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SOUTHBOROUGH TOWN CLERK

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TOWN OF SOUTHBOROUGH ZONING BOARD OF APPEALS

COMPREHENSIVE PERMIT REGULATIONS AND GUIDELINES

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1.0 Authority, Background and Purpose

These regulations and guidelines (the "Regulations") establish binding procedures for applications to the Town of Southborough (the "Town") Zoning Board of Appeals (the "Board") for comprehensive permits under G.L. c. 40B, §§ 20-23 (a "Comprehensive Permit"). These regulations are required by M.G.L. c. 40B, § 21, as amended by Stat. 1989, c. 593, and by 760 CMR 56 ("Chapter 40B"). The purpose of Chapter 40B and these Regulations is to facilitate the development of affordable housing in Massachusetts. Further explanation of the background and purpose is provided in the above-described regulations of the Housing Appeals Committee ("HAC"), 760 CMR 56.

These Regulations shall be filed with the Town Clerk, and as of such filing are effective as of the date of filing. These Regulations supersede any and all previous such regulations of the Board.

These Regulations may be amended at any time by a complying vote of the then-sitting members of the Board. Any such amendments shall be filed with the Town Clerk in the same manner in which these Regulations were so filed and will be effective as of such filing date (or other later date as specified as part of such filing).

The Town strives to provide affordable housing for all residents and recognizes the need for a diversity of housing options for all. At the same time, the need for affordable housing must be considered within the context of such issues as public health and safety, promotion of improved site and building design, neighborhood character, infrastructure impacts, environmental concerns and open space preservation as well as support for both larger and smaller affordable housing development projects.

These Regulations alone are not sufficient to describe Comprehensive Permit procedures before the Board. They must be read in conjunction with and implemented in a manner consistent with Chapter 40B and, as may be applicable, guidelines published periodically by the Executive Office of Housing and Economic Development ("EOHLC"). In addition, the Board's general Rules and Regulations (the "Rules") for conduct of hearings under M.G.L. c. 40A apply to Comprehensive Permit Applications. In case of inconsistency or conflict between the Board's Rules and these Regulations, these Regulations shall govern. These Regulations shall be construed in accordance with the applicable laws and regulations of the Commonwealth of Massachusetts. The invalidity, illegality or unenforceability of any provision of these Regulations, by statute, court or otherwise, shall not affect the validity, legality or enforceability of any other provision of these Regulations, which shall remain in full force and effect.

2.0 Definitions

2.1 "Board" means the Southborough Zoning Board of Appeals established under M.G.L. c. 40A, § 12.

2.2 "Limited Dividend Organization" means any applicant which proposes to sponsor housing under M.G.L. c. 40B; and is not a public agency; and is eligible to receive a subsidy from a state or federal agency and which agrees to limit the dividend on its actual invested equity to the maximum amount allowed by the applicable statute or regulations governing the pertinent housing program (see Section 4.1.1.1).

2.3 "Local Board" means any local board or official, including, but not limited to any board of survey; board of health; planning board; conservation commission; historical commission; water, sewer, or other commission or district; fire, police, public works, or other department; building inspector or similar official or board; city council or Select Board. All boards, regardless of their geographical jurisdiction or their source of authority (that is, including boards created by special acts of the legislature or by other legislative action) shall be deemed Local Boards if they perform functions usually performed by locally created boards.

3.0 Initial Process

3.1. Application

An "Applicant" may apply to the Board at any time for a Comprehensive Permit, by completing the Comprehensive Permit Application Form (the "Application"), which is available from the Business Administrator for the Zoning Board of Appeals. The Application for a Comprehensive Permit shall consist of a completed and duly signed Application, filed with and signed by the Town Clerk, including all necessary supporting documents as required by these Regulations, as well as the fee required hereunder.

An Applicant is encouraged to first meet with the neighbors in the area of the proposed development prior to submission of an Application and to keep the neighbors apprised of all proceedings with Town Departments.

If there are wetlands or water bodies on or near the site, the Applicant is advised to contact the Town Conservation Commission as early as possible to identify any potential environmental issues to be addressed.

3.2 Town Department Review

The Applicant is encouraged to meet with and to discuss their proposed development plans with the following Town entities, as the Board will typically ask such Town entities, as the Board deems may be appropriate, for comments and recommendations related to the proposed Comprehensive Permit development project:

- Select Board – for review and recommendations concerning the proposal;
- Building Commissioner - to determine the relief requested, as well as review zoning and building code issues;
- Town Planner and the Planning Board - to review the plans for completeness, accuracy, and compatibility with good planning, design, and development practices, including, but not limited to, such factors as traffic, public transit, housing, and land use objectives. The Town Planner and the Planning Board may suggest ways that the plans and the Application might be improved, and may make recommendations to the Board relative to the Application;
- The Affordable Housing Trust Fund Committee - for review and recommendations concerning the proposal;
- Southborough Housing Authority - for review and recommendations concerning the proposal;
- Department of Public Works ("DPW") - to review the adequacy of utilities and roadways in the area and other engineering issues related to the proposal;
- Fire Department and Police Department - to review safety, including emergency access and applicable fire codes;
- Conservation Commission - to review wetland and environmental and stormwater issues; and

- Others as recommended by the Building Commissioner, Town Planner or DPW Director.

3.3 The Applicant is advised to refer to the Town Zoning By-Law (the “By-Law”) as a guideline to the proposed development plan. This includes, but is not limited to, setback, lot size, lot coverage, and parking requirements. By-Law requirements may be overridden, in full or in part, by the Board if inconsistent with local needs as defined by MGL Ch. 40B, section 20. The Board may impose conditions as part of the Board’s approval of a Comprehensive Permit, provided that they do not make the project uneconomic as defined by MGL Ch. 40B, Section 20.

3.4 Other Required Reviews

Other regulations as required by state law that may apply must still be adhered to, such as Massachusetts Environmental Policy Act Regulations, 310 CMR 11.00 *et seq.* (“MEPA”) and the Wetlands Protection Act Regulations, 310 CMR 10.00 *et seq.* An Environmental Notification Form under MEPA may be required if a Comprehensive Permit application triggers one or more of the threshold requirements under MEPA.

4.0 Filing, Time Limits, and Notice

4.1 The materials listed below shall be submitted to the Board with the Comprehensive Permit Application Form. The Board understands that for many projects, the plans may not be at a definitive stage of development. However, the Board needs to receive information relevant to the impacts of the proposed development on the Town and the surrounding area, and in order to evaluate those impacts, this information is required of the Applicant. Providing this information promptly and in the beginning of the process will result in a quicker process and will help the Board to become better informed about the proposed project.

The Application shall include the following, and, unless specified otherwise below, all required drawings and plans shall be signed and/or stamped by a MA-registered professional engineer, land surveyor, architect, etc., as appropriate:

4.1.1 Documents confirming that the Applicant fulfills the following jurisdictional requirements of 760 CMR 56.04(1) shall be submitted:

- 4.1.1.1 The Applicant is a public agency, a non-profit organization, or a Limited Dividend Organization;
- 4.1.1.2 The project is fundable by a “Subsidizing Agency” under a low or moderate income housing subsidy program (Applicants are advised that the Board may review this documentation to ensure that the applicable Subsidizing Agency has performed the due diligence required under 760 CMR 56.04); and
- 4.1.1.3 The Applicant controls the site and access thereto (this documentation must adequately demonstrate that the Applicant possesses the necessary control over the site and the site access to develop the project as proposed in the Application).

4.1.2 A complete financial *pro-forma*, detailing the projected costs and revenues of the proposed project shall be submitted. Specifically:

- 4.1.2.1 The *pro forma* shall be prepared by a certified public accountant or other professional experienced in construction development and signed by the Applicant under penalties of perjury;
- 4.1.2.2 All financial data submitted by the Applicant is subject to technical review;
- 4.1.2.3 In preparing the *pro-forma*, the Applicant shall limit its costs to actual investment in the property. Acquisition costs shown in the *pro-forma* shall be limited to the lesser of the existing as-is fair market value of the property (i.e., the value under existing By-Laws and regulations without the benefit of waivers or variances) or the amount of last arm’s length sale (with all reasonable and demonstrable carrying costs), whichever is less;
- 4.1.2.4 The Applicant shall fully disclose any costs ascribed to related entities (including any financing arrangements). Profits generated by any related entities in the development of any aspect of the project, in excess of usual and customary

profits for the same general type of such related entity, shall be considered as part of the total profit for the Applicant, which is subject to the applicable statutory and/or regulatory limitations; and

- 4.1.2.5 The pro-forma projections for the Applicant's costs, revenues and profits must comply with the requirements of the appropriate Subsidizing Agency and any other applicable laws and regulations. The Board may elect to retain the services of a consultant, pursuant to Section 5.1, to review the details of the *pro-forma*, and to consider other relevant review guidelines for the review of costs and revenues of a development project.
- 4.1.3 Site development plans shall be submitted, as follows:
 - 4.1.3.1 All plan submittals shall conform to the requirements of the Town Subdivision Rules and Regulations, Article III—Plan Submission and Approval, Section 244-10 Definitive Plan, as may be amended, or other requirements as may be specified by these Regulations or by the Board;
 - 4.1.3.2 Plans shall have a title on each sheet, appearing in the lower right-hand corner of the plan, showing the name of the project, if any; the date; scale; the names and addresses of the Applicant; and the names of the designer, engineer and/or surveyor who made the plan. Plan sheets shall be consecutively numbered;
 - 4.1.3.3 Plans shall show the locations and outlines of proposed buildings and limit of work line; existing structures on adjacent properties within 50 feet of the property line; the proposed locations, general dimensions and materials for streets, drives, parking areas, walks and paved areas; proposed locations of utilities; proposed lighting; setbacks required by the Town Zoning By-Law (both in a tabular form and drawn on the plan); setback distances of structures from all property lines; and open areas within the site;
 - 4.1.3.4 Plans shall show Town zoning districts and location of any Town zoning district boundaries, the 100-year floodplain, and any wetland that may lie within the locus of the plan. Dimensional regulations currently in effect shall also be listed, including any conflicts;
 - 4.1.3.5 Plans shall show the location and ownership of abutting property as it appears on the Certified List of Abutters, unless the Applicant shall have more recent knowledge of such abutters, including all abutting land owned by the Applicant, and all other land within three hundred feet (300') of the boundaries of the land shown on the plan including across an existing street. A Certified List of Abutters is required from an abutting Town if the proposed project is within three hundred feet (300') of a Town line. The plans shall show intersecting boundary lines of any abutting properties;
 - 4.1.3.6 Plans shall show major features of the land, such as existing waterways, all wetlands and water bodies (per the Massachusetts Wetland Protection Act), rivers and riparian zones (per 310 CMR10.00), Water Resources Protection Overlay District boundaries, existing wetland resource areas, as defined in the Southborough Wetlands By-Law (including vernal pools, whether certified or not) and their associated buffer zones, existing significant environmental features such as ledge outcrops, scenic views and large trees, natural drainage courses, walls, fences, structures, underground structures, utilities, historic markers, milestones, bridges, clearly defined trails, large trees, wooded areas, outcroppings and ditches which exist on or are contiguous and relevant to the site at the time of survey;
 - 4.1.3.7 Plans, signed and stamped by a MA-registered land surveyor, shall show existing and proposed topography for the site at two foot (2') contour intervals, referenced to the North American Vertical Datum of 1988 (NAVD 88). The Board may require additional information

on abutting land, whenever it is deemed necessary, to ensure compatibility of grades and drainage. Reference benchmarks, including descriptions must be identified. The road stationing shall be shown on the grading plans;

4.1.3.8 Plans shall include a utilities plan showing the proposed location and types of gas, electric, cable, telephone, sewage, drainage, and water facilities, including hydrants.

4.1.3.9 Where a subdivision of land is involved, plans shall include a subdivision plan adhering to the requirements of the Southborough subdivision regulations;

4.1.3.10 Plans shall include a landscape plan to include the total square feet of all landscape and recreation areas, and depiction of materials to be used, and the quantity, size, methods, and species of plantings, with a strong preference for native species. For larger projects, the Board may require that landscaping plans be prepared and stamped by a registered landscape architect in the Commonwealth of Massachusetts. The landscape plan shall also show the location and species of trees to be retained;

4.1.3.11 Plans shall contain full information regarding all easements, covenants or restrictions applying to the land, and their purposes;

4.1.3.12 Plans shall contain suitable space on every plan sheet to record the action of the Board and the signatures of the Board, including the date of approval and the date of endorsement;

4.1.3.13 Plans shall show location and results of soil, percolation, and water table tests using the Department of Environmental Protection Soil Evaluation procedures under Title V;

4.1.3.14 Plans shall include a drainage plan, prepared by a Registered Professional Engineer in the Commonwealth of Massachusetts, showing: existing and proposed streets, lots, two foot (2') contour intervals (referenced to the NAVD 88), and other pertinent data; the drainage limits and acreage of the area tributary to each stormwater inlet and culvert, location and type of inlets proposed; the location, size, length, invert elevations and slopes of proposed drains and culverts; structural details of inlets, manholes, pipes, headwalls; and all other drainage structures. The grading plan may be used for this purpose, provided that it includes all the information required. Adequate supporting information shall be provided to demonstrate that the drainage system will meet all Stormwater Management Guidelines promulgated by the Massachusetts Department of Environmental Protection, or best management practices, whichever is more stringent; The drainage design and construction plan will be assessed against the requirements of the applicable Town By-Laws;

4.1.3.15 An Applicant proposing to construct or rehabilitate four or fewer units may submit a sketch of the matters in this Section 4.1.3 and in Section 4.1.5 below, which need not have a MA-registered architect's signature. All proposals for the construction or rehabilitation of five or more units must have site development plans signed by a MA-registered architect; and

4.1.3.16 The Board may, at its discretion, require that additional information be included in the plans. The Board may engage a Massachusetts-registered Professional Engineer or other professional advisor, experienced in various areas, including such areas as groundwater evaluation, hydrogeology or hazardous and toxic materials, to review the Application for completeness and correctness, with the Applicant required to pay for the cost of the review pursuant to Section 5;

4.1.4 A report on existing site conditions and a summary of conditions in the surrounding areas, showing the location and nature of existing buildings, existing street elevations, traffic

patterns and character of open areas, if any, in the neighborhood shall be submitted. This submission may be combined with that required in Section 4.1.3 above;

- 4.1.5 Scaled, architectural drawings shall be submitted as described above. For each building in projects of more than four units, the drawings shall be signed by a MA-registered architect, and shall include typical floor plans, typical elevations, and sections, and shall identify construction type and exterior finish;
- 4.1.6 An analysis, assessment, and evaluation of the surrounding areas that details the following information shall be submitted: location and nature of existing buildings, existing streetscape and elevations, traffic patterns (including traffic counts and LOS of streets), character of open space and playgrounds, if any. This analysis should include a neighborhood plan showing abutting lots and listing the owners of those properties;
- 4.1.7 A tabulation of proposed buildings by type, size (number of bedrooms, floor area) and ground coverage, and a summary showing the percentage of the tract to be occupied by buildings, by parking and other paved vehicular areas, and by open areas shall be submitted;
- 4.1.8 A list of requested exceptions to local requirements and regulations, including local codes, ordinances, By-Laws or regulations shall be submitted. The list of requested exceptions to local requirements and regulations shall include an analysis of each requirement and why its waiver increases the affordability of the project. In addition, if waivers of the applicable By-Laws and/or wetlands regulations are requested, the list shall include an analysis of why each exception is required, and why not adhering to each requirement makes the project more affordable. These analyses shall include a discussion of what the impact on the affordability of the project would be if the requirements and regulations were adhered to. Blanket waiver requests shall not be permitted;
- 4.1.9 A complete copy of any and all materials and applications submitted by the Applicant to any prospective Subsidizing Agency or source, including, but not limited to applications for site approval shall be submitted;
- 4.1.10 A list of each member of the development and marketing team, including all contractors and subcontractors, any financing organizations, the proposed lottery agent and monitoring agency, to the extent known at the time of the Application shall be submitted. The Applicant shall also disclose its relationship, if any, and the nature of any such relationship, to all such entities; A list of any of the Applicant's engineers, consultants, and other professional advisors ("Consultants") who have been or are expected to be involved in the preparation of plans, reports and other materials presented to the Board as part of the Application or as presented and/or discussed at any public hearing related to the Application (the "Consultant List") shall be submitted. The Consultant List shall indicate any of the Consultants who have a personal interest in the development project that is the subject of the Application, beyond payment for their professional services rendered on the project under industry standard fee arrangements. The nature and status of any such personal interests, such as an ownership interest or incentive compensation for services rendered or any other interests, a Consultant (or the Consultant's affiliates or related individuals or related entities) may have in the proposed development project must be described as part of the Consultant List; and
- 4.1.11 A list of all prior development projects completed by the Applicant within the past ten (10) years, along with a brief description of each such project shall be submitted;
- 4.1.12 An "Environmental Analysis" shall be prepared by a qualified Environmental Scientist, with qualifications including training, education, etc., and shall be provided to the Board. The person performing the Environmental Analysis shall (1) have at least a masters degree in ecological science from an accredited college or university, or (2) be another competent professional with at least two years experience in environmental

analysis. The Environmental Analysis shall assess the impact of the development on the environment within and adjacent to the development. The analysis shall include, but shall not be limited to, the evaluation of pre-development conditions and post-development impacts on:

- 4.1.12.1 Surface and groundwater quality;
- 4.1.12.2 Groundwater recharge of upper aquifers and perched groundwater layers;
- 4.1.12.3 Wildlife habitats and corridors;
- 4.1.12.4 Wetlands and bodies of water, including streams and rivers, both localized and general;
- 4.1.12.5 Existing and potential domestic water supplies;
- 4.1.12.6 Species of special concern in Massachusetts; and
- 4.1.12.7 Road salt and fertilizer loading.

The Environmental Analysis shall include proposed mitigation of the post- development impacts identified. Mitigation measures requiring ongoing or periodic maintenance shall be identified and a maintenance plan shall be included with the Environmental Analysis;

- 4.1.13 Compliance with the By-Laws - An analysis shall be submitted which compares the proposed project with the most applicable zoning district regulations;
- 4.1.14 A "Traffic Impact Report", prepared by a MA-Registered Professional Engineer qualified in the field of Traffic Engineering, assessing the proposed development's impact on the congestion, safety and the overall impact the proposed development will have on the roadway system/network providing access to the proposed development shall be submitted. Impacts on both vehicular and pedestrian travel shall be addressed, including, but not limited to, impacts within the site. The Traffic Impact Report shall address issues regarding traffic volume, sight distances, and the adequacy of access by emergency vehicles;
- 4.1.15 Any other information the Board deems necessary and so notifies the Applicant in writing shall be submitted.

4.2 The Application shall be accompanied by a filing fee based on the proposed number of housing units as follows, provided that there shall be no filing fee for any project proposed as a Local Initiative pursuant to 760 CMR 56.02:

- (a) for Limited Dividend Organizations - \$3,000 flat fee plus \$100 per unit;
- (b) for Non-Profit Organizations - \$1,500 flat fee plus \$50 per unit; and
- (c) for Public Agencies and Local Governments - \$1,500 flat fee plus \$0 per unit.

Additionally, pursuant to Section 5, the Board may require the Applicant to pay a reasonable Review Fee for the employment of outside consultants chosen by the Board to assist the Board in analyzing an Application, monitoring or inspecting a project or site for compliance with the Board's decision or regulations, or inspecting a project during construction or implementation.

4.3 The Applicant must file one (1) full physical copy with the Town Clerk, five (5) physical copies and one (1) electronic copy of all submissions (including all plans, drawings, reports, etc.) with the Business Administrator for the Zoning Board of Appeals, at the Applicant's expense. Plan sets should include one (1) full-size copy and five (5) 11" x 17" copies. Should the Board require additional copies of an Applicant's submission, the Board shall so notify the Applicant and the Applicant must provide such additional copies as well at the Applicant's expense.

4.4 Within seven (7) days of filing of the Application, the Board shall notify local officials or Local Boards of the Application by sending such official a copy of the materials required by Section 4.1 as required by 760 CMR 56.05(3)., Based upon that list, the Board shall also, within the same seven (7) days, invite the participation of each local official or Local Board who has a substantial interest in the Application by providing such official or Local Board with a copy of the entire Application.

4.5 Revised materials should be submitted to the Zoning Board of Appeals no less than seven (7) days

prior to the hearing to allow sufficient time for the Board, it's consultants, other Town departments, and the public to review.

5.0 **Review Fees**

5.1 If, after receiving an Application, the Board determines that in order to review that Application requires technical advice unavailable from Town employees, it may employ outside consultants for such purpose. Whenever possible, the Board shall work cooperatively with the Applicant to identify appropriate consultants. Alternatively, the Board may, by majority vote, require that the Applicant pay a reasonable "Review Fee" for the employment of outside consultants chosen by the Board alone. In hiring outside consultants, the Board may engage engineers, scientists, financial analysts, planners, attorneys, urban designers or other appropriate professionals who can assist the Board in analyzing a project to assess compliance with all relevant laws, bylaws, and regulations. Such assistance may include, but not be limited to, analyzing an Application, monitoring or inspecting a project or site for compliance with the Board's decision or regulations, or inspecting a project during construction or implementation. The Board may require that an Applicant deposit a lump sum in order to retain consultants. In the even that such sum is insufficient to fund the necessary consulting services, the Board may require additional deposits.

5.2 A Review Fee may be imposed only if:

- 5.2.1 the work of the consultant consists of review of studies prepared at the request of the Board on behalf of the Applicant, and not of independent studies on behalf of the Board;
- 5.2.2 the work is in connection with the Applicant's specific project; and
- 5.2.3 all written results and reports are made part of the record before the Board.

5.3 All Review Fees assessed pursuant to this section shall be reasonable in light of:

- 5.3.1 the complexity of the proposed project as a whole;
- 5.3.2 the complexity of particular technical issues;
- 5.3.3 the number of housing units proposed;
- 5.3.4 the size and character of the site;
- 5.3.5 the projected construction costs; and
- 5.3.6 fees charged by similar consultants in the area.

As a general rule, the Board will not assess any fee greater than the amount which might be appropriated from Town funds to review a similar Town project.

5.4 Any invitation for bids or request for proposals shall indicate that award of the contract is contingent upon payment of a Review Fee. If the Applicant fails to pay the Review Fee, such failure to pay shall constitute grounds for the Board to deny the Comprehensive Permit.

5.5 Each Review Fee shall be deposited in a special account established by the Town treasurer pursuant to M.G.L. c. 44, § 53G. Expenditures from this special account may be made at the direction of the Board without further appropriation. Expenditures from this special account shall be made only for services rendered in connection with a specific project or projects for which a project review fee has been or will be collected from the Applicant.

5.6 Prior to paying the Review Fee, the Applicant may appeal the selection of the consultant to the Select Board according to the procedures specified in Section 5b Consulting Fees of the Board's Policies and Procedures.

5.7 At the completion of the Board's review of a project, any excess amount in the account, including interest, attributable to a specific project shall be repaid to the Applicant or the Applicant's successor in interest. A final report of said account shall be made available to the Applicant or the Applicant's successor in interest. For the purpose of this regulation, any person or entity claiming to be an Applicant's successor in interest shall provide the Board with documentation establishing such succession in interest.

6.0 **Review Standards and Process**

The following describes the Board's review standards and process:

6.1 The purpose of the review standards is:

- 6.1.1 To encourage a more efficient and uniform review process by clearly specifying local requirements in advance of Applications for Comprehensive Permits;
- 6.1.2 To ensure that Applications demonstrate the maximum benefit in providing housing for families of low and moderate income;
- 6.1.3 To equitably distribute Comprehensive Permit housing units throughout the Town and throughout a Comprehensive Permit development, so as to avoid concentrations of subsidized Comprehensive Permit housing units in any one area;
- 6.1.4 To ensure the long-term viability of Comprehensive Permit developments through well designed projects that function properly and that are provided with adequate utility infrastructure;
- 6.1.5 In a similar manner to that for other development projects presented to the Board or other Town Boards for review, to assure that the appropriate and relevant issues are considered by the Board, including, but not limited to:
 - 6.1.5.1 providing affordable housing while minimizing impacts to abutting properties, neighborhoods, and municipal services and infrastructure;
 - 6.1.5.2 ensuring that a site design provides affordable housing yet conserves environmental features, woodlands, wetlands and areas of scenic beauty and which preserves sites and structures of historical importance; and
 - 6.1.5.3 providing affordable housing without threatening the ability of the Town to provide bona fide infrastructure and public services to existing and future development on other sites or to municipal uses;

6.2 Review standards, as for other applications before the Board and including but not limited to the following, will be applied by the Board, as the Board deems appropriate for a particular Application:

- 6.2.1 Impact on sensitive areas: Comprehensive Permit developments shall avoid impacts to the extent possible on environmentally sensitive areas such as floodplains, wetlands, groundwater recharge areas, aquifers, areas contributing to municipal water supplies or recreational water bodies, or to significant woodlands, hillsides or other sensitive natural features;
- 6.2.2 Impact on the site: Comprehensive Permit developments shall be designed to accommodate the natural features of the site. The placement of roads, housing units, driveways, drainage structures and other elements requiring site disturbance shall be sited to fit with the land. The design shall not alter a site in such a manner as to physically transform it dramatically, permanently altering and destroying natural features, drainage patterns, wildlife habitats, historic landscapes and biodiversity of the area. It is the intent that if the development is designed to fit with the landscape, minimizing site disturbance and alteration, it will reduce the cost of construction and development, making it a more economic and affordable development for all citizens, and will result in fewer problems in the future in dealing with the impacts of massive alteration to the landscape;
- 6.2.3 Impact on infrastructure: Comprehensive Permit developments shall avoid areas which have public infrastructure or services incapable of serving the increased density of such developments without imposing significant increased public expense that would otherwise be unnecessary for uses built at densities permitted by right. Applicants may downsize their projects or improve the infrastructure to meet these criteria;
- 6.2.4 Impact on municipal water supply: The amount of municipal water supply is finite and its use for any new development, including Comprehensive Permit developments, is reviewed and managed by the DPW. Therefore, any Comprehensive Permit development project that includes connection to the municipal water system for water service shall be reviewed by the DPW, and a recommendation from the DPW regarding its assessment of any

considerations related to the impact of the proposed project on the municipal water supply shall be provided to the Board;

6.2.5 Site suitability: While it is not necessarily an absolute requirement, the Board recommends that Comprehensive Permit developments strive to avoid sites which are zoned Industrial; and

6.2.6 Exceptions to local regulations and requirements: It is the intent of the Board that exceptions to local regulations shall be granted only to the extent that such exceptions are necessary to maintain the financial feasibility of the project. The Applicant must demonstrate that any such local regulation negatively affects the profitability of the project or the affordability of the units within the project.

6.3 Access: To assure reasonable standards of public safety, there shall be adequate means of access to a Comprehensive Permit development, which the Board will assess based on an evaluation by and the recommendations of their retained consultant, DPW, the Fire Chief and the Police Chief. Typically this means at least two means of access to the property, or otherwise as recommended by the DPW, the Fire Chief and the Police Chief. The principal means of egress shall have pavement width and grades adequate in the opinion of the DPW, the Fire Chief, the Police Chief and the Board for the safe passage of public safety vehicles. If roads within the proposed project site are to become public ways, they shall also be adequate in width, structure, and horizontal and vertical alignments, in the opinion of the DPW and the Board to accommodate Town snow plow vehicles within the paved areas.

6.4 Affordability: Pursuant to EOHLIC regulations and Town guidelines:

6.4.1 Comprehensive Permit developments shall include at least 25% affordable units, as defined by Chapter 40B, or 20% where the affordable units are offered at a lower price or rent, in compliance with requirements of a particular subsidy program.

6.4.2 Affordable housing restrictions on a Comprehensive Permit development shall specify that the units shall remain subject to the affordability guidelines in perpetuity.

6.4.3 Affordable housing restrictions on a Comprehensive Permit development shall include provisions giving the Town the right of first refusal for purchase of the units.

6.4.4 Affordable units shall be substantially the same as the market rate units in terms of floor area, interior and exterior finishing and bedroom mix, and residents of affordable units shall have the same access as residents of other units to any project amenities (such as recreational facilities, parking, etc.).

6.4.5 Affordable units shall be owner-occupied, excepting units designated in the Comprehensive Permit as rental units.

6.5 Southborough Preference: The development plan shall provide that all legally permissible efforts shall be made to provide 70% of the affordable units as local preference, with such local preference requirements determined in accordance with EOHLIC regulations.

6.6 Parking: Adequate parking for the development shall be provided, which the Board will assess based on the recommendation of its consultants, the Town Planner and Planning Board.

6.7 Site Amenities: The design of the site shall respect the natural and historic characteristics of the site and shall preserve and enhance the natural landscape wherever possible. The Applicant is encouraged to retain a minimum of 10% of the site as contiguous permanent open space. The Applicant is encouraged to protect undisturbed open space with a conservation restriction, and to the maximum extent possible, the site plan shall connect on-site trail systems to abutting trail systems, as may be feasible.

6.8 Stormwater Management: The plan shall be prepared to conform with the requirements of the Department of Environmental Protection Stormwater Management Guidelines and Policy, and the Town's Stormwater By-Law, whether or not the proposed work is subject to the Wetlands Protection Act, and the plan shall conform to the standards for a 100-year storm.

6.9 Technical Review Team: In order to expedite the review process, the Board may, at its sole

discretion, appoint and direct a “Technical Review Team” to assist with the review of the Application and to advise the Board regarding technical details of the Application. The Technical Review Team may include such individuals as one or more Board members, the Town Planner, the Building Commissioner, the Town Engineer, representatives of other Town boards or committees, one or more neighborhood representatives, and selected advisors to the Board.

7.0 Public Hearing and Decision

7.1 The Board shall hold a public hearing for a Comprehensive Permit Application within thirty (30) days of the date of the official filing of the Application with the Town Clerk, unless such period is extended by the applicant. This public hearing (and any continuations of the public hearing) will be conducted according to the Rules and Regulations of the Board.

7.2 The Board may request the appearance at the hearing of such representatives of local officials and Local Boards as it considers necessary or helpful in reviewing the Application. In making its decision, the Board shall take into consideration the recommendations of local officials and Local Boards.

7.3 In assessing the Application, the Board shall consider the review standards in Section 6 above, and additional factors including, but not limited to, the following:

- 7.3.1 the health and safety of the residents of the proposed housing and the current residents of the Town, including:
 - 7.3.1.1 the structural soundness of the proposed buildings;
 - 7.3.1.2 adequacy of sewage disposal;
 - 7.3.1.3 adequacy of handling stormwater runoff;
 - 7.3.1.4 adequacy of fire protection;
 - 7.3.1.5 adequacy of water pressure;
 - 7.3.1.6 adequacy of handling traffic generated by the project and the impact of such traffic on adjacent areas;
 - 7.3.1.7 the manner in which the development recognizes and addresses the need for, and availability of, alternative modes of transportation for all Town residents; and
 - 7.3.1.8 the proximity of the site to industrial activities that might affect the health of the proposed residents.
- 7.3.2 the height, bulk, and placement of the proposed buildings, accessory structures, and improvements, including:
 - 7.3.2.1 the physical characteristics of the proposed housing;
 - 7.3.2.2 the physical characteristics of the surrounding land;
 - 7.3.2.3 adequacy of access to the site and adequacy of parking arrangements; and
 - 7.3.2.4 adequacy of open areas and green space.
- 7.3.3 the economic need to require additional units, including:
 - 7.3.3.1 the general feasibility of the project;
 - 7.3.3.2 limitations imposed by the Subsidizing Agency with respect to size or character of the development, amount or nature of the subsidy, and permissible rentals and tenant limits; and
 - 7.3.3.3 changes in rents and unit sizes of the development which would be necessary to accommodate the requirements and regulations sought to be imposed.
- 7.3.4 The manner in which the project responds to the Town’s current supply of affordable housing and current need.

7.4 The Board shall render a decision, based on a majority vote of the Board, within forty (40) days after termination of the public hearing, unless such time period is extended by written agreement of the Board and the Applicant. The hearing is deemed terminated when all public testimony has been received and all information requested by the Board has been received.

7.5 The Board may dispose of the Application as follows:

- 7.5.1 approve a Comprehensive Permit on the terms and conditions set forth in the Application; or
- 7.5.2 deny a Comprehensive Permit as not consistent with local needs; or
- 7.5.3 approve a Comprehensive Permit with conditions to address any local concerns, as such term is contemplated under Chapter 40B.

7.6 The Board's decision related to a Comprehensive Permit shall become final (the "Effective Date") on the date that the written decision of the Board is filed in the office of the Town Clerk if no appeal is filed; otherwise, it shall become final on the date the last appeal is decided or otherwise disposed of. A Comprehensive Permit approved by the Board shall be exercised within three (3) years from the Effective Date. Extensions may be granted by the Board for good cause shown and with satisfactory proof that such extension is necessary and in the public interest.

8.0 Changes in Application

8.1 In the event that, during the public hearing process, the Applicant proposes any changes in its Application or project plans that, in the Board's discretion and consistent with Chapter 40B and applicable EOHLC regulations, constitutes a material or substantial change to the project, the Applicant shall provide notice of such change to its Subsidizing Agency.

8.2 In the event of material or substantial changes, the Board may request, and the Applicant shall provide, any and all information specified in Section 4 above that is deemed by the Board to be necessary to evaluate such changes.

8.3 In the event of a material or substantial change, any and all plans and supporting information shall be provided to all of the local entities identified in Section 4.5, above.

8.4 If the Applicant submits a revised plan for the Board's consideration and said plan is the plan that is the subject of the Board's hearing and deliberation, then the Application shall be deemed to be revised, subject to the foregoing provisions.

9.0 Appeals

9.1 If the Board approves the Comprehensive Permit, any person aggrieved may appeal the decision within the twenty (20) day time period and to the court as provided in MGL Ch. 40A, Section 17.

9.2 If the Board denies the Comprehensive Permit or approves the Comprehensive Permit with conditions or requirements unacceptable to the Applicant, the Applicant may appeal to the HAC within the twenty (20) day time period as provided in MGL Ch. 40B, Section 22 and 760 CMR 56.06.

10.0 Waiver of Compliance

10.1 Full compliance with any part(s) of these Regulations may be waived by the Board, provided that such waivers are deemed by the Board to serve the public interest and are not conflicting with Chapter 40B. Requested waivers (original and five (5) copies) shall be submitted by the Applicant in writing at the time of the application for such waivers.

Attested

Board of Appeals

Full Members:

David Williams, Chair
 Michael Robbins, Clerk
 Doris Cahill
 Paul Drepanos
 Jamie Mieth

Alternate Members:

Doug Manz