the Comprehensive Permit. The award may be subject to a land disposition and/or development agreement between the Applicant and the successful bidder. Hereinafter, all references to the Applicant shall include any successful bidder, successor and/or assigns.



### **THE APPLICANT'S PROPOSAL:**

The Applicant has proposed eight (8) detached homes, of which two (2) will be affordable in perpetuity. Each home will have 1,200 square feet ( $\pm 2\%$ ) of living space, 800 square feet of useable basement space (excluded from the aforesaid calculation of living space), a farmer's porch and a one car garage. Each home will contain three (3) bedrooms and two (2) bathrooms. The site layout has been designed to create walkable, pedestrian friendly common areas with vehicular traffic restricted to the perimeter of the property. As proposed, each unit owner will maintain all of its building and a small amount of landscape area around the building, within so-called exclusive use areas, and the condominium association will maintain the remainder of the common areas, including the roadways and all remaining landscaped areas.

As proposed, the development complies with many of the dimensional land use regulations applicable to developments within an Official and Open Space District. Nonetheless, the Applicant has requested waivers from certain use, dimensional, and/or other restrictions otherwise applicable to the Project, as authorized under the provisions of the Statute and the regulations promulgated thereunder, at 760 C.M.R. 56.00, et seq. ("the Regulations"), to the extent that compliance therewith is inconsistent with local needs. The Applicant will designate two (2) units as affordable so as to aid the Town in satisfying the statutory minima established by the Statute and the Regulations, of either ten percent (10%) of its total housing units qualifying as "affordable" or affordable housing existing on sites comprising more than 1.5% of the total land area zoned for residential, commercial, or industrial use in the Town. At the time of the filing of this application, the Massachusetts Department of Housing and Community Development ("DHCD") reported that the Town of Hingham's affordable housing stock was less than six percent (6%) of the available housing stock. However, at the commencement of the public hearing process, the Board noted that the Town of Hingham (the "Town") challenges DHCD's position with respect to the level of affordable housing, and that the Board asserts that it is not obligated to entertain the Application. The Board informed the Applicant that the Board would hear and consider the Application on the merits, but that the Board reserved the right to deny the Application on the merits and/or upon the basis that the Town is no longer obligated to entertain affordable housing permit applications under M.G.L. Chapter 40B because of recent increases in the Town's affordable housing stock. The Board further stated that the Board's consideration of the Application, and potential granting of a Comprehensive Permit, would not be contradictory to the Town's position regarding the current affordable housing stock, and would not be deemed a waiver of the Town's position regarding its status under M.G.L. Chapter 40B and the applicable regulations.

### **THE ZONING BOARD'S AUTHORITY UNDER THE STATUTE:**

Pursuant to the Statute, the Applicant must fulfill three (3) jurisdictional requirements:

1. The Applicant shall be a public agency, non-profit organization or a Limited Dividend Organization;
2. The Project shall be fundable by a Subsidizing Agency under a Low or Moderate Income Housing subsidy program; and
3. The Applicant shall control the Site.

The Board received evidence through the application and the hearing process and makes the following finding of facts relevant to jurisdiction:

1. The Applicant is a Trust created pursuant to M. G.L. Chapter 44, Section 55C. The Board finds that the Trust is a public agency and therefore satisfies this jurisdictional requirement.
2. The Applicant received project eligibility approval on May 11, 2011 from the Commonwealth of Massachusetts Department of Housing and Community Development under the Local

Initiative Program ("LIP"). The Board finds that this DHCD determination of Project Eligibility satisfies the jurisdictional requirement.

3. The Applicant has shown control of the Site by providing a copy of its deed to the property recorded with the Plymouth County Registry of Deed in Book 38142 Page 254 and therefore the Board finds that the Applicant has satisfied this jurisdictional requirement.

**SUMMARY OF REVIEW:**

During the hearing process, the Board heard testimony, both written and oral, from the Applicant and its consultants, Town Boards and Departments, as well as abutters/property owners in the vicinity of the Site. The Board had the Project reviewed by their consultant, Chessia Consulting Services, LLC, who raised some concerns primarily with drainage and stormwater management. The Applicant and its consultants responded verbally and in writing to the issues raised by the Board, its consultant and other interested parties. All of these concerns have been satisfactorily addressed by the Applicant, and specific conditions of the Project are set forth on Attachment A to this decision.

**AFFORDABILITY:**

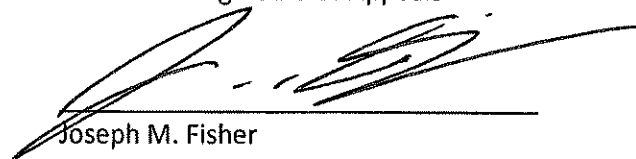
After discussion and review of the public needs and the financial projections of the Applicant, the Board has determined that the income based eligibility requirements shall be established as outlined in Attachment C to this decision. The affordable units shall be conveyed with a Deed Rider which shall maintain the units' status as affordable units in perpetuity. The Applicant in conjunction with DHCD shall establish the sale price for each affordable unit and the maximum sale and resale price for the affordable units shall be set forth in the Regulatory Agreement and Deed Rider. To the extent permitted by law, there shall be a "local preference" for Hingham residents in eligibility for the affordable units as further defined in Attachment C.

**FINDINGS AND DECISION:**

Based on the evidence presented by the Applicant, local boards and officials and interested parties at the public hearings, the Board found that there is a local need for affordable housing units, and that the Applicant's proposal, as authorized under the provision of M.G.L. Chapter 40B is consistent with those local needs. Therefore, the Zoning Board of Appeals has voted unanimously to GRANT the Comprehensive Permit under M.G.L. Chapter 40B Local Initiative Program (LIP) subject to the following conditions and waivers (Attachment A), Plans (Attachment B), and affordability requirements (Attachment C) which are attached hereto and incorporated herein by reference.

This decision shall not take effect until a copy of the decision bearing the certification of the Town Clerk, that twenty (20) days have elapsed since the decision has been filed in the office of the Town Clerk and no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied, is recorded with the Plymouth County Registry of Deeds and/or the Plymouth County Land Court Registry, and indexed in the grantor index under the name of the record owner or is recorded and noted on the owner's certificate of title.

For the Zoning Board of Appeals



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Joseph M. Fisher  
October 25, 2011

## ATTACHMENT A

### **Hingham Affordable Housing Trust, 80 Beal Street Comprehensive Permit Conditions and Waivers**

**(Applicant shall include any successful bidder, successor and/or assigns.)**

#### **A. General Conditions:**

1. This Decision permits the construction, use and occupancy of 8 housing units on the Site. Each housing unit will have 1,200 square feet ( $\pm 2\%$ ) of living space, 800 square feet of useable basement space (excluded from the aforesaid calculation of living space), a farmer's porch and a one car garage. Each housing unit will have three (3) bedrooms and two (2) bathrooms. The conversion of living space to additional bedroom(s) shall be prohibited, and a restriction to that effect will be incorporated into the Master Deed for the condominium. The construction and use of the Site shall be in substantial conformity with the Plan, and there shall be no further subdivision of the Site, or the creation of additional housing units or any other structures or infrastructure except that which is showing the Plan, without further approval of the Board.
2. Prior to the issuance of a building permit, the Applicant shall submit to the Board a final set of Comprehensive Permit site and construction plans and calculations, for technical review by the Board or its representative to ensure that it is consistent with and in conformity with this decision. The construction plans shall include but not be limited to:
  - (a) A utility plan including individual service locations and showing all pipe inverts, pump calculations, and profiles.
  - (b) Detail of the sidewalk and drives.
  - (c) Detailed landscape plan with specific species.
  - (d) Spot grading along the driveways to the individual units.
  - (e) With regard to the catch basins at the entrance to the site and storm water management, provide outlet sizing calculations consistent with DEP requirements for both the stone dimensions and length and width of the outlets.
  - (f) Provide a Storm Water Pollution Prevention Plan (SWPPP) consistent with National Pollution Discharge Elimination System (NPDES) for review with the Building Permit Application
  - (g) Forebays properly sized for the water quality volume shall be designed at the edge of pavement near Cottages #3 and #6.
3. Prior to roadway excavation, provide and obtain written approval of a detailed plan/specification indicating a compaction and repaving/repair plan for Beal Street opening for the installation of utilities, in accordance with Hingham DPW Projects Engineers Office street opening standards and all the additional conditions of the street opening permit and/or grant of location as may be required. (\*note: The Applicant would have to install approximately 1,400 linear feet of utilities in order to connect to the Site if they were not to create a new opening on Beal Street and this requirement is deemed uneconomical for the Project.)
4. The Applicant shall execute or cause to be executed (i) Master Deed and (ii) Condominium Trust and By Laws (collectively the "Condominium Documents") in a form consistent with the requirements and conditions of this Comprehensive Permit. All Condominium Documents shall be submitted to Counsel for the Town and this Board prior to execution for review and approval as to form, and to ensure consistency with the conditions contained herein. Prior to the issuance of a certificate of occupancy, the Project shall be organized as a condominium in accordance

with the applicable law, the appropriate Condominium Documents shall be approved, as set forth above and recorded with the Plymouth County Registry of Deeds and evidence of such recording shall be provided to the Board.

5. Each condition in this decision shall, in accordance with its terms and applicable law, be applicable to and binding on the Applicant and the Applicant's successors and assigns for as long as the Project and the use of the land does not strictly and fully conform with the requirements of the Hingham Zoning By-Law; and reference to these conditions shall be incorporated in the Master Deed and in each Unit Deed recorded for the Project and for any unit in the Project.
6. Maintenance schedules setting forth the Applicant's and its successors (i.e. condominium association) responsibility for the entrance drives, common area lighting, trash removal and storm water management system shall be specified in the Condominium Documents. No provision of the Condominium Documents required by this Comprehensive Permit shall be materially amended without consent of the Board.
7. The percentage interest of the units in the condominium common elements and their respective votes shall be calculated and determined in a manner consistent with Massachusetts General Laws Chapter 183A. To the extent allowable by law, the percentage interest of the units in the condominium common elements shall be based on the size of the units, and for all intents and purposes, each home should have an approximate 1/8<sup>th</sup> interest in the common elements, and one vote.
8. The Applicant shall comply with all local rules and regulations of the Town of Hingham and its boards and commissions unless expressly waived herein or as otherwise addressed in these conditions.
9. The Applicant shall at all times satisfy the jurisdictional requirements set forth above in accordance with the applicable requirements of the Statute and the Regulations.

**B. Building, Design and Construction:**

1. The Applicant shall pay all fees of the Town of Hingham imposed generally in respect of construction projects and for the purposes of monitoring compliance of the Project's building construction and occupancy in accordance with this Comprehensive Permit.
2. The Applicant shall comply with the State Building Code and any local regulations or fees of the Building Commissioner. The Applicant shall pay all required fees for all such building permits including any fees charged for inspections and permits.
3. The unit types, sizes and mix of units will be in accordance with the Plans. Construction of all dwelling units, utilities, pedestrian and vehicle areas, drainage structures and all related appurtenances shall be in accordance with the Plans submitted to the Board and referenced in Attachment B. The exterior appearance of the Affordable Units shall be substantially indistinguishable from the market rate units. One (1) Affordable Unit shall be conveyed for every three (3) market rate units conveyed. Each home shall be limited to not more than 1,200 square feet ( $\pm 2\%$ ) of habitable floor area, excluding garages, basements, porches, decks, patios, balconies, and air conditioner condensers and other areas not normally counted toward habitable area.

4. The Applicant shall copy the Board and the Building Commissioner on all correspondence between the Applicant and any federal, state or Town official, board or commission that concern the conditions set forth in this decision.
5. The Applicant shall obtain temporary easements or written permission from any abutting property owner if, during the course of construction, it becomes necessary to enter upon abutting land for construction or planting.
6. All utilities serving the Project shall be installed underground, including any extensions from existing line or poles external to the Property. All existing overhead utilities and poles located on the premises shall be removed and replaced with underground services.
7. The Applicant may display a temporary construction, marketing, or for-sale sign not exceeding 50 square feet stating appropriate marketing information on the Site, provided it otherwise complies with Section V-B of the Zoning By-Law. The temporary sign shall be displayed for no longer than three years or the date of the closing on the last home, whichever occurs first, which term shall be renewable at the Board's discretion.
8. During the period of construction, no vehicles of construction workers and no construction equipment shall be parked on Beal Street, or any other public way of the Town of Hingham.
9. During the period of construction, all deliveries of construction materials and equipment shall be made only on Monday through Friday no earlier than 7:00am and not later the 5:00 pm. Construction operations shall be limited to the hours of 7:00 am to 6:00 pm Monday through Friday and 8:00am to 4:00 pm on Saturday. Except for emergency conditions, no exterior construction work shall be allowed on Sundays. The Building Department shall be notified promptly of any such emergency conditions. Hours of operation may be enforced by the Police Department. Throughout construction, the Applicant shall comply with all local, state, and federal laws regarding noise, vibration, dust and blocking of roadways.
10. During the period of construction and marketing, notwithstanding any pre-conditions for the issuance of a building permit or certificate of occupancy otherwise set forth herein, the Applicant shall be entitled to designate, construct and operate one of the homes as a decorated, model home, and the Applicant shall be able to designate, construct and operate said home's garage as a temporary sales office. The model home and sales office shall be subject to the standard requirements of the Building Commissioner of the Town of Hingham with respect to building and fire code compliance.
11. All outdoor lighting shall be installed in accordance with the requirements of the Town of Hingham.
12. During construction, the Applicant shall be able to locate a construction trailer on the Property, provided however, that the trailer shall not be located within any wetlands areas.
13. The roadways, utilities, drainage systems, and all other infrastructure shown in the Plan shall remain private and the Town of Hingham shall not have, now or ever, any legal responsibility for the operation or maintenance of said infrastructure, nor shall it have, now or ever, any legal responsibility for snow removal, trash collection, landscaping, street lighting or building repair and maintenance unless otherwise agreed to by the Town.

14. The Project shall demonstrate that there is an adequate water supply for fire protection and water supply and provide a construction plan for connection to the Aquarion Water Company System.
15. The Applicant shall be required to submit a NPDES permit (including a SWPPP) and associated SWPPP including an erosion control plan to the Building Department and other required authorities.

**C. Grading and Stormwater Drainage System:**

1. The Applicant shall perform soil evaluations witnessed by an appropriate agent of the Town or their designee at all proposed infiltration systems and treatment swales/filter strips prior to submission of construction plans.
2. A storm water management plan shall be submitted by the Applicant for review and approval by the Board or its representative prior to the issuance of a building permit. The plan shall include, but not be limited to, spot grades, limits of various soil components, plantings, water quality swales (preceded by a forebay to pretreat road runoff prior to discharge to the swales), and plans and specifications in the bioretention areas.
3. An as built plan of Best Management Practices (BMP's) shall be submitted to the Board prior to certificate of occupancy to ensure that the systems will work properly.
4. Provide a final bound Operation and Maintenance Plan (O&M) based on the as-built of the site. The O&M shall include a plan with the location of all stormwater components, snow storage areas, etc. with specific maintenance requirements consistent with DEP guidance as noted in the Stormwater Manual.
5. The storm water drainage system shall be operated and maintained by the Applicant, and subsequently by the condominium association, in accordance with the storm water management plan approved by the Board.

**D. Transfer of Comprehensive Permit**

1. The Applicant shall notify the Board of any transfer of this Comprehensive Permit, in accordance with 760 C.M.R. 56.05 (12)(b).

**E. Miscellaneous**

1. The Board or its agent(s) may enter onto and view the Site during regular business hours, without notice, to ensure compliance with the terms of this decision, subject to applicable safety requirements.
2. In the event of serious or repeated violations of the substantive or reporting requirements of this Comprehensive Permit or a failure by the Applicant to take appropriate actions to cure a default hereunder, the Town and/or DHCD shall have the right to take appropriate enforcement action against the Applicant, including, without limitation, legal action to compel compliance. DHCD, the Town and/or the Town's designee shall be entitled to seek recovery of their respective fees and expenses, including attorney fees, incurred in enforcing this Decision against the Applicant and to place a lien on the Project to secure payment of the same.



**WAIVERS GRANTED:**

The Board grants the following waivers to the General and Zoning By-Laws of the Town of Hingham:

**Zoning By-Law:**

1. Sections I-H, I-I and IV-B 6: Waiving the site plan approval requirement to allow the Project to proceed without Site Plan Approval from the Planning Board.
2. Section III-A, Scheduled Uses: Waiving restriction on residential uses.
3. Section IV-B 5: Waiving the setback requirement to allow the pavement in front of cottage #3 to be less than the required 20' from the property line but not less than the setback shown on the approved plans.
4. Section V-B Signs, allowing a temporary construction sign, not to exceed fifty (50) square feet

**General Bylaws:**

1. The regulation of not allowing a street opening in a newly paved public street is waived to allow the Applicant to install and extend utilities to the Site entrance as shown on the Plan, but is subject to General Condition #3 as outlined above.

**Recommended Waivers:**

The Board recommends the following waivers to the General Bylaws of the Town of Hingham:

1. Sewer Connection - waiving sewer connection fees for the affordable units only.
2. Building Permit - waiving building permit fees for the affordable units only.

**Waivers Not Listed**

By granting the foregoing waivers from local bylaws and regulations, it is the intention of this Comprehensive Permit to permit construction of the Project as shown on the Plan. If, in reviewing the Applicant's building permit application(s), the Building Commissioner determines that any additional waiver from local bylaws or regulations is necessary to permit construction to proceed as shown on the Plan, the Building Commissioner shall proceed as follows: (a) any matter of a de minimus nature shall be deemed within the scope of the waivers granted by this Comprehensive Permit; and (b) any matter not of a de minimus nature including but not limited to potential adverse impact on public health, safety, welfare or the environment shall be reported back to the Board for expeditious disposition of the Applicant's request for a waiver there from.

## **ATTACHMENT B**

### **Hingham Affordable Housing Trust, 80 Beal Street Comprehensive Permit Approved Plans**

Plans entitled "Town of Hingham Affordable Housing Trust 80 Beal Street, Hingham, MA 02043"  
prepared by a team consisting of Strelakovsky Architecture, Coyle & Caron, LLC and Merrill Associates:

- C1.1 – Existing Conditions (revised through September 19, 2011)
- C2.1 – Layout (revised through September 19, 2011)
- C3.1 – Grading & Utility (revised through September 19, 2011)
- C4.1 – Plan & Profile (revised through September 19, 2011)
- C5.1 – Easement Plan (revised through September 19, 2011)
- C6.1 through C6.4 – Details (revised through September 19, 2011)
  
- Floor Plans (Units 1,4,5 & 8) (revised through September 20, 2011)
- Floor Plans (Units 2,3,6 & 7) (revised through September 20, 2011)
  
- L1.0 – Concept Planting (revised through August 29, 2011)

## ATTACHMENT C

### **Hingham Affordable Housing Trust, 80 Beal Street Comprehensive Permit**

#### **Affordability**

1. The Project shall be comprised of no fewer than two (2) units designated as affordable units, located in the areas designated on the Plan (Cottages 3 and 8).
2. The affordable units shall remain affordable in perpetuity through a Deed Rider in the form approved by DHCD. Said Deed Rider shall be recorded with the Plymouth County Registry of Deeds with the sale of each affordable unit and shall run with the land.
3. The Applicant shall obtain Final Approval from DHCD in connection with the requirements set forth in the Project Eligibility letter.
4. The Applicant shall execute or cause to be executed a Regulatory Agreement and a Deed Rider (collectively, the "Regulatory Agreement"). The Regulatory Agreement shall be consistent with the requirements and conditions of the Statute and the Regulations, and shall be submitted to Counsel for the Town and this Board prior to execution for review and approval as to form. The Regulatory Agreement shall be in a form approvable by DHCD. The Regulatory Agreement shall be recorded with the Plymouth County Registry of Deeds. At a minimum the Regulatory Agreement and/or Deed Rider shall contain the following terms:
  - a. The affordable units shall be reserved for sale in perpetuity to households earning no more than eighty percent (80%) of the Area Median Income for the Boston-Cambridge-Quincy PMSA, adjusted for household size, and the price for said units shall be set at a price affordable for a household earning no more than seventy percent (70%) of the Area Median Income, adjusted for household size, with an assumed, five percent (5%) down payment.
  - b. A right of first refusal to purchase an affordable unit on resale shall be granted to the Board or its designee.
  - c. The actual affordable units shall be identified in the Regulatory Agreement.
  - d. The affordable units shall be owner-occupied only; provided, however, that the Board may authorize the temporary rental of said units at a price affordable to a household earning no more than eighty percent (80%) of the Area Median Income where the owner demonstrates that there is a bona fide reason for the same, such as an illness in the family, military duty or the like.
5. The Applicant in conjunction with DHCD shall establish the sale price for each affordable unit. The affordable unit shall be reserved for households earning up to 80% of the Area Median Income of the Boston-Cambridge-Quincy, PMSA (as defined by HUD on an annual basis) adjusted for household size, all as more particularly described in the Regulatory Agreement. To provide a "window of affordability" the affordable units shall be made available at a price affordable for a household earning no more than seventy percent (70%) of the Area Median Income, adjusted for household size, with an assumed, five percent (5%) down payment. The maximum sale and resale prices for the affordable units shall be determined in accordance with the Regulatory Agreement and Deed Rider.

6. Prior to the advertisement of the affordable units for sale, a Lottery Agent shall be selected by the Applicant and approved by the Board. Said Lottery Agent shall develop an Affordable Fair Housing Marketing Plan (AFHMP) for the affordable units that shall be approved by DHCD. The AFHMP shall conform to: (i) all affirmative action requirements or other requirements imposed by federal or state regulation; (ii) DHCD's "Comprehensive Permit Guidelines" adopted in July, 2008, as amended; and (iii) the local preference requirements set forth below. The AFHMP shall require timely notice to the Board, the Hingham Housing Authority and the Hingham Affordable Housing Trust of the availability for sale or re-sale of the affordable units. All costs associated with the lottery shall be borne by the Applicant.
7. To the extent permitted by law, the affordable units shall be marketed in accordance with the following local preference criteria: Local preference shall be given for one of the two affordable units to one or more individuals who are: (i) A current employee of the Town of Hingham - including but not limited to teachers, janitors, firefighters, police officers, librarians or Town Hall employees; (ii) A current resident of the Town of Hingham or (iii) A parent of a child in the Hingham METCO program.
8. **Profit Cap:** The Applicant shall be limited to an overall profit of twenty percent (20%) of the total development costs of the Project, as accepted by DHCD (the "Profit Cap"). The Applicant shall cause a certified public accountant ("CPA") to review the financial records of the Project to determine whether the Developer has conformed to the Profit Cap requirements of this Comprehensive Permit decision. The CPA shall submit to DHCD, with a copy to the Board, a certification of the actual profit from the development along with a certification of the Profit Cap calculation. If the Applicant has exceeded the 20% Profit Cap the Applicant shall donate the excess profit above the Profit Cap to the Town of Hingham to be used at the discretion of the Board of Selectmen for the express purpose of promoting, encouraging, creating, improving or subsidizing the construction or rehabilitation of affordable housing in the Town of Hingham. The Applicant shall deposit \$4,500 in an escrow account set up by the Town pursuant to G.L. c. 44, §53G to cover the Town's expenses in the monitoring compliance with the Profit Cap. Any funds not expended after the completion of the Town's determination of compliance with the Profit Cap shall be returned to the Applicant. In determining whether the Applicant has conformed to the Profit Cap requirements of this Comprehensive Permit decision, the CPA shall be required to certify that (a) the total profit, excluding permitted development fees as outlined in the LOCAL 40B REVIEW and DECISION GUIDELINES put out by Massachusetts Housing Partnership and Edith M. Netter, Esq. dated November 2005, to the Applicant does not exceed twenty percent (20%) of total development costs of the Project; (b) the Applicant has not made unreasonable or excessive payments (i.e. payments in excess of reasonable industry standards applicable to an arm's length transaction) to the Applicant or to its parents, subsidiaries, affiliates, successors, and assigns, or to their respective partners, limited partners, shareholders, managers, or other owners, or to the relatives of the same in connection with work performed on the Project in order to artificially inflate the costs of development of the Project; (c) there have been no commissions charged on the affordable units which are required to be sold pursuant to a lottery selection process as provided by this Comprehensive Permit; and (d) the CPA has been provided access by the Applicant to any reasonable financial information necessary to make these determinations and to verify whether the income and expenses of the Project, including without limitation land acquisition costs, construction costs, landscaping costs, and other expenses, represent fair market value for such items, with particular attention to those arrangements between parties with overlapping ownership to owners of the Applicant. Unless prohibited by law, all costs of enforcement of this Profit Cap condition, including legal fees incurred by the Board and/or the Town of Hingham, shall be borne by the Applicant.