DECISION AND NOTICE OF THE
ZONING BOARD OF APPEALS
NORFOLK, MASSACHUSETTS

Number:	2016-04
Date Application Filed:	April 19, 2016
Applicant:	Lakeland Farms, LLC
Premises Affected:	Norfolk Assessors Map 15, Block 15, Lot 43, 84 Cleveland Street, Norfolk Massachusetts
Relief Requested:	Comprehensive Permit, G.L. c. 40B, §§ 20-23
Public Notice:	Notice published in the Sun Chronicle on May 4, 2016, and May 11, 2016, and notice sent by mail, postage prepaid, to all interested parties pursuant to the provisions of Massachusetts General Laws.
Public Hearing(s) held:	May 18, 2016; June 22, 2016; July 20, 2016; August 29, 2016; September 21, 2016; October 12, 2016; November 2, 2016; November 22, 2016; and December 14, 2016.
Decision of the Board:	Comprehensive Permit Approved, with Conditions
Members participating:	Kulesza, Luciano, Wider, Sebastiano, and Hanssen
Date of Decision/Notice:	January 9, 2017

ZONING BOARD OF APPEALS OF THE TOWN OF NORFOLK DECISION ON THE APPLICATION OF LAKELAND FARMS LLC FOR A COMPREHENSIVE PERMIT

I. PROCEDURAL HISTORY

1. On April 19, 2016, Lakeland Farms LLC (the "Applicant") submitted an application for a Comprehensive Permit for low- or moderate-income housing under G.L. c. 40B, §§ 20-23 (the "Application"). The Applicant proposed the construction of a homeownership development consisting of 40 detached and semi-attached dwellings (the "Project") on approximately 8.8 acres of land located at 84 Cleveland Street, identified as Block 15, Lot 43 on Assessor's Map 15 (the "Site"). Of the proposed 40 units, at least 10 would be designated for low- or moderate-income homebuyers.

2. The Site is located in the Residence 3 (R3) Zoning District. The Site includes Bordering Vegetated Wetlands along the western and southerly borders and riverfront area associated with a perennial stream. It is located within an area identified as Estimated Habitat and Priority Habitat by the Natural Heritage and Endangered Species Program (NHESP) of the Massachusetts Division of Fish and Wildlife (MDFW).

3. The Site has 111 feet of frontage on Cleveland Street, which runs between Seekonk Street and Route 115. Cleveland Street is a locally designated Scenic Road under G.L. c. 40, s. 15C. Situated on the Site are a single-family dwelling, a garage, and agricultural outbuildings that will be demolished for the proposed development. Nearby land uses include detached single-family dwellings and vacant residential land. The Site was formerly used for agricultural purposes under the name "Brambly Farms".

4. The Zoning Board of Appeals ("Board") held a duly noticed public hearing on the Application on May 18, 2016 and continued the public hearing on June 22, 2016; July 20, 2016; August 29, 2016; September 21, 2016; October 12, 2016; November 2, 2016; November 22, 2016; and December 14, 2016. A representative of the Board and the Board's consultants also conducted two informal work sessions with the Applicant while the public hearing process was still open. The Board closed the public hearing and voted to grant this Comprehensive Permit, with conditions, on December 13, 2016.

5. To comply with 760 CMR 56.05(3), the Board would have been required to close the public hearing within 180 days of the opening date, or no later than November 13, 2016. The Applicant agreed in writing to extend the hearing to November 22, 2016 and again to December 14, 2016.

6. To evaluate the plans, documents, and testimony submitted by the Applicant's development team, the Board sought technical assistance and comments from Town

departments and other boards and commissions. The Board also retained peer review consultants from BETA Group to review the Applicant's site plan and traffic and stormwater reports, and Glen S. Fontecchio for architectural design review. In addition, the Norfolk Department of Public Works retained Environmental Partners Group (EPG) to review water demand (domestic) and fire flow requirements associated with the proposed development. Furthermore, the Board received comments from abutters and other interested parties.

7. The purpose of the public hearing extensions was to provide for peer reviews and plan revisions, to understand the outcome of the Conservation Commission's review of a Notice of Intent to construct the Project the Applicant filed in order to obtain approval under the Massachusetts Wetlands Protection Act, G.L. c. 131, § 40; and to consider the neighborhood's concerns.

8. After considering the Board's peer review comments and conducting a neighborhood meeting on October 3, 2016, the Applicant informed the Board on October 12, 2016 that the Project would be reduced to 32 units, including [6] two-bedroom units and [26] three-bedroom units. For purposes of this Decision, the 32-unit proposal is the Project (for plan of record dates, see Section V, Conditions). BETA Group subsequently provided peer review comments to the Board on [November 2, 2016] and December 8, 2016,

9. During the public hearing process, several abutters spoke against the Applicant's plans. Often, the concerns expressed by abutters and some Town staff involve conditions that already exist on Cleveland Street and are not a direct result of the Project. The following summarizes the concerns that abutters and others presented to the Board, through testimony and correspondence.

   (a) That Cleveland Street is already unsafe for pedestrians and vehicles, and the additional vehicular traffic generated by the development would increase the existing safety hazards. The Police Chief expressed similar concerns in a letter to the Board dated September 21, 2016. However, the Board's consultants, BETA Group, reviewed and commented on the Applicant's traffic study and the Applicant's response to BETA Group's comments, and found that the Applicant's proposal meets or exceeds the traffic safety standards required for a development of this size and location. Although BETA Group also notes that traffic safety may be compromised by roadside vegetation around the Site, the vegetation appears to lie within the public right-of-way and that maintenance most likely lies with the Town.[1]

[1] See Memorandum from WSP/Parsons Brinckerhoff ("PB"), for the Applicant, dated June 2, 2016; BETA Group, Inc., to the Norfolk Board of Appeals, July 12, 2016; PB to Andrews Survey & Engineering, dated August 12, 2016; and BETA Group, Inc., to the Norfolk Board of Appeals, dated August 29, 2016.

(b) That the Site is not appropriate for the proposed development, whether at the originally proposed 40 units or the revised plan at 32 units. However, site suitability is determined primarily by the Subsidizing Agency, which found in its Project Eligibility Letter (PEL) that the Site "is suitable for residential use and development and that such use would be compatible with surrounding uses" and that the scale of the proposed units is consistent with the single-family dwellings found elsewhere in the neighborhood.[2]

(c) That the Applicant has not provided enough on-site parking for residents of the development and their guests. Some abutters said that if any of the Lakeland Farms residents had a party or some other event that attracted many people to the neighborhood, visitors would have to park along the side of road, which is already narrow with 12' travel lanes and thick roadside vegetation. However, the Applicant's site plan provides for one or two garage parking spaces and a minimum of two driveway spaces per dwelling unit along with 20 spaces designated for guests. As such, the development will have as much if not more parking per unit and overall than is available on many lots for conventional single-family homes in Norfolk. Moreover, the Applicant has not requested a waiver of any local rules regarding parking for residential units, and the Board is prohibited pursuant to G. L. c. 40B, § 20 from imposing requirements on subsidized housing that are not imposed on unsubsidized housing.

10. Sitting for the Board and present for the public hearing process were Chairman Michael Kulesza, Robert Luciano, Christopher Wider, Joseph Sebastiano, and Don Hanssen.

II. GOVERNING LAW

11. The law governing this application is the Comprehensive Permit Law, Massachusetts General Laws, Chapter 40B, §§ 20-23 (the "Act"), and the regulations promulgated by the Department of Housing and Community Development ("DHCD"), 760 CMR 56.00 et seq. (the "Regulations").

12. The Act promotes regional distribution of low or moderate income housing by preventing individual cities and towns from using exclusionary zoning to block construction of such housing. Toward these ends, the purposes of the Act are satisfied if: (a) a town has low or moderate income housing in excess of 10 percent of the total number of year-round housing units reported in the latest decennial census; or (b) a town has low or moderate income housing which is on sites comprising 1 ½ percent or more of the town's total land area zoned for residential, commercial, or industrial use; or (c) the application results in

[2] MassHousing to Edward O'Harte, Lakeland Farms LLC, October 30, 2015.

the commencement of low and moderate income housing construction on sites comprising more than .3 percent of such total area or 10 acres, whichever is larger, in one year.

13. The Regulations expand the conditions for satisfying the statute to include various "safe harbor" opportunities, such as certification of progress under an approved Housing Production Plan (HPP), where "progress" means achieving a minimum annual low- or moderate-income housing production threshold established by DHCD (in Norfolk, at least 16 new low- or moderate-income units); or increasing the number of low- or moderate-income units by at least 2 percent of the community's year-round housing units (in Norfolk, this would mean a minimum of 63 new low- or moderate-income units in a single calendar year). The Town does not qualify for any of the "safe harbor" provisions under 760 CMR 56.03.

14. The Board's decision on a comprehensive permit must balance the regional need for low- or moderate-income housing against the Town's long-range planning goals, local requirements and regulations to the extent that they are applied equally to subsidized and unsubsidized housing, and valid concerns about the health and safety of residents of the proposed housing, the surrounding neighborhood, or the Town as a whole.

III. FINDINGS:

The Board makes the following findings in connection with the Application:

15. The Applicant has complied with all rules and regulations of the Town of Norfolk as they pertain to the application for a Comprehensive Permit.

16. The Applicant has demonstrated its eligibility to submit an application for a Comprehensive Permit to the Board, and the development fulfills the minimum project eligibility requirements set forth in 760 CMR 56.04(1) as follows:

    (a) The Applicant has formed a limited dividend organization, Lakeland Farms, LLC, a Massachusetts limited liability company with a place of business at 84 Cleveland Street, Norfolk, MA 02056.

    (b) The Applicant received a written determination of Project Eligibility from the Massachusetts Housing Finance Agency ("MassHousing") dated October 30, 2015, a copy of which was provided to the Board.

    (c) By including with the Application a copy of a Purchase and Sale Agreement dated October 27, 2015 by and between Edward B. O'Harte and Sandra O'Harte as Seller, and Lakeland Farms, LLC as Buyer, the Applicant has provided evidence of site control.

(d) The Applicant will execute a Regulatory Agreement that limits its annual distributions in accordance with Chapter 40B and the regulations and guidelines adopted thereunder by DHCD.

17. The Town of Norfolk does not meet the statutory minima set forth in G.L. c. 40B § 20 or 760 CMR 56.03(3):

(a) At the time of the filing of the Application, the number of low or moderate income housing units in the Town of Norfolk constituted 3.6 percent of the total year-round units in the Town, based on the most recent decennial census. Thus, the Town does not meet the 10 percent statutory minimum.

(b) Existing affordable housing units are on sites which comprise less than one and one half percent of the total land area of the Town which is zoned for residential, commercial or industrial use (excluding land owned by the United States, the Commonwealth of Massachusetts or any political subdivision thereof).

(c) The granting of this comprehensive permit will not result in the commencement of construction of low or moderate income housing units on a site comprising more than three tenths of one percent of land area in the Town of Norfolk or ten acres, whichever is larger, zoned for residential, commercial or industrial uses (excluding land owned by the United States, the Commonwealth of Massachusetts or any political subdivision thereof) in any one calendar year.

18. The Project, if constructed and operated in conformance with the plans and conditions set forth hereunder, will adequately provide for stormwater drainage, sanitary sewer services and water services, and other appurtenant utilities and amenities, and it will not be a threat to the public health and safety of the occupants of the Project, the neighborhood, or the Town.

19. The Board finds that the conditions imposed in Section V of this Decision are necessary in order to address Local Concerns. The Board finds that such conditions will not render the project uneconomic. To the extent that such conditions may render the project uneconomic, the Board finds that the Local Concerns outweigh the regional need for affordable housing.

20. The Board finds that granting certain waivers from local by-laws and regulations is acceptable even though granting any waivers may have an adverse effect on Local Concerns. Nevertheless, the Board finds that the Local Concerns affected thereby do not outweigh the regional need for affordable housing, especially given the Project changes the Applicant has agreed to make, specifically the reduction in proposed number of units from 40 to 32 and improvements to the site layout in direct response to concerns of the Board and other parties in interest.

21. The Board acknowledges concerns raised by abutters and other interested parties. The Board finds that despite these concerns, the Project addresses local and regional affordable housing needs and that the Applicant has addressed these concerns by reducing the number of units from 40 to 32 and making requested improvements to the site layout.

22. The Board finds that many of the concerns expressed by abutters and other interested parties during the public hearing process involve pre-existing conditions on Cleveland Street that are not directly related to or caused by the Project.

IV. DECISION

In consideration of all of the foregoing, including the plans, documents and testimony given during the public hearing, the Board hereby grants the Applicant a comprehensive permit under the Act for the development described herein, subject to the conditions set forth below.

V. CONDITIONS

A. General

A.1 The holder of this Comprehensive Permit is defined as a limited dividend organization, Lakeland Farms LLC. The "Site" is defined as that property containing approximately 8.8 acres of land situated at 84 Cleveland Street, identified on the Norfolk Assessors Map as Map 15, Block 15, Lot 43. The Project is defined as all features shown on the plans listed below in Condition A.2 or as otherwise required by this Comprehensive Permit.

A.2 Except as may be provided for in the following conditions or in the Final Plans referenced below, the Project shall be constructed substantially in conformance with the plans and drawings listed below in this Condition A.2, which for purposes of this Comprehensive Permit shall be considered the Approved Plans for the Project ("Approved Plans"). Minor changes to the Approved Plans (e.g., changes that do not materially affect the location of, or increase the height or massing of the structures, or increase the number of units contained in the residential buildings) shall be submitted to the Inspector of Buildings who shall have the authority to approve such changes as immaterial changes. Changes that require the construction of additional structures shall constitute a material change that must be reviewed by the Board pursuant to 760 CMR 56.05(11). If the Inspector of Buildings determines that the proposed changes do not conform to the requirements of this comprehensive permit and are material changes, he shall so notify the Applicant and the Applicant shall either bring the plans into conformance with this decision or seek modification in accordance with 760 CMR 56.05(11). The Approved Plans consist of the following:

Site Plan prepared by Andrews Survey & Engineering, Inc., of Uxbridge, Massachusetts, comprised of the following sheets:			
Sheet Number	Sheet Title	Date	Final Revision Date
C-0.0	Cover Sheet	04/19/2016	11/16/2016
C-1.1	Legend, Abbreviations, General Notes	04/19/2016	11/16/2016
C-2.0	Existing Conditions	04/19/2016	11/16/2016
C-3.0	Layout & Materials	04/19/2016	11/16/2016
C-4.0	Utility Plan	04/19/2016	11/16/2016
C-5.0	Grading & Drainage	04/19/2016	11/16/2016
C-6.1 – C-6.2	Topographic Plan Profile	04/19/2016	11/16/2016
C-7.1 – C.7.6	Construction Details	04/19/2016	11/16/2016
C-8.0	Lighting Plan	11/16/2016	
L-1.0	Landscape Plan	04/19/2016	11/16/2016
L-2.0	Landscape Schedule & Details	04/19/2016	11/16/2016
L-3.0	Landscape Notes	04/19/2016	11/16/2016

Architectural Plans, consisting of elevation drawings and floor plans (six sheets), prepared by Brian Donohue Architects, dated April 13, 2016, Final Revision Date October 31, 2016 (seven sheets).

A.3 The Applicant shall be a Limited Dividend Organization as required by Chapter 40B and it and its successors and assign, shall comply with the limited dividend and other applicable requirements of Chapter 40B and the regulations adopted thereunder.

A.4 The Project shall consist of not more than 32 detached dwelling units not exceeding the maximum height allowed under the Norfolk Zoning Bylaw, and site amenities shall be provided as shown on the Approved Plans. No unit shall have more than three bedrooms.

A.5 There shall be 1 or 2 garage parking spaces and 2 driveway parking spaces per unit, and 20 parking spaces in designated overflow parking areas (at least three such areas, as shown on the Approved Plans).

A.6 All dwelling units approved under this Comprehensive Permit shall be for homeownership only, in perpetuity, and shall not be converted to another form of ownership or tenure without approval of a substantial modification of this Comprehensive Permit pursuant to 760 CMR 56.05(11).

A.7 The Applicant has requested, and the Board has granted, waivers from the Norfolk Zoning Bylaw and other local by-laws and regulations as specified in Exhibit A of this Decision. No waivers are granted from requirements that are beyond the purview of G.L. c. 40B, §§20-23. No waivers are specifically granted from permit or inspection fees, or from security requirements in the Planning Board's rules and regulations. Any subsequent revision to the Plans, including but not limited to revisions that are apparent in the Final Plans that require additional or more expansive waivers of any local by-laws or regulations, must be approved by the Board in accordance with 760 CMR 56.05(11). To the extent that additional waivers are subsequently determined to be required with respect to improvements that are otherwise shown on the Approved Plans, such waivers shall be deemed an insubstantial change to the Comprehensive Permit under 760 CMR 56.05(11), and can be granted administratively by the Board.

A.8 The Applicant shall comply with all local regulations of the Town of Norfolk and its boards, commissions, and departments unless specifically waived herein or as otherwise addressed in these Conditions.

A.9 The Applicant shall copy the Town Planner on all correspondence between the Applicant and any federal, state, or Town official, board, or commission concerning the conditions set forth in this Decision, including but not limited to all testing results, official filings, environmental approvals, and other permits issued for the Project.

A.10 Except as otherwise specifically provided herein, where this Decision provides for the submission of plans or other documents for approval by the Building Inspector or other Town Departments, the Building Inspector or applicable Department Head will use reasonable efforts to review and provide a written response within thirty (30) days following submission. For submissions that require assistance from an outside consultant, as determined by the Building Inspector or applicable Department Head, the thirty-day time period shall not begin until the consultant's fee has been fully funded by the Applicant.

A.11 This Comprehensive Permit may be subsequently assigned or transferred pursuant to 760 CMR 56.05(12)(b) The pledging of the Property as security under any conventional loan construction financing terms as set forth in the financing entity's Loan Documents or any foreclosure sale pursuant to the same shall not constitute an assignment or transfer under this paragraph. The Board shall receive notice of any change in the principals of Lakeland Farms, LLC during construction of the Project, except if said change is as a result of the exercise by the Project lender of any rights under the applicable Loan Documents.

A.12 The provisions of this Comprehensive Permit Decision and Conditions shall be binding upon the successors and assigns of the Applicant, and the obligations shall run with the land. In the event that the Applicant sells, transfers, or assigns its interest in the development, this Comprehensive Permit shall be binding upon the purchaser, transferee, or assignee and any successor purchasers, transferees or assignees. The limited dividend restrictions shall apply to the owner of the Project regardless of sale, transfer, or assignment of the Project.

A.13 The sidewalks, driveways, roads, utilities, drainage systems, sanitary sewer system, water system and all other infrastructure shown on the Approved Plans as serving the Project shall remain private in perpetuity, and the Town of Norfolk shall not have, now or in the future, any legal responsibility for the operation or maintenance of the infrastructure, including but not limited to snow removal and landscape maintenance. In this regard, the driveway within the Project shall not be dedicated to or accepted by the Town.

A.14 No connection shall be made to the municipal water system for sprinkler/ irrigation purposes other than as may be required by the State Building Code or as permitted by the Norfolk Department of Public Works.

A.15 Unless otherwise indicated herein, the Board may designate an agent to review and approve matters on the Board's behalf subsequent to this Decision.

B. <u>Affordability Requirements</u>

B.1 At least 8 of the 32 units in the Project, or 25 percent, shall be low- or moderate-income units, meaning they shall be available for and restricted for occupancy by households whose income is no more than 80 percent of the area median income, as determined by the United States Department of Housing and Urban Development ("HUD") and DHCD. Low- or moderate-income units shall be dispersed throughout the development in accordance with MassHousing guidelines. The Applicant shall be responsible for maintaining records sufficient to comply with MassHousing guidelines for the location of low- or moderate-income units in the Project and occupancy of such units by income-eligible households.

B.2 Upon completion of the Project and in perpetuity, at least 8 units shall meet the criteria for inclusion in DHCD's "Subsidized Housing Inventory" (SHI).

B.3 The Applicant shall obtain approval by the Subsidizing Agency of an affirmative fair housing marketing plan prior to making any of the units available for sale, and shall ensure that the Project complies with the Subsidizing Agency's fair housing requirements.

B.4 The units in the Project shall remain affordable in perpetuity. If for any reason, the Subsidizing Agency provides written notice to the Town, as set forth in 760 CMR 56.05(13), that the Subsidy, as defined in 760 CMR 56.02, will expire, and prior to the expiration of the Subsidy, the Applicant or the individual affordable unit owners shall enter into a Permanent Restriction/Regulatory Agreement with the Town (the "Town Regulatory Agreement"), which the Applicant shall record with the Norfolk County Registry of Deeds. The Town Regulatory Agreement shall require that (i) there shall be at least 8 low- or moderate-income units in perpetuity as set forth herein, and (ii) all 8 units shall be eligible for inclusion in the SHI in perpetuity. An outline of the terms of the Town Regulatory Agreement is attached as Exhibit B.

B.5 When the Town Regulatory Agreement takes effect, the affordability requirements set forth in this Decision shall be monitored and enforceable by the Town. From and after such time as the Town becomes responsible for monitoring the affordability requirements, if ever, the Applicant shall provide the Town with a reasonable fee to cover the costs of such monitoring and enforcement.

C. <u>Submission Requirements</u>

C.1 Prior to any construction on the Site, whether or not pursuant to a building permit, the Applicant shall:

a. Deliver to the Board a check in a reasonable amount determined by the Board to be used for the Board to retain outside experts for technical and legal reviews and inspections required under these conditions. Said funds shall be deposited by the Board in an account pursuant to G.L. c. 44, s. 53G and shall only be used for technical reviews and inspections associated with this project. Any unspent funds shall be returned to the Applicant with accrued interest at the completion of the Project. If at any time the Board reasonably determines that there are insufficient funds to cover the costs of technical reviews, it shall inform the Applicant and the Applicant shall forthwith deliver additional funds as specified by the Board in a reasonable amount as may be determined by the Board. Said funds may be used by the Board to hire civil engineering, traffic engineering, legal counsel, accounting, and/or other professionals that the Board deems reasonably necessary to ensure compliance with the conditions hereof.

b. Submit to the Town Planner for review and approval Final Engineering Drawings and Plans ("Final Plans") that conform to the requirements of this Comprehensive Permit and incorporate the conditions herein. The Final Plans shall also incorporate all conditions and requirements of

permitting agencies having jurisdiction. Applicable sheets of the Final Plans shall be signed and sealed by the Professional Land Surveyor, the Registered (Civil) Engineer of record, and the Registered Landscape Architect of record. The Final Plans shall be submitted to the Town Planner at least 45 days prior to the anticipated date of commencement of building construction or submission of an application for building permits, whichever is earlier (the "Final Site Plan Submission Date").

c. Submit to the Board and Town Planner a construction mitigation plan including, but not limited to, dust control measures, fill delivery schedules, stockpiling areas, and like matters. Other than site work and such other work as may be authorized in writing by the Town Planner, no other construction of units shall commence and no building permits shall issue under this Comprehensive Permit until the Town Planner, in consultation with the Board's engineer, has approved the Final Plans as being in conformance with this Decision. If no written response or comments have been given to the Applicant by the Town Planner concerning the Final Site Plans within 45 days after the Final Site Plan Submission Date, the Final Plans, as delivered, will be deemed to have been approved.

d. Obtain approval of site access details and proposed hydrant locations from the Norfolk Fire Department.

C.2 Prior to the issuance of a building permit for the project, the Applicant shall:

a. Record this Comprehensive Permit with the Norfolk Registry of Deeds, at the Applicant's expense, and provide proof of the same to the Building Inspector.

b. Submit to the Town Planner evidence of Final Approval from MassHousing, as required by the Project Eligibility letter and the Chapter 40B regulations.

c. Submit to the Town Planner a true and accurate copy of the Regulatory Agreement and Monitoring Services Agreement for the Project, as recorded with the Registry of Deeds. Execution and recording of such Regulatory Agreement and a subsidy funding commitment by MassHousing or other approved lender shall be complete prior to the issuance of any building permit.

d. Submit to the Building Inspector final Architectural Plans prepared and sealed by an architect with a valid registration in the Commonwealth of Massachusetts ("Architectural Plans"). The Architectural Plans shall be submitted in such form as the Building Inspector may request.

e. The Board's engineer shall approve the maintenance schedule for the stormwater system.

f. Obtain and file with the Building Inspector a copy of all federal, state, and local permits and approvals required for construction of the Project, including but not limited to an Order of Conditions from the Norfolk Conservation Commission under G.L. c. 131, § 40.

g. Obtain all necessary building, electrical, plumbing, and associated permits for the Project required by state law.

C.3 Prior to issuance of a certificate of occupancy for any units in the Project, the Applicant shall:

a. Submit interim engineer's certification of compliance with utilities plan and profiles to the Department of Public Works.

b. Provide a letter to the Board, signed by the Applicant's civil engineer, certifying that the Project has been constructed substantially in compliance with the Final Plans.

c. Obtain acceptance from the Fire Department of testing of local smoke alarms within the dwelling units.

C.4 Prior to issuance of the final certificate of occupancy, the Applicant shall:

a. Provide the Town Planner with the identification of the affordable units within the project in the form specified by MassHousing.

b. Submit to the Department of Public Works, in paper and digital file format, a final as-built utilities plan including profiles, showing actual in-ground installation of all utilities, rim and invert elevations, roadway, sidewalk and associated construction. The digital file shall include property boundaries, dimensions, easements, rights-of-way, edge of pavement, edge of sidewalk, edge of water bodies, wetland boundaries, spot elevations, parking areas, road centerline and associated text as specified in the Norfolk Subdivision Regulations 3.4.7.

c. Submit to the Building Inspector as-built plans showing the location and exterior dimensions of all buildings in the Project.

D. Project Design and Construction

D.1 The Applicant and the site general contractor shall attend a preconstruction conference with the Town Planner and other Town Department heads as the Town Planner may determine.

D.2 The Applicant shall permit representatives of the Board to observe and inspect the Site and construction progress until such time as the Project has been completed.

D.3 During construction, the Applicant shall conform to all local, state, and federal laws regarding noise, vibration, dust, and blocking of Town roads. The Applicant shall at all times use all reasonable means to minimize inconvenience to residents on Cleveland Street. Adequate provisions shall be made by the Applicant to control and minimize dust on the Site during construction in accordance with the construction mitigation plan.

D.4 Appropriate signage shall be shown on the Final Plans.

D.5 The location of all utilities, including but not limited to underground electric, telephone, and cable, shall be shown on the Final Plans. All transformers and other electric and telecommunication system components shall be included on the Final Plans.

D.6 The Applicant shall install outdoor lighting using fixtures that prevent light spillage onto adjoining properties. Full cut-off lighting not more than 15 feet in height, ground to luminaire. Management of outdoor lighting shall be the responsibility of the Applicant.

D.7 Utilities, including but not limited to telephone, electric, and cable, shall be located underground.

D.8 Construction activities are limited to Monday through Saturday, and shall not commence before 7 a.m. or extend beyond 7 p.m. Construction activities are prohibited on Sunday and federal holidays without approval from the Norfolk Town Administrator and Police Chief. For purposes of this condition, construction activities shall be defined as: start-up of equipment or machinery, delivery of building materials and supplies; removal of trees; grubbing; clearing; grading; filling; excavating; import or export of earth materials; installation of utilities both on and off the Site; removal of stumps and debris; and erection of new structures. All off-site utility work shall be coordinated and approved by the Department of Public Works and shall not be subject to the timing restrictions set forth above. Parking of all vehicles and equipment must be on the Site during construction.

D.9 Burning or burial of construction or demolition debris on the Site is strictly prohibited. All such materials are to be removed from the Site in accordance with applicable law. During construction, entrance to the Site shall be secured against unauthorized entry or vandalism by fencing, or other appropriate means, and all construction materials shall be stored or stockpiled in a safe manner. Any floodlights used during the construction period shall be located and directed so as to prevent spillover or illumination onto adjacent properties. All construction activities are to be conducted in a workmanlike manner.

D.10 No building areas shall be left in an open, unstabilized condition longer than 45 days. Temporary stabilization shall be accomplished by hay bales, hay coverings or matting. Final stabilization shall be accomplished by loaming and seeding exposed areas.

D.11 The Applicant does not propose to use dumpsters on the Site. Instead, the Applicant proposes that private trash collection will occur utilizing individual trash pickup for each unit. To the extent that dumpsters are used, such dumpsters shall be enclosed and covered.

D.12 All retaining walls shall be constructed (except those noted on the Approved Plan) in the aesthetic manner depicted in the colored rendering as submitted. Visible retaining walls shall be stone-faced. Fenced walls facing the power line and fenced walls facing the pond are shown as concrete, and shall not be visible while walking the Site.

D.13 Snow shall be stored within the areas of the Site designated on the Approved Plans. To the extent snowfall exceeds the capacity of the designated snow storage areas, the Applicant shall truck the excess snow off-site.

D.14 The proposed large trees depicted on the Approved Plans shall be 3" to 3.5" caliper.

E. <u>Traffic Safety Conditions</u>

E.1 The Applicant shall provide a safe, sheltered school bus stop for children residing in the Project, as determined by the Norfolk Public Schools. Such bus stop shall be shown on the Final Plans.

E.2 Sidewalks shall be provided within the Site linking the residential buildings to on-site amenities. Sidewalks and on-site amenities shall be designed and constructed in accordance with Americans with Disabilities Act (ADA) and Massachusetts Architectural Access Board (MAAB) regulations, to the extent applicable.

F. Water, Sewer, and Utilities

F.1 The water, wastewater, and drainage utilities serving the buildings in the Project shall be installed and tested in accordance with applicable Town of Norfolk requirements and protocols, as applicable.

F.2 Utilities shall be installed underground by the Applicant using methods standard to those installations. Utilities shall be defined as electric service lines, telephone lines, water service lines, CATV lines, municipal conduit and the like.

G. Other General Conditions

G.1 This decision will be deemed to be final upon the expiration of the appeal period with no appeal having been filed or upon the final judicial decision following the filing of any appeal, whichever is later. In accordance with 760 CMR 56.05(12)(c), this Comprehensive Permit shall expire three (3) years from the date that the permit becomes final, unless (i) prior to that time substantial use of the Comprehensive Permit has commenced or (ii) the time period is otherwise tolled in accordance with law. The Applicant may timely apply to the Board for extensions to the Comprehensive Permit as permitted by law.

G.2 The Applicant or its designee or successor-in-interest shall be responsible for the operation and regular maintenance of all pedestrian walkways, parking areas, and other common facilities shown or described in the Approved Plans and materials, including, but not limited to, regular snow plowing.

G.3 If any default, violation or breach of these conditions by the Applicant is not cured within thirty (30) days after notice thereof (or such longer period of time as is reasonably necessary to cure such a default so long as the Applicant is diligently and continuously prosecuting such a cure), then the Town may take one or more of the following steps: (a) by mandamus or other suit, action or other proceeding at law or in equity, require the Applicant to perform its obligations under these conditions; (b) have access to, and inspect, examine and make copies of all of the books and records of the Applicant pertaining to the project; or (c) take such other action at law or in equity as may appear necessary or desirable to enforce these conditions. If the Town brings any claim to enforce these conditions, and the Town finally prevails in such claim, the Applicant shall reimburse the Town for its reasonable attorneys' fees and expenses incurred in connection with such claim.

TOWN CLERK
NORFOLK

2017 JAN 11 PM 3: 11

Lakeland Farms LLC
January 9, 2017

RECORD OF VOTE

The Board of Appeals voted 5-0, at its public meeting on December 14, 2016, to unanimously grant a Comprehensive Permit subject to the above-stated Conditions, with this decision as attested by the signatures below.

Members in favor:

Michael J. Kulesza, Chairman

Michael J. Kulesza, Chairman

Robert Luciano, Vice Chairman

Christopher Wider, Clerk

Donald M. Hanssen

Donald M. Hanssen, Full Member

Joseph Sebastiano, Full Member

Dated: January 9, 2017

Filed with the Town Clerk on January 11, 2017

Town Clerk

Notice: Appeals, if any, shall be made pursuant to Massachusetts General Laws, Chapter 40A, s. 17, and shall be filed within twenty (20) days after the filing of this notice in the Office of the Town Clerk, Town Hall, Norfolk, Massachusetts.

EXHIBIT A

Waiver List

The Board hereby grants exceptions from the following by-laws, regulations, and requirements of the Town of Norfolk:

Rules and regulations for subdivision of land and site plan approval & Special Permit Rules and Regulations through September 16, 2010

1. A general waiver is sought from all site plan approval requirements under Planning Board's jurisdiction where the project will be reviewed by the Zoning Board of Appeals per the Comprehensive Permit and M.G.L. Ch. 40B regulations.

2. 3.3.2.21 Waive the impact study and assessment report, where project will be designed in compliance with Title 5 septic system requirements, DEP Stormwater Management Regulations, DEP Wetlands Protection Act and its regulations, and roadway infrastructure will be sufficient to support the proposed project as shown on the plans. Solid waste and site/landscape maintenance shall be the responsibility of a homeowners association who shall contract these services with professional companies approved to do business in Norfolk.

3. 4.1.1 Waive requirement for the applicant to observe all design standards of Sections 4, 5, and 6 of Town's land subdivision/site plan approvals.

4. 4.9.4 Waive requirement for trees to be planted at 40 foot or lesser intervals on both sides of all streets, where a landscaping plan with appropriate trees and other plantings shall be provided for this condominium project.

5. 4.12.1 Waive requirement that prior to the removal of any trees over four (4) inches in diameter in the right of way and within any tree easement and prior to grading, the developer shall mark all trees proposed for removal and the developer shall plot these marked trees on site plan to be reviewed by the Planning Board. Applicant proposes to show limits of work (and not individual trees) on site plans to be reviewed by the Zoning Board, and all trees within these limits shall be flagged for clearing prior to construction.

6. 4.14.6 Waive town's secondary road (serving between 7 & 50 homes) design requirements of 26' paved width, 170' centerline radius, 340' intersection sight distance for internal roadways, 350' spacing of intersections (centerline to centerline), and other town roadway design standards as may be necessary to construct the private driveway network as shown on the site plans, where this project is a private development with lower design speeds. The proposed side roadway is proposed to be 22' wide.

7. 4.14.9.1 Waive requirement that paved cul-de-sacs shall not exceed 500 feet in length

from the intersection of the nearest intersecting through-street to the farthest end of the paved turnaround.

8. 4.17 Waive requirement for drafting street cross sections at 50' station intervals, where the site plans show a proposed private development permitted under M.G.L. Ch. 40B.

9. 4.19.7.1 Waive requirement for no new point source discharge within 100 feet of a bordering vegetated wetland, as overflows are provided for all infiltration systems.

10. 4.19.7.2 Waive requirement for a closed stormwater collection system consisting of precast concrete drain manholes, precast concrete catch basins (5' I.D.), precast concrete water quality structures connected by straight segments of drain line (min. 12"), and cross-culverts consisting of straight segments of Class IV reinforced concrete pipe with gasketed joints, where site design may utilize other collection and conveyance methods including use of hydrodynamic separators and other pipe materials in accordance with MassDEP Stormwater Management Regulations.

11. 4.19.7.4 Waive requirement for separate roof runoff recharge systems on all homes with capacity to accommodate 1-inch of runoff from roofs. The proposed drainage design of the project intends to comply with MassDEP Stormwater Management Regulations, and provides the required amount of stormwater recharge based on the impervious surfaces proposed.

12. 4.19.7.5 Waive requirement that basin embankments having a height of greater than four feet between the required freeboard elevation and finished grade exterior to the basin shall require geotechnical testing and an embankment design prepared by a Massachusetts Geotechnical Professional Engineer, and for sections through such embankments be provided showing slopes, impervious cores, and surface armoring. Basins shall be designed in accordance with standard engineering practice according to the MassDEP Stormwater Management Regulations.

    Waive requirement for surface stormwater basins and surrounding maintenance access berms be provided on separate lots not part of any building lot, with a 10-foot wide minimum access and maintenance easement extending from the public way to the stormwater basin lot, and a 10-foot wide tree easement with plantings around the berm, where the drainage basins on this project are all part of a single project lot to be privately maintained, and landscaping plan being provided such that easements are not needed.

    Waive requirement for the edge of surface stormwater basins (measured at the required freeboard elevation) to be set back 100 feet from building cellars/basements and 200 feet from street intersections.

13. 4.19.9.1 Waive requirement to recharge all stormwater onsite to allow offsite stormwater discharge. Peak rates of runoff will be controlled such that there is no increase from

existing conditions.

14. 5.2.1.1 Waive requirements for 26' wide pavement, 7' grass strip and sidewalks on both sides of a secondary street. The two-way roadway loop will be 22' wide.

15. 5.2.3. Waive requirement for an Earth Relocation/Removal Permit when 500 cubic yards or more of earth materials are to be removed from the site or relocated within the site.

16. 5.2.6.3 Waive requirement of a plan showing as-built surface grades at 50' stations of the completed dense grade prior to installing bituminous concrete binder course for Planning Board approval, where this is a private development with no public ways proposed.

17. 5.2.8 & 5.2.9 Waive the use of sloped granite curbing, to allow the use of cape cod berm.

18. 5.3.3.3 Waive requirement of curb inlet stones at catch basins, to allow the use of cape cod berm.

19. 5.3.5 Waive requirement to provide field stone masonry ends at culverts per Section 685 of the M.H.D. Standard Specifications, where proposed culverts shall make use of concrete headwalls.

20. 5.7 Waive requirement for retaining walls to be 4-ft. max height and of cemented stone masonry conforming to the relevant provisions of Section 685 of the M.H.D. Standard Specifications, where proposed retaining walls shall be as shown on the plans poured in place concrete.

21. 5.9. & 5.9.1 Waive requirements for street trees to be planted within a grass strip (or in tree easements per Planning Board discretion) at 35-foot or lesser intervals, on both sides of all streets, and other planting and guarantee requirements of the Planning Board where the roadways shall not be offered up for acceptance by the town. Also waive requirement for Planning Board approval of tree species where this project is permitted by the ZBA under M.G.L. Ch. 40B.

22. 5.10 Waive requirements for loaming & seeding where a landscape plan has been prepared for this private development with specific details have been provided for ground covers and sequencing of construction. Also waive the prohibition on the removal of topsoil from the development where we anticipate the project area will have a surplus of loam that will be transported offsite to other land owned by the applicant.

23. 5.12 Waive requirement for Street Light fees to be paid to the town and other street light requirements, because the lights are on private roads.

24. 7.3.1 Waive requirement for dwelling to be constructed and residential use of the subject property to be expanded with a site plan approved by the Planning Board, where the ZBA

will review these plans under a Comprehensive Permit per M.G.L. Ch. 40B. Waivers from all such site plan approval requirements are hereby requested.

25. 7.4.2 Waive requirement for all site plans to be at 1" = 20' scale. 1" = 40' scale is used for site plan set which provides sufficient detail and clarity of the proposed work.

26. 7.4.2.2 Waive those provisions of Sections 4 & 5 as necessary, substituting the words "site" for "subdivision" and "applicant" for "subdivider" where site plan approval by the Planning Board and no Special Permits are requested, and this project is permitted under M.G.L. Ch. 40B by a Comprehensive Permit from the Zoning Board of Appeals.

27. 7.4.3.16 Waive requirements that all storm water drainage shall be contained on site unless otherwise approved by the Planning Board, that Soil Percolation tests shall be conducted in accordance with Subsection 5.3.12.2., that all facilities for accommodating storm water drainage shall comply with the relevant paragraphs of Regulation 5.3, that runoff from all structures shall be accommodated into leaching basins unless otherwise approved by the Planning Board, that all runoff from parking areas, driveways and service areas on the site shall be directed into a dedicated oil-water separator, and that roof runoff shall be discharged into drywells. The applicant requests waivers from all town stormwater management regulations (Planning Board & Conservation Commission) such that the drainage system intends to comply with MassDEP Stormwater Management Regulations.

28. 7.4.3.25 Waive requirement that all waivers required for the project, be shown on the plans, and that such waivers are subject to approval of the Planning Board, where this project is permitted under M.G.L. Ch. 40B and the site plans are subject to Comprehensive Permit approvals by the Zoning Board of Appeals.

29. 7.5 through 7.9 Waive all Site Plan submission, fee, hearing, and approval requirements administered by the Planning Board, where the Zoning Board of Appeals will review this application and plans under a Comprehensive Permit per M.G.L. Ch. 40B.

Zoning Bylaws with Amendments through May 2014

1. Watershed Protection District

D.3.d.l.b Waiver to allow structures, land disturbing activities, excavation within 25 feet of on-site wetlands/streams/ponds, and excavation to create ponding areas/drainage basins where portions of the proposed the entrance roadway (with retaining walls and box culvert) and drainage system will be constructed within 25 ft. of wetlands as shown on the plans.

D.3.f.l - 5 Waiver to submit a Special Permit application to the Zoning Board of Appeals, and all plan submittal and procedural hearing requirements for proposed work

within the Watershed Protection District, where the Zoning Board of Appeals will review this application and plans as part of the Comprehensive Permit per M.G.L. Ch. 40B, including but not necessarily limited to waivers to allow:

- D.3.e.1.c Residential construction of roads, landscaping, stormwater controls, dwellings, and associated utilities upon issuance of an Order of Conditions from the Norfolk Conservation Commission

- D.3.e.1.d Excavation, filling, dumping, transferring of earth materials or the filling, dumping or transferring of any earth material within the district. Portions of roads, landscaping, and stormwater controls are located within 25' of wetland resource areas.

- D.3.e.1.e Any use not expressly allowed in Section D.3.c or prohibited in Section D.3.d.

2. Parking

3. F.7.a Waive requirement for the Planning Board to make a decision on the adequacy of the parking by a Special Permit, where this project is to be reviewed by the Zoning Board of Appeals pursuant to M.G.L. Ch. 40B.

4. F.7.e Waive requirement for a Special Permit by the Zoning Board of Appeals for parking spaces in the front yard where the project is to be reviewed by the Zoning Board of Appeals pursuant to M.G.L. Ch. 40B.

5. F.7.i Waive requirement for travel lane widths as specified in this section, to allow two-way travel lanes at 22 feet wide with 90° parking spaces.

6. F.7.n Waive requirement for parking lots and appurtenances to be constructed in accordance with Planning Board regulations for same, where the project driveways and parking areas shall be constructed as shown on the plans.

Site Plan Approval

1. F.11. and subsections a - d Waive requirements for Site Plan Review and Approval by the Planning Board, where this project is being review pursuant to M.G.L. Ch. 40B by a Comprehensive Permit by the Zoning Board of Appeals.

2. DESIGN REVIEW

3. F.12, F.12.c.1, & F.12.d - g Waive all requirements for applications to the Design Review Board, where this project is being review pursuant to M.G.L. Ch. 40B by a Comprehensive Permit by the Zoning Board of Appeals.

4. F.12.f.1 Waive requirement for a study model or final presentation model.

Affordable Housing Development

1. H.3 Waive all requirements for providing affordable housing by Special Permit issued by the Planning Board, where eight (8) affordable housing units are to be provided by this project pursuant to M.G.L. Ch. 40B subject to a Comprehensive Permit by the Zoning Board of Appeals.

Board of Health Regulations for Siting, Construction, Inspection, Upgrade, Repair, and Expansion of On-Site Wastewater Disposal Systems - February 11, 1997

2. IV.5 Waive requirements for Board of Health approval of the water supply and stormwater drainage systems for this private development project where it is permitted pursuant to M.G.L. Ch. 40B subject to a Comprehensive Permit by the Zoning Board of Appeals. Wastewater disposal system plans shall be prepared in accordance with MassDEP Title 5 for approval by the Board of Health.

3. VII.3 Waive town requirements for sizing septic tanks and allow use of MassDEP Title 5. Section

4. VII.4.A - C Waive requirement that only leaching trenches be used, and allow use of other leaching systems approved for use in MassDEP Title 5. The proposed design incorporates the use of Enviro-Septic technology as permitted by MassDEP for general use. A different leaching systems may be utilized in the final design.

5. Vll.4.G Waive requirement for a maximum 36" of cover over the septic tank and pump chamber, where gravity flows to the septic tank required up to 60" of cover.

6. VII.6 Waive requirement for 10' spacing between leaching trenches, and to allow use of Title 5 leaching system design guidelines.

7. XII Waive requirements for pump systems, to allow use of Title 5 requirements for use of Enviro-Septic technology system, or other approved MassDEP approved technology as may be required in the final design.

Bylaws of the Town of Norfolk

Article VII, Land Use and Resource Protection, Article 1. Earth Removal:

1. Waive applicability and procedural requirements in their entirety regarding the removal and/or relocation of earth, where this private development project is subject to a Comprehensive Permit issued by the Zoning Board of Appeals pursuant to M.G.L. Ch. 40B.

Article VII, Land Use and Resource Protection, Article 2. Wetlands Protection Bylaw

1. SECTION 2(1)(b) Waive requirement that lands within 100 feet of any of the other resource areas listed shall be regulated as a resource area, and to allow this buffer zone area to be regulated per the MA Wetlands Protection Act and its regulations.

2. SECTION 2(1)(c) Waive requirement that ephemeral streams be treated as a wetland resource area, and to follow MA Wetlands Protection Act and its regulations.

3. SECTION 3 Waive all town buffer zone performance standards, and follow MA Wetlands Protection Act and its regulations.

4. SECTION 14(4) Waive requirement for Stormwater Management design in strict compliance with the provisions of the "Rules and Regulations for the subdivision of Land and Site Plan Approval of the Town of Norfolk Planning Board", where Stormwater Management design is intended to compliance with MassDEP Stormwater Management Regulations.

5. Section 14(7) Waive all bylaw (Municipal) Filing Fees.

Article VII, Land Use and Resource Protection, Article 4. Scenic Roads Bylaw

1. Waive applicability and procedural requirements in their entirety regarding scenic roads, where this private development project is subject to a Comprehensive Permit issued by the Zoning Board of Appeals pursuant to M.G.L. Ch. 40B.

Article XV, Demolition of Historically Significant Properties

1. Waive applicability and procedural requirements in their entirety regarding demolition of historically significant properties, where this private development project is subject to a Comprehensive Permit issued by the Zoning Board of Appeals pursuant to M.G.L. Ch. 40B.

SHADE TREE ACT, M.G.L. CH. 87

Waive applicability and procedural requirements of the Shade Tree Act in its entirety.

OTHER

To the extent waivers necessary to construct the project in accordance with the Approved Plans have not been included herein, when such required waiver is identified it shall be submitted to the Board, which shall approve such additional waiver(s) as an insubstantial change pursuant to 760 CMR 56.05(11).

EXHIBIT B

Terms to be Included in Replacement Regulatory Agreement

(language forthcoming)