

**City of Waltham**  
**Zoning Board of Appeals**  
**April 14, 2026**

**The Zoning Board of Appeals held a public hearing at 7:00 P.M. on Tuesday, April 14, 2026 in the Public Meeting Room of the Arthur Clark Government Center, 119 School Street, Waltham, MA.**

**In attendance were John Sergi, Chair, and members Mark Hickernell, Matt Deveaux Glenna Gelineau and Stephen Taranto.**

**Mr. Sergi: The first order of business is to approve the minutes of April 7, 2026. May I have a motion to approve the minutes of April 7, 2026, please.**

**On motion of Mr. Deveaux, seconded by Mr. Geleneau, the board voted to approve the minutes of April 7, 2026.**

**Mr. Sergi: So we have approved the minutes of April 7, 2026. Okay, tonight we have continued cases. I am going to go through the extension requests first. So, let's start off with Case No. 2026-01, Paul Yu. So Paul, if you could come to the podium or your representative, please?**

**Paul Yu, 719 Main Street, Waltham: I respectfully request a continuance of this matter to the next available hearing date. My attorney is unable to be present this meeting this evening and I prefer to proceed with counsel present. Thank you.**

**Mr. Sergi: Okay. Any questions of the board?**

**Mr. Deveau:** I just have one matter of extension in time for the decision in filing. And I make a motion that we extend it out to May 31, 2026. Mr. Taranto seconded the motion.

**Roll call:** Mr. Taranto, yes; Ms. Gelineau, yes; Mr. Deveau, yes; Mr. Hickernell, yes and Mr. Sergi, yes.

**So we have granted you an extension to May 31st, correct?**

**Mr. Deveau:** Correct. We need a date for him to show up.

**Mr. Sergi:** We could do it on May 12th, is that agreeable? Will your attorney be ready?

**Mr. Yu:** Yes.

**Mr. Sergi:** Is everybody available on he 12th?

**(Board members responded that they were available on the 12th.)**

**Mr. Sergi:** I will entertain a motion to continue the case to the 12th.

**On motion of Mr. Taranto, seconded by Mr. Deveau, the board voted to continue Case No. 2026-01 to May 12, 2026.**

**Roll call:** Mr. Taranto, yes; Ms. Gelineau, yes; Mr. Deveau, yes; Mr. Hickernell, yes and Mr. Sergi, yes.

**Mr. Sergi:** So we have extended it to May 12th.

**Mr. Yu:** Thank you.

**Mr. Sergi:** Let's do the 210 Moody Street case, Case No. 2023-6 Micol, LLC., a request to extend.

**May we hear from the petitioner or the petitioner's representative, please?**

**Attorney Philip B. McCourt, Jr., 272 Bacon Street, Waltham, the petitioner's representative came forward representing Micol, LLC.**

**Mr. McCourt:** I'm representing Micol, LLC who had the benefit of some variances for the potential hotel down on Moody Street. So we are currently in front of the City Council. It's going on pretty well but there's more work to be done so there's no way that we could have this so that we could operate on starting the work before the April 20th. So we would ask that you would extend it for the six months. They have it in here for a year but I'm not sure you can do that. I think the six months.

**Mr. Sergi:** Six months.

**Mr. McCourt.** Six months exactly.

**Mr. Sergi:** Six months from which date?

**Mr. McCourt:** From April 20th now to October 20th, I think.

**Mr. Sergi:** Any questions from the board. Hearing none, I will entertain a motion to extend the case until October 20, 2026.

**On motion of Mr. Taranto, seconded by Mr. Deveau, the board voted to extend Case No. 2023-06 to October 20, 2026.**

**Roll call: Mr. Taranto, yes; Ms. Gelineau, yes; Mr. Deveau, yes; Mr. Hickernell, yes and Mr. Sergi, yes.**

**Mr. Sergi: So we have extended it for you.**

**The next case that we have is Case No. 2025-23 Maple Multi-Family Land East Coast, L.P. 245-265 Winter Street - Chapter 40B Comprehensive Permit.**

**Attorney Philip B. McCourt, 272 Bacon Street, Waltham representing 2025 Maple Multi-Family Land East Coast L.P. along with Co-Counsel Jim Ward from Nutter McClennen, who is here came forward.**

**So we've been going along with this and it ended in some discussions with Michelle and today the company filed tremendous amounts of papers, you know, information that you couldn't review at this point and neither could Michelle but you know we have been working with her as you have granted us permission in this case to keep working with her and she has been very cooperative in doing that.**

**I think we have permission, right Mr. Deveau?**

**Mr. Deveau: Yes.**

**Mr. McCourt: So they would like to have a relatively short extension date. I mean if they were picking a date it would be April 28th but it would be up to you people whenever that is to reappear with Michelle and that sort of thing. You know it will**

probably go beyond that so we need two extensions, I believe. Mr. Deveau knows that we need not only to have the continued hearing but, of course, the time to act.

**Mr. Sergi:** On the 28th we have three cases. So we can do May 5th. So what do we need to extend Matt?

**Mr. Deveau:** Do we anticipate on closing the public hearing on that date?

**Mr. McCourt:** It's hard to tell because Michelle has many things to go over, possibly not.

**Mr. Deveau:** End of May, is that okay? Or no?

May 31st. Is that okay?

On motion of Mr. Deveau, seconded by Mr. Taranto, the board voted to extend the case for the concluding of the public hearing to May 31, 2026.

**Mr. Sergi:** May 30th.

**Mr. Deveau:** May 30th.

**Mr. Taranto:** I second that.

**Roll call:** Mr. Taranto, yes; Ms. Gelineau, yes; Mr. Deveau, yes; Mr. Hickernell, yes and Mr. Sergi, yes.

**Mr. McCourt:** I think we need a motion to continue the hearing until the 5th.

**On motion of Mr. Deveau, seconded by Mr. Taranto, the board voted to continue the hearing to May 5, 2026.**

**Roll call: Mr. Taranto, yes; Ms. Gelineau, yes; Mr. Deveau, yes; Mr. Hickernell, yes and Mr. Sergi, yes.**

**Mr. Sergi: Okay the next case we are going to hear tonight is Case No. 2025-05, DIV 455 TPR, LLC; 455 Totten Pond Road - Chapter 40B Comprehensive Permit.**

**If we could hear from counsel or the petitioner's representative, please.**

**Attorney Philip B. McCourt, 272 Bacon Street, Waltham along with Jim Ward, CoCounsel in relation to that:**

**So as you know, you closed the hearing and we were working on a decision to do that he would voted to accept the overall contribution package the thing and Jim Ward and Michelle have been working diligently up almost to late today on it. So really it's better off if she describes to you where we stand on finalizing a possible decision.**

**Mr. Sergi: Okay. Michelle, would you like to come up?**

**Attorney Michelle Learned, Assistant City Solicitor for the City of Waltham and Counsel for the board on this case. I think it might make sense to just go over the Proposed Draft Comprehensive Permit that has been provided to you by email late in the afternoon and I think you have a hard copy that was left in your packets today. And I think it might be wise for me to just sort of go through it possibly condition by condition so that our public watching today and folks here in the audience have a good understanding of what this 40B development will look like and how it will be regulated by the City of Waltham**

during the construction phases of it should this board decide to vote in favor of adopting that decision.

So, as you know, the State law, Chapter 40B controls these affordable housing developments and the premise that exists with respect to this law is if an applicant is willing to construct twenty-five percent of the whole build as affordable units then they are allowed to streamline the application process and what that means is normally when you build a development such as this sort of scale, this size, you're often going to various boards within the city. So you might need relief from the zoning board to vary some front yard setbacks and sizes and any sort of variance of our zoning. You might be required to go to the city council for some special permits. You might be required to go to a Traffic Commission for review of traffic issues. You might have to go to the Board of Survey and Planning to decide if the width of a driveway can be over twenty-five feet or not. There are various boards and commissions in the City of Waltham that govern land use in the construction of its size. But what the state law does, Chapter 40B, is it says, the creation of affordable housing is so important that we want to have a mechanism for developers to be able to have all of those matters considered by one board and that's the board that you sit on.

And so, all of those issues you have been charged with reviewing, vetting and coming to a conclusion on whether certain waivers of our zoning that they have requested are going to be granted and what conditions this board can put on the decision to regulate that construction. And the State has took away a lot of the power that a municipality has with respect to what we can and cannot do. In many circumstances, the State and law that exists at the appellate level has indicated that if there is a State rule that governs, so, for example, DEP in many circumstances, a particular issue but the municipality has a greater obligation that the applicant only has to follow what that State Law says. And here, for example, that applies with respect to stormwater.

**That's one thing to keep in mind that when there are State requirements that also actually falls and affects affordable housing issues. We have a State Agency EOHLIC that is the entity that governs affordable housing now in Massachusetts and so they dictate most of the restrictions that can be placed on a 40B build with respect to affordable housing issues.**

**Now, what they do let happen is an applicant is able to say, wait, we'll give a little more. We will propose that we will offer this when a board such as ours says your build is going to cause these local problems. And so to mitigate those particular problems that that construction is going to cause, often times an applicant will say, well, we'll mitigate it this way. The board is also entitled to say in certain circumstances, this is required of you. And so, there's a delicate balance between how the board is allowed to regulate 40B's under the State law that exists that favors developers. And I just wanted to give that background before we got into some of the particular provisions that have been crafted to sort of strike that delicate balance between the city making sure that the perceived local concerns and grounds that would be caused by the build are in part ameliorated by the conditions that you place on them today if you were to vote to grant this and adopt this decision.**

**So for the public just to understand, the applicant has requested to build and put in plans and those plans are able to be seen at the office of the Zoning Board in Waltham which is at 119 School Street, this building upstairs, and you can see all those plans in great detail. But they have requested to construct and use three hundred and forty (340) units of multi-family apartment housing at the property of 455 Totten Pond Road for a five-story residential building that is over a two-story garage and this building would measure 69.83 feet in height. It would have fifty-four surface parking spaces and it will have three hundred and seventy one garage spaces. Now in order to do that the applicant has requested a number of waivers from our local zoning. If in the proposed Comprehensive Permit all of that is outlined in Pages 4 through 5 which is the specific requests of what they want to build and starting on Pages 5 and it goes through Page 14 of the Proposed Draft**

**Comprehensive Permit before you are the requested waivers and in many circumstances although the waiver is requested, the city has asked for very specific additional conditions that are attached to a possible grant of that waiver request. So, for example, on Page 6, Number 2, the applicant has acknowledged that the I/I obligation that requirement that exists in the City of Waltham is connected to a State requirement and therefore they will do that so they will remove four gallons of I/I from the city sewer system for every new gallon of sewer flow it adds into the system but what they were requesting as a waiver is the timing of doing that project. So we have placed a, and this decision when I say, we, we have suggested that the rule that the city follows not be waived with respect to the timing of the completion of this project. So in the city we have a process where an I/I covenant is signed and executed and reported at the Registry of Deeds and that essentially binds and obligates the applicant to complete that I/I project but what the waiver is doing is making sure that the project gets completed before the occupancy permits issue.**

**At number 3, it discusses stormwater management. And I eluded to this earlier about how when the state has a requirement we can't necessarily require something greater than the State but we did put a little teeth in this particular section. They were proposing to waive our General Ordinance Regulations and only follow Mass DEP's Standards, but what we added is that "The stormwater system shall conform with the Mass DEP Standards but it shall also conform with the Engineering Department's requirements, no more than 2.1 inches of run-off in half hour run-off storms to the maximum extent practicable."**

**Now this is something that the city engineer wrote many communications to you about and they went back and forth with the applicant and they rested upon what is the maximum extent practicable which is outlined in correspondence that is a drainage report that was dated and revised November 10, 2025 that was submitted by the applicant to the city engineer. It was also submitted to the board for reference. The stormwater system shall be constructed as designed in the set of plans that will be voted on here and adopted**

by reference into your decision and so they cannot deviate from that specific set of plans that will be adopted should you vote tonight to grant this Comprehensive Permit. They are required to follow all of the stormwater and drainage systems regulations that exist in the State Building Code and it's important that we included that no run-off shall shed onto any public way or sidewalk and that we have a city stormwater enforcement agent that will be able to make sure that the stormwater requirement in this Comprehensive Permit are indeed followed and adhered to and if there is any subsequent development or redevelopment of the locus, there's a provision here that just acknowledges you will have to follow everything that our city ordinance requires of any new development. So future developments on the site does not gain the benefit of this particular Comprehensive Permit. It only controls the plans and the development that have been vetted here by this board.

There's more extra protection that the city and that this board has thought about including and that's to make sure that at the end of the building of the stormwater systems that the petitioner is required to present as-built plans for that stormwater system and that they will have to provide a certification from a professional engineer that the stormwater management system is actually in compliance with the approved plans and all of the terms of the Comprehensive Permit. That is Number 4 on Page 7 of the Comprehensive Permit.

They did make a request for some variation and waivers from our city ordinances that talk about the excavation of resurfaced streets. That is Item 5, later request 5, also on Page 7 and the extra teeth that the decision has put into this is that, although the Comprehensive Permit will authorize the specific infrastructure improvements that are set out in the decision, the applicant still has to have its contractor submit and fill out completed copies the City's Street Opening Permit Application, Utility Permit Application, Trench Permit Application and these are so that the contractor is certifying there's a bunch of things in those particular applications that are relative to indemnification should anything go wrong.

**On Page 8 of the Draft Decision, there are several instances of how they have requested waivers from zoning requirements. You know, for example, this is a build that occurring in a Limited Commercial Zone and our zoning code doesn't permit that so they needed to request a waiver to allow that. And, again, this is something that the State Law permits to happen.**

**There's also some particular FAR requirements that they have requested a waiver from. These requested waivers on the zoning requirements that usually someone would have to go to the city council for a special permit for are all detailed from Item 7 through probably 16 in the Draft Decision and they cover, you know, parking determinations, what percentage of the lot can be landscaped. They are proposing to landscape by providing fifty (50) deciduous and ornamental trees that are two to three and a half inches in diameter, measured six inches from ground level and thirty six (36) evergreen trees. seven to eight inches in height, as shown on the planting plan. So, again, those plans that they propose will become part of the record and part of this decision, so later down the road if they don't have the requisite number of trees, our city building inspector is able to enforce on that plan and, you know, issue cease and desist orders to say, you're out of compliance. And in certain things like this, these things would have to be done prior to the issuance of building permits or issuance of occupancy permits. There is a mechanism that would be outlined here.**

**They are proposing forty-one point four percent (41.4%) open space.**

**Now we talked a little bit in the vetting process about a requirement to make a contribution to the Traffic Safety and Infrastructure Maintenance Fund. And I have told you other 40B's have all made that contribution. What has been vetted here and ended up being what we believe the board will vote on this evening, is that, in lieu of that, that waiver of payment of the required fee and here that fee would have been Three Hundred and Seven Thousand, Two Hundred and Forty Nine Dollars (\$307,249). It's calculated math**

equation that is come to based on the square footage that you are building that is above what is allowed at of right. So here, that amount of money is going to instead be paid towards the construction of the sidewalk along the northern side of Totten Pond Road as further mentioned later in the decision with some very specific conditions.

There are some front yard setback and rear yard setback deviations. They are listed in Item 17, Condition Number 17 and by voting today you would be granting that request for a waiver from those particular setbacks.

Again, I told you what the height of the building would be at 69.83 and the maximum number of stories will be seven (7). Normally in the Limited Commercial Zone the maximum building height is forty (40) feet and the maximum number of stories is three (3). I do remind the board though that in that area when other 40B's have been granted they too have gone up this number of stories and up to this number of the height of the building.

The lot coverage that is required by our zoning is thirty (30%) in that Limited Commercial Zone. They are requesting a waiver so that it could be 42.8%. The minimum lot area in the Limited Commercial Zone is five (5) acres. They are requesting a waiver because their lot is 4.642 acres. That's set forth at Waiver Request No. 21.

There's a bunch of things there but I would bring us now to Item 25, Waiver Request 25 on Page 12. And this is important because it's the parking requirement that our Ordinance has in place and so normally you have two spaces per dwelling unit and so here there are three hundred and forty units (340) being proposed so that would be times two which is six hundred and eighty (680) parking spaces would be required under zoning but they are proposing four hundred and twenty-five (425) spaces for those three hundred and forty (340) units.

**They are also proposing a small deviation from the number of spaces that can be for smaller cars. That's at Item 26. Normally our ordinance has the actual dimensions that a parking space has to be and twenty-five percent (25%) of the parking stalls can be sixteen (16) feet by eight (8) feet and that's for the smaller cars and they are just proposing that half of them, fifty percent (50%) of the parking stalls, be that smaller compact car widths.**

**As I mentioned before, the design of the parking areas for more than five cars talk about driveway openings and curb cuts. Normally if they are going to be over twenty-five (25) feet you have to go to that Board of Survey and Planning. Here they are proposing two driveways along Totten Pond Road and two driveways along Winter Street, two of which shall exceed the twenty-five (25) feet in width. One on the east side is just (25.82) feet so just a little bit passed it and the second is at east drive on Winter Street and that is 29.04 feet. So a vote on adopting this decision is granting that additional footage for the driveway opening.**

**Condition Waiver 28, again talks about trees. The waiver request and condition at twenty-nine (29) talks about loading docks, loading areas. Here the development is proposing one loading zone measuring twelve by seventy feet and it's in deeper depicted on the plans that will be incorporated by reference into this decision and again that the building inspector can hold on to and make sure it happens and happen to the specific dimensions that are approved here through this Comprehensive Permit should it be adopted.**

**Waiver Requests in conditions 30, 31, 32 and 33 all deal with signs. And I know that through the process some of the residents who came to the podium were concerned about how bright these signs would be. I just point out in Item 33, the rule that we have in the City of Waltham is that, Signs shall not be illuminated between the hours of midnight and 6 A.M. So where they were requesting a sign that is going to be illuminated during that time frame, we added a little teeth so that the condition for a grant of this waiver is, "However**

said signage shall be equipped with dimmers and timers so that all signage on the property shall comply with all of the other city ordinances and regulations relating to the illumination of signs including Section 6.73 of our City Zoning Ordinance.” And that requirement is so that the lights will not exceed eight hundred (800) milliamps per sign and so they will comply with that requirement.

Section 34 sets forth the requirements with respect to the Affordable Housing Provisions. I’ll wait until we get into the section that’s in the Decision to discuss that further.

Condition 35 is the same.

When you hit Page 15 of the Proposed Comprehensive Draft, it sets forth every single one of the plans on this Page 15 through Page 16 but would be incorporated into the Comprehensive Permit. And all of these plans make sure that the construction of the development is going to be in compliance with the State Building Code and the State Fire Codes.

There is also a reminder that each condition in this Decision shall be applicable to and binding on the Petitioner and the Petitioner’s successors and assigns. And that means if they ever sell the property all of these requirements are binding on whomever buys the property. And if that person sells the property, all of these requirements are binding to the successors and assigns. That’s what that language means.

At Page 16, we begin the specific conditions that are handling affordability requirements. And what happens here is there are a number of places where the applicant has agreed to provide greater than what the State requires with respect to these 40B requirements. So the biggest one to point out is that the State requires twenty-five Percent (25%) of your total build to be affordable at eighty percent (80%) of the Area Medium

Income as defined by HUD on an annual basis in perpetuity. And what the City of Waltham has been trying to do is get as many units as we can at sixty percent (60%) AMI because of a market, our residents here in Waltham have a need for a lower, a deeper affordability for their affordable housing units. And so, what the applicant has been able to provide is they will provide and rent thirteen (13) the required twenty-five percent (25%) at sixty percent (60%) units as conditioned. So that's instead of the eighty percent (80%) unit. That's detailed in Item 3a on Page 17 of your Draft Comprehensive Permit.

Mr. Sergi: It says eleven (11) here.

Attorney Learned: That must be an old one. They were delivered. So technically the Decision you should have and I know it was put on your cart does not have any notations in the margin. You may have been looking at the draft that I had previously provided that had some colors in it. It was a red lined draft that showed you things that I was trying to put into the decision. Most of today, the attorney representing the developer and myself were going back and forth to see what the applicant was willing to accept. What language had I insisted should be there that they were willing to accept and in one particular circumstance, a substantive addition has been made and offered by the applicant.

When we stood here before you at the last hearing, before the hearing was closed and that mitigation package was presented by the applicant, at that time they had eliminated the free parking for the affordable tenants. We have had many conversations today and they have now agreed to have thirty-six (36). So thirty-six (36) of the surface area parking will be designated for the affordable units on a first come first serve basis at the leasing time period. This was how we arrived at that thirty-six (36) figure is that there are fifty-four (54) spaces, eleven (11) spaces had to be the EV spaces outside, the charging stations, three (3) spaces are handicapped spaces. They indicated that they needed three (3) spaces to be for visitors and so what remained is thirty-six (36) spaces.

**Ms. Gelineau: Free.**

**Attorney Learned: Free to the Affordable Housing tenants and that is listed actually on Page 19, Item 10, on thirty-six surface spaces and the language is there for you to read. In the draft that hopefully Pam had put that in your folders, maybe, or on the cart. So I can read it in case that draft is not- - -**

**Mr. Sergi: No, we have it.**

**Attorney Learned. There's no red lines on it. And just for the public I can read that.**

**The Petitioner shall make available one (1) surface parking space per Affordable Unit, free of charge, to each Affordable Unit at the time the Affordable Units are leased, on a first come, first served basis, as available but the restriction of the total number of free parking spaces designated for affordable units only shall be at a minimum of 36 surface spaces. The marketing materials for the Affordable Units shall specifically include this option. For implementation, the project property manager shall label each surface parking spot as a reserved spot for the specified numbered Affordable Unit that has been assigned the parking space (after the first come, first served process completed for the Affordable Unit parking space designations).**

**And then there's language in there that is there so that we know this is a condition that they are agreeing to that is above what is required by the State. We certainly hope that the State catches on soon and does implement some requirements in circumstances where people are charging for parking spaces to affordable tenants. It's been conveyed to me by our Housing Director that many times with this and also in circumstances that we have in Item 11, when water is needed separately, that affordable tenants do get in a situation**

where it's very hard for them to continue meeting the rent obligations and to make sure that these folks have the ability to have a parking space helps make sure that people people aren't going to be parking on the adjoining streets.

So even thought when you were here last, that had been not on the table. I engaged in many, many conversations today with the applicant's counsel to see if we could get some type of Affordable Housing free parking space put back into the decision. And so the result of that, and there were many conversations that appears in Condition Number 10 on Page 19.

Also very important to the Housing Department was the elimination of the VASH Program for veterans and that it be a condition that parallels State Law. So that we have indeed done that at Condition No. 6 on Page 18.

So the Petitioner shall provide a preference for veterans for 10% of the Affordable Units that would be nine (9) units to the extent in accordance with Chapter 150 of the Acts of 2024 and we have an ordinance that governs this, Section 9.15 of the Zoning Ordinance of the City of Waltham. This 10% Veterans Preference applies, in perpetuity, to any Unit Type for which an eligible Veteran qualifies and is not limited to 60% AMI units. Prior to any housing lottery or other resident selection process, the Petitioner shall submit its veterans' preference plan to the City's Housing and Community Development Director for review and approval; said plan must include requirements for proving veteran status. The process for veteran preference selection must be that which is in Chapter 150 of the Acts of 2024. And, also, to the extent permitted by law, preference shall be given first to veterans residing in Waltham at the time of the lottery/application, and secondarily afterwards to non-Waltham veterans.

Just briefly, the breakdown of the Affordable Units shall consist of ten (10) studio units, forty-six (46) one bedroom units, twenty-one two bedroom units and eight (8) three

bedroom units. And they will be evenly dispersed within the development in accordance with the floor plans that have been included as part of this Comprehensive Permit.

There are three tables on Page 17 and 18 that actually set forth what that unit mix for the Affordable Units will be.

At Condition No. 7 on Page 19, we have something that is called a Local Preference Condition and that just follows what has been allowed by the EOHLC with respect to, After applying the 10% Veterans Preference, the Petitioner shall allow for the local preference for up to 70% of the Development (the maximum degree as allowed by EOHLC and as approved by the Subsidizing Agency). Now, local preference categories include present residents of Waltham, City of Waltham employees, or teachers employed by the school district that serves Waltham. That's at Condition 7 on Page 19.

The Affirmative Marketing Plan Requirements appear at Condition 9.

I've already discussed Condition 10 which is the free parking space requirement.

Eleven discusses that if water is metered separately and tenants are charged for water and sewer usage, the affordable units shall not be charged. That was at the request of our housing director.

And then Item 12 is a little bit of legal jargon that we needed in the decision. Once the applicant had agreed to some of these requirements, particularly the ones that are above, we needed to make sure that there was a mechanism that would hold them to it. So the language at 12 a. and b. and c. really take care of that. So they will be providing a certification that all of the terms that I just talked about in this Section 2b of this Proposed Comprehensive Permit are they will not be arguing as being null and void under a Case called Amesbury vs. the Housing Appeals Committee or any other ground. They will

provide that certification to the Law Department prior to the expiration of the twenty day appeal period for this decision and that twenty day appeal period is regulated by State Law.

And now Item c. discusses, well, what happens in thirty years when the oversight of the Regulatory and Use Agreement is by Mass Housing, in thirty years that ends. So we have a requirement in our 40B Comprehensive Permits that sort of is referred to legally as a springing local regulatory agreement. And it basically says that whenever that other agreement ceases and certainly at the expiration of thirty years that a Local Regulatory and Use Agreement that says all of these terms, all of these affordable terms will be included in that comes into affect. And that agreement has been executed in prior 40B's. We'll use the exact same terminology and we will have to have that executed before any final certificate of occupancy shall issue. And so that's an important provision there.

When we hit Pages 21 through 27, they discuss the parking, transportation, traffic mitigation and other infrastructure improvements that are conditions here on the development and the creation of this affordable housing.

I'm just quickly looking to see if, you know, it discusses things like reduction of parking in Item Condition 1. In Condition 2 it talks about how many parking spaces have to be ADA accessible spaces in the parking garage vs. the surface area how much have to be in ADA compliance. And all of those requirements have been communicated to you by our building inspector. They are controlled by the State Building Code as well and they are just duplicated here for ease of reference.

Again, and returning to one of the concerns that the neighbors had with respect to headlight spillage, on Page 21, Condition 3 reads, "There shall be no headlight spillage onto abutting properties. The Development shall provide headlight shields when necessary to prevent spillage onto abutting properties." So that means that if a neighbor does, in fact,

experience anything with respect to headlights bothering them they would be able to call the building inspector and ask for this Condition 3 to be enforced.

It's important that Condition No. 4 that you see, "The Petitioner shall construct the east and west driveways to meet the applicable fire access requirements of the Waltham Fire Department, as shown on the Layout Materials in their Plan. So when they prepared their plan, that plan complies with our particular requirements. The fire department asked for the access roadway depicted on that sheet and that the plans shall be clear of parked vehicles at all times and that the Petitioner shall tow any car on these particular driveways, these roadways and shall post signs advising that the parked cars on the said roadways will be towed by the development. And that's to make sure that there are no parked cars. We have a similar condition about there can't be any snow on these because we need the width of the fire access roadways to be wide enough that our fire engines can actually navigate and maneuver them.

Condition No. 5 on Page 21 begins the monetary mitigation payment of Two Million Dollars (\$2,000,000.00) to assist the city with mitigating impacts that are reasonably attributable to the project on municipal service infrastructure services and the Petitioner has voluntarily offered to pay the Two Million Dollars and this Petitioner's commitment to do so is an operative fact on which this board is relying in making its decision to grant the Comprehensive Permit should you vote yes on this decision. There is a notation about the timing of this payment and it shall be required prior to the issuance of the first building permit for the project. That's important! That was something that was discussed back and forth. The city needs it to be by the first issuance of the building permit. The building inspector requested this. The fire department requested this. There's a lot of time that should the fire department use the designated funds that may be attributed to them for getting a fire truck for example. Fire trucks take a very long time to be built to particular specifications. So having a payment be required before the building permit issues might, in

**fact, let the two or three years happen and have that fire truck available to fight any potential fires at the site before occupancy.**

**Then at 5b the use of the funds sets forth a priority between the infrastructure and public safety mitigation, primary infrastructure and public safety mitigation and then the municipal service impact and secondary infrastructure and traffic mitigation priorities.**

**That's at Page 22 and so how it's listed is the sewer infrastructure improvements within Totten Pond Road corridor to the extent that when flow monitoring and sewer modeling occurs may show and demonstrate that the project will result in capacity constraints or adverse impacts on the sewer system. Such improvements are necessary to mitigate those impacts. Such improvements may include replacement, upsizing, or rehabilitation of sewer pipes and related infrastructure within the roadway.**

**Again, during the vetting process, you received many communications from our city engineer and a little back and forth battle with the applicant's engineer about this particular sewer capacity issue that the city engineer believes, may, in fact, exist. And so, there were some estimates that were presented by document to you for like the worst case scenario in how to fix such a problem and what this indicates is they are required to submit right away almost after being required to do a flow monitoring study. I guess it's how you maybe say it, but it's in the next section. This is how we need to say it but it's in the next section. They will give the results of that study to the city engineer and they are making a Ten Thousand Dollar (\$10, 000.00) monetary payment which is above the \$2 Million to have the city's contractor, Brown and Caldwell, be able to use that data and recalculate our model to see exactly what is going on in Totten Pond Road sewer for capacity issues and to recommend what size pipe might, in fact, be needed in order to solve that problem. So that is sort of where the money will first be spent and then after that the additional funds will be for the design and construction of the sidewalks along the northerly side of Totten Pond Road because in the event 245-265 Winter Street which is another 40B that is pending**

before this board is also granted, they would be doing an upgrade to the southerly side of Totten Pond Road, and again this is fixing the gapped areas where there isn't sufficient sidewalks right now and it's contributing to that. There might be other mechanisms that the city could utilize depending on where these gaps exist with respect to pursuing possible betterment contributions. And what that would do is it would free up more of this money to go and hit some of the things that are lower priority on this list of priorities.

The third thing is that the measures necessary to address the increased fire protection and emergency response demands that are attributable to the project including the purchase of equipment, a fire truck, and/or other support vehicles, staffing or facility related needs that are reasonably related to the impacts from this proposed project. But that has been capped to not exceed Three Hundred Thousand Dollars (\$300,000.00).

Then below that becomes the Secondary Infrastructure and Traffic Mitigation Municipal Service impact priorities that if there's money left over of those \$2Million, it could be spent on. And how that works is there is a designated Three Hundred Thousand Dollar (\$300,000.00) amount that could offset increased educational service demands that is caused by the project to the school department. There is a Hundred Thousand Dollars (\$100,000.00) to the Police Department to offset increased public safety service demands that are attributable to the project.

Ms. Gelineau: I'm sorry Michelle. When you say up to, is that only if there is money left over?

Attorney Learned: Yes. And what is happening with the item 5(b)(2) but now it says (i). I think those will be renumbered so it's little i but i through (v) then is an order and if you look at the last sentence of the paragraph above it, "The priority, timing, and allocation of such funds among the categories set forth below shall be determined by the Mayor based on the City's assessment of project-related impacts"

**So how it's been structured is these items here with that language will give the Mayor the opportunity to decide, okay, this day, this amount of money still exists, what do we need the most?**

**Ms. Gelineau: If there's anything left over.**

**Attorney Learned: Correct.**

**Ms. Gelineau: Just doing the math, it doesn't sound like there would be.**

**Attorney Learned: There could be if we were able to get to a point where there's other ways for the properties in a limited Commercial Zone perhaps to contribute for the upgrade of the sidewalks. If the sewer upgrades cost less than what were estimated then there would be the Three Hundred Thousand (300,000) for the fire department.**

**Mr. Sergi: From the estimates that you showed us it seems like there will be excess funds.**

**Attorney Learned: There could be but it really does all depend on - - -**

**Mr. Sergi: Those are estimates where you say conservative, I guess, which meant you make the most - - -**

**Attorney Learned: In the worst case scenario. And I do want to just remind the board that as I stated before, I am confident that the sewer capacity issue would lean in favor of the city should we have to go through court scrutiny, and first you go to HAC, the Housing Appeals Committee and then you go to the Superior Court and then we would take that sewer capacity issue through the Appellate Courts. And I, as legal counsel, am**

confident that that would rule in our favor with respect to the sewer capacity issue. However, the other items here listed, although it is very clear that these impacts are happening and occurring and falling on the city's financial shoulders. The construction of this development is causing these local concerns and problems. On appeal, those items may not be upheld. Certainly the HAC has issued decisions that do, in fact, strike down in some of these areas, and so, if we were to go, for example, if you were to deny the Comprehensive Permit tonight, what would happen is the applicant would appeal us to HAC and then anything they agreed to they would no longer agree to and they would argue to make null and void. And so, HAC, which is decisions that you see repeatedly are in favor of the applicants, the developers. Their mission is to create affordable housing, And so there's a balance to be done here - - -

**Mr. Deveau:** Even on the sidewalk funds for the safety?

**Attorney Learned:** I would say we could certainly argue it but I couldn't say definitely that we would be successful.

**Mr. Deveau:** Thought one of the perimeters were for health and safety.

**Attorney Learned:** It is, but again, HAC has repeatedly ruled against municipalities. And certainly the extent of where the sidewalks are that we are requesting to be - - I would make the argument, I'd say there's a reduction of parking here and that reduction of parking requires the residents to be out on the streets and that reduction of parking requires pedestrians in places that aren't safe right now. What happens though is that HAC says, well, wait a second, you're going take in from tax revenue from the folks in that development and now you really need to look at, well, how much would you be taking in and could that fix the problem. And what happens then is even if we are able to establish that that's a local concern that the developer has negatively impacted. Even if we are able to say that, what they then do is they say, okay, well now we have to balance it against the

regional need for affordable housing. Not just Waltham's need for affordable housing, it's the regional need and unfortunately HAC gets to, or fortunately, depending on what your position is, but for the city in trying to uphold a condition like this, they decide what is regional. So they just don't just say Waltham's, because here in Waltham now we've done well. Right. We have the 1.5%, we've satisfied our minimum land area, Safe Harbor, so that means 1.5% of all the land in Waltham that's able to be built upon for affordable housing, 1.5% of that land serves affordable housing. That's great! That's how we were able to use that Safe Harbor in the past with a third 40B application that was in the same area. So we have that and we have the 10% met right now but we are not allowed to just analyze the local concern against our need for housing they open it up to regional need. So they'll lump in Weston, Lexington and it could go out as far out as Lincoln and possibly at Watertown. And they will draw the lines in a way that likely will not be beneficial to the city when we are doing that balancing.

And, of course, should the board vote to deny the application, I would make whatever arguments were available to the law department to back your decision but I do believe that this decision with the extra teeth, for example, in the decision is in a position and ready for you to vote on.

So again, at 5(b)(2) there is those extra areas that if there was any money left over and the priority would really be in the Mayor's hands as to what at that particular time is required to do.

Now, separate from the money what they do have to do and they have to do the work, is where their property fronts on Totten Pond Road and where their property abuts on Winter Street they actually have to do the sidewalk work. So they have to bring it up and this is Condition No. 6 on Page 23 that means that for 550 linear feet in length within the city's right of way along their frontage on Totten Pond Road but they must construct a concrete sidewalk for 330 linear feet on Totten Pond Road and then for 550 linear feet on

Winter Street. And that will be subject to the construction design review and approval from our CPW/DPW Director and the city engineer. The sidewalk shall be concrete with new granite curbing as detailed on a plan that gets incorporated into this decision. All street opening permits and utility permit requirements are not being waived. The work and material shall be in accordance with the City of Waltham Street Opening, Curb Cut & Utility Permit Rules and Regulations. And all necessary permits and work shall be completed by the Petitioner prior to the issuance of any certificates of occupancy.

So this work has to be done before any tenant is in that development.

Condition No. 7, I won't repeat it but it discusses what the driveway openings are going to be. I do note that at Condition 8, The Petitioner shall install ADA curb ramps at these driveway openings, the entrances and exits on both Totten Pond and Winter Street. The required ADA detectable warning panels shall be weathered cast iron.

Now, Number 9, we shift into the Traffic Mitigation Plan. They have voluntarily committed at its sole expense to implement traffic signal timing improvements at three intersections. Through this process, I know that at one point it was very important for this board to make sure that the light that exists in front of the ice skating rink be included in this signaling retiming calibration in coordination with the others and that has been added so that the signal timing improvements will be at the intersections of Totten Pond Road, at Wyman Street and Third Ave, Totten Pond Road at Winter Street extension and Totten Pond Road at Prospect Hill Park Veterans Memorial Ice Rink. The traffic signals at these three intersections shall be recalibrated and coordinated, at the sole cost of the applicant, prior to the issuance of any occupancy permit. And then there's language about what should happen at the green phases and where the lights are going to be that's specifically detailed here. This is directly from the request of our city traffic engineer and they did agree to that. But the language that is also important is, well, what happens if it's all wrong, if it's not working the right way, this condition puts in some teeth for that.

**So when the building is 80% occupied, the Petitioner shall hire a traffic consultant to perform a study using collected traffic data. So that's real time not estimates that exist at that time to reevaluate the traffic signal timings and coordination of the traffic lights at these three intersections. Based on the results of the study, Petitioner, at its sole cost, shall prepare and submit a revised optimized signal timings proposal to Mass DOT for the State controlled intersection at Totten Pond Road and Wyman Street/Third Avenue and to the City Traffic Engineer for the City-controlled intersections of Totten Pond Road at Winter Street Extension and also Totten Pond Road at Prospect Hill Park/Veterans Memorial Ice Skating Rink to modify the traffic signal timings and coordination of the traffic signals at said three intersections. Then with the approval of the City Traffic Engineer and MassDOT, the Petitioner shall recalibrate and coordinate the traffic signals at these three intersections in accordance with the approvals they get. At the sole cost of Petitioner and they must do this within three months of that final review and approval by the City Traffic Engineer and MassDOT. Now any of these improvements that are required under this section shall be for traffic signal coordination only and shall not include physical changes such as installing conduits.**

**There is an item about trimming and removing trees and vegetation along any of the land that abuts the public ways of Totten Pond Road and Winter Street, that's Item 10. There's a regulation of the Roof top HVAC systems. They must follow the State noise standards that are controlled by State regulations. There is a requirement of twelve electric vehicle charging stations and that seventy-five of the spaces have to be EV ready. That is at Condition 12.**

**Then in Item 13, and remember we also had the benefit of our peer traffic engineer with respect to some of the suggested traffic mitigation requirements and all of those requests from that peer traffic engineer reviewer are also included and incorporated into**

**this decision. So Condition No. 13 puts forward some of those requirements thereabout providing a fare subsidy for MBTA passes.**

**Item 13, (iii) The Petitioner has agreed that the Development shall be served by the 128 Business Council or a similar professional ride share service and a ride share service that offers residents subsidized trips to Waltham's commuter rail stations. These services have to be operating Monday through Friday from 7 am to 9 am and 4pm to 6pm. The Petitioner may conduct a periodic review and adjust based on the particular actual use of these ride share options but if they were ever desiring to cease its operation they would have to come back here to the board and there's a particular mechanism that regulates how they come back to the board that is articulated in 760 CMR 56.05 (11).**

**There's some items about bicycle parking. There's also a review that occurs at the 80% occupancy that the applicant shall engage a qualified engineering consultant to conduct a parking monitoring study to assess the actual residential parking demand. All of the requirements that must occur in that study are listed on Pages 25 and 26 of the decision and they are required to submit that study to our city traffic engineer and this board. And if the observations show that the demand is approaching capacity, additional observations will be made offsite to determine if any adjacent properties are experiencing overflow from the site and the cost of preparing and submitting the study will be the sole responsibility of the Applicant.**

**So the next item, Condition 4 deals with a request that was made by our CPW Director about moving the bus stop. The language that was agreed is that, "The Petitioner shall provide seating and a shelter at the relocated MBTA bus stop, as referenced in the comment letter provided by the City of Waltham Department of Public Works dated January 13, 2026. A preliminary location of the new MBTA bus stop, including the seating and shelter, is shown on Sheet C-201 of the plans that would be approved as part of this decision, however the final location has to be determined in coordination with the MBTA.**

Number 15 is the site access to and from the locus shall be followed. And what this condition does is it states exactly what they have advocated and put forward in their plans that would happen with any restrictions. So the Winter Street west driveway shall be enter-only, which shall establish one-way travel southbound from Winter Street to Totten Pond Road. The access to Winter Street east driveway shall be provided from both garage levels via a ramp connecting the upper and lower levels; the Totten Pond Road west driveway shall be right-turn egress only for all vehicles. However, full access for emergency vehicles at the west driveway shall be maintained through a mountable channelization island.

(4) The Totten Pond Road middle driveway has been eliminated thereby providing only two driveways on Totten Pond Road. Totten Pond Road east driveway shall provide additional queuing storage for the egress movements. This driveway shall be full access which means entering or exiting vehicles left turns or right turns permitted.

So what happens if that doesn't work, I know that through the vetting process that the peer reviewer for traffic said that this plan was good and I know that our city traffic engineer thought there could be additional restrictions on right hand/left hand turns for entering and exiting. So what we did is we put in, and I am going to call it teeth again, a mechanism where our city engineer would be able to revisit this issue. So the latter half of Condition 15 requires upon 80% occupancy of the building but the city traffic engineer shall conduct a review of the site access along both Totten Pond Road and Winter Street extension and should he determine that the traffic operations and that means traffic safety and traffic flow are not acceptable resulting from the site access taking place at that time, the petitioner shall change the left turns and right turns permitted and/or restricted as directed to do so by the city. Such future changes to the access or egress at the driveways shall be limited to signage and striping modifications. It won't require any physical modifications. The Petitioner has voluntarily committed, at its sole expense, to implement

any signage and striping modifications deemed necessary by the City Traffic Engineer at this 80% occupancy of the building. Okay, that handles all of the traffic and infrastructure.

On Page 27 we get into stormwater, sewer, water, utilities, and trench paving.

Mr Taranto: Excuse me Attorney Learned, is it safe to assume that the the City Traffic Engineer's re-evaluation at the 80% occupancy will also include input from the police department on safety accidents and accident reports.

Attorney Learned: I'm sure is. We could possibly add that language to make sure it does but I believe he would do that.

Mr. Taranto: I think it would be an entity that maybe the two just might not know what each other knows. Thank you.

Attorney Learned: A review of accident reports in consultation with the police chief.

Mr. Taranto: Yes, mam. Thank you.

Attorney Learned: I believe that would be okay with the applicant.

So now I'm Page 27, there is language that discusses the stormwater issues, water requirements, anything that falls under the engineering department's purview and the CPW Department's purview.

So, again, Item 1 talks about the I/I requirements. At Item 1 a., there's reference to the required 162,800 gallons per day of existing I/I that shall be removed and there's a reference to a particular correspondence. There has been dialogue that is discussing which

particular project this Applicant is able to do to remove that requisite number of gallons of I/I and that will all be reduced to writing and the obligations will be set in that covenant that gets recorded at the Registry of Deeds. There is an indication of a possible I/I reduction based on the work that may be done that was referenced earlier with respect to resolving the sewer capacity issue and if that occurs this Petitioner will only receive half of such reduction and the I/I project assigned to the Petitioner will be adjusted. That's because 245-265 Winter Street should that be approved would receive the other half of that I/I reduction.

A bunch of these requirements deal with, again, engineering issues.

Condition No. 5, for example, is about the stormwater, so they will follow what has been articulated in that November 2025 correspondence. They will comply with the city rule that only stormwater detention system overflow piping shall be connected to the existing municipal system, as approved by the city engineer. They will also comply with the city rule that any building, impervious areas, etc. to be removed/demolished shall not be considered for any credit on the drainage.

They are required to follow MassDEP Standards and all applicable requirements pertaining to stormwater and drainage systems enumerated by the State Building Code and this decision and they shall maintain the system. They have to file a Stormwater Pollution Prevention Plan, give that to the city engineer prior to the start of construction.

Condition No. 10, I eluded to earlier, that's where they are performing the flow monitoring at the eastern most Totten Pond Road sewer manhole upstream from where the sewer changes direction to the South and away from Totten Pond Road. The flow monitoring will also be performed by the Applicant at the first Totten Pond Road sewer manhole upstream from the manhole at Rando Lane. The flow monitoring has to be performed between April and July 1, 2026, so that's right around the corner and must

**capture at least one storm that is a minimum of 1 inch over a 12 hour period. This is all sort of known in the industry for how you do flow monitoring. They will be required to provide their own rain gauge and based on this flow monitoring, the city's model will be recalibrated and existing and future sewer pipe capacity and flow peaking factor for the Totten Pond Road will be evaluated. This will be completed by the city's sewer consultant, Brown and Caldwell, based on the updated sewer flow monitoring information. And the Petitioner is going to contribute Ten Thousand Dollars (\$10,000.00) and that is above the \$2 Million from before toward the cost for the recalibrated model and they must do this by prior to July 1, 2026.**

**Condition No. 13 is worth noting. They are required to provide a 4 inch domestic water service pipe and an 8 inch fire protection pipe as two separate lines as approved by the city engineer. This is a requirement that the city has. You can't have one pipe that bends like off, you must have two separate pipes which assists when you are fighting fires and it basically makes sure that the water pressure is sufficient in the need of fighting any fires.**

**Again it repeats that there shall be no shedding of water on streets and sidewalks and that the building inspector has the power to enforce Section 17-9 of the General Ordinance. There are a lot of requirements here dealing with pre-demolition survey of existing structures when you deal with asbestos containing materials.**

**Item 23 for example, The Applicant shall comply with all MassDEP laws and regulations and all applicable environmental laws. Any requirements under Mass DEP regulations or other applicable laws to provide notice and/or information regarding soil, groundwater, and/or environmental issues to the city shall include data results and analysis by a licensed environmental professional.**

**Ms. Gelineau: Attorney Learned, they would have to do that despite the verdict in this.**

**Attorney Learned: They do but incorporating into the decision - - -**

**Ms. Gelineau: They would have to do most of this just to build. Almost all of it.**

**Attorney: Correct.**

**Ms. Gelineau: But it does memorializing it.**

**Attorney Learned: Yes and it does give the building inspector and should we have to go to court on the enforcement an additional mechanism to gain enforcement. Essentially what he could do is revoke the occupancy permit.**

**Ms. Gelineau: Which he could do anyway.**

**Attorney Learned: Yes. But it is much easier to have it codified in the Comprehensive Permit.**

**The Petitioner shall submit a letter from the Professional Structural Engineer attesting to the proper design of the building foundation considering the final design of the subsurface infiltration system with the garage.**

**At Condition No. 28, the Petitioner shall provide as-built plans to the city for all water, sewer, stormwater, drainage systems, and utilities on site and for any connections to the city systems prior to the issuance of any certificates of occupancy.**

**So, for example, they are required to do things like this but often times you have developers that don't and that leave the site and we don't actually have the as built plans.**

And so by looping this into a requirement that you can't get your occupancy permit until you to do that it provides the building inspector with teeth to enforce that requirement.

Condition No. 30 talks about what's going to happen after you disturb any of the road along the locus's frontage on Totten Pond Road and its abutting land on Winter Street. There's some very specific requirements with what they need to do with restoring the road back to it's original state, and it gives the CPW Director some additional powers should the restoration not be up to snuff.

I do want to point out that there is after Item 30 there's a paragraph that should be identified as Item 31, Condition 31. For some reason the number did not appear when this draft was printed. And that begins, The Developer shall hire a mutually agreed to third-party inspector for all onsite water, sewer and drain utility work per 780 CMR 107.6.4 (Project Representation) and that's listed in detail.

On Page 31 we go into fire safety conditions and mitigation. There is a blasting requirement, again it's to follow up the losses. One thing of importance is that and this is Condition 3, they have agreed that the east and west drive shall be a minimum of twenty-four feet wide throughout as shown on the specific Layout and Materials Plan (C-201). The Petitioner's commitment to make the fire access roads said 24 feet wide as described here and on those plans (instead of 20 feet wide) is a very important requirement that they agreed to. This is above what the State requires. The State requires 20 feet fire access roads. Our fire department really strongly believes that 24 feet are required. They expressed that to you through the vetting process and that's been reduced to writing here as a condition that they did agree to.

Condition 4 talks about snow storage, not reducing that 24 foot wide fire access road. Item five are the requirements that they provide a swept path analysis for the fire truck turning plan. That's all pretty standard except the final one that says the letter

signed and stamped by a licensed PE certifying that the fire access was built as per the plans and otherwise complies with Chapter 18 of NFPA. So, it's that extra requirement of saying, okay you built it, did you build it exactly the way you said you would build it.

Again, 6, talked about that dedicated fire line, then it goes into automatic sprinklers and those requirements and one of the things that they have offered that is above what is required by State Law is that they will provide and have the automatic sprinklers be active during the construction phase, usually it's when the building is up and occupied. But here it's during construction. We all know that we experienced a very bad fire during a construction phase here in Waltham and so our fire department is very proactive with respect to making these requests.

The other requirement that is very important is Condition 9. They have agreed to this at the Fire Department's request, "The Petitioner has agreed to and shall install a stair pressurized system for the building in all egress stairwells to help residents to egress/ evacuate the building in fire/ smoke emergencies and I want to point out that these sort of things like that above 20 feet for the fire access road to the 24 feet, the automatic sprinklers during the construction, the pressurized stairs, well we all think well that should be. Right? Of course they should do that but the State does not require that. The State has the stair pressurize system when you hit a certain height and they are under that height. They're under it by a little but they are under it. So they're not required to do that by law. So that's another extra that we would have to consider when we're balancing whether you want to vote to adopt this decision today or whether you are interested in voting to deny it. When they take the appeal of any sort of denial these are the type of things that they would take away. It's my belief that anything that was considered extra, I can't entirely speak for them but it's my belief that they have the ability to say to HAC that they no longer want to provide those things. And again in those areas, there is clear law that does say that if a State rule regulates it they only have to provide what the State says. And so in

circumstances like the road width and in circumstances like the pressurized system those are two requirements that we are indeed getting above what State requirements have.

Also at Item 12, the fire department wanted them to install a fully addressable fire alarm control panel and BDA (Bi-Directional Amplifier) system that's coordinated with the fire department and they did agree to do that.

And then at 13, I won't go through everything, through Page 34, so Condition 13 on Page 33 all the way through Page 34 talks about everything that will have to happen while they are constructing. And then when you hit the little (i) on Page 34 it talks about the construction period for fire safety for stairs throughout the development shall be addressed in the following manner and it goes through that all the way until 14. So this is designed to help evacuations. Evacuation routes for emergency events and fire events shall be provided for in a certain manner that's outlined here. And then Item 16 which was requested, the Petitioner's building permit application plan set may be reviewed by a third-party consultant to confirm the conformance with the State Building and Fire Protection Codes. This such review shall be at the Petitioner's sole cost and expense which shall be reasonable but the consultant shall be hired by the city. Nothing contained herein shall have the effect of waiving the building inspector's authority. This was also something that's above. Usually if it has to happen there is argument back and forth.

So then we start at the Section No. F which is Additional Site and Safety Conditions. They talk about environmental law requirements removing any known underground storage tanks.

Condition 3 in Section F talks about the Integrated Pest Management Plan. Snow is discussed and how they are going to handle snow and where the snow storage locations are and if said snow storage locations are at capacity where they have been designated on those plans. The snow shall be removed from the site within eight hours of the end of a snow fall

event and otherwise disposed of per State Regulations. This is a provision that's in all of our 40B Decisions. So to Item 5 when I say Item it also means Condition. Condition 5 discusses where the waste shall be collected, it references where the trash room is on those plans and that trash shall be removed from the site at least once a week and this is all at their cost.

There's a provision that governs the wall and ground mounted light fixtures. There's provisions about the utility roadway, pedestrian infrastructure work and how it must follow 17-25 of our city ordinances.

Condition 8 talks about that the Petitioner shall submit to the Waltham Police Department for review by the Chief or his designee a detailed and comprehensive security plan. The Petitioner shall provide the security measures included in the approved plan for the duration of construction. If needed the plan may be amended by the request of the Petitioner upon approval by the Police Chief or his designee. The Petitioner is responsible to provide the Building Inspector with a copy of the approved security plan. This puts the final say in the city's hand. Also prior to the issuance of the occupancy permit, the petitioner shall coordinate with the school department and the Waltham Police Chief's designee to identify an appropriate location for the school bus stop that will serve this development.

There's a discussion about the portable bathrooms. There again is more discussion about the as-builts. There is a requirement at Condition 15 about providing certification at the completion of work that the development has been built in accordance with the plans in all material respects and prior to the start of construction shall inform this Board of the name, business address, and telephone number of the engineer and/or architect that they retained to do this.

**Prior to the start of construction, the Petitioner shall erect construction fencing along any unfenced portions of the property line.**

**Then there's some things about how can they market. Do they get a marketing sign. Can they have, here it's three units decorated as model units. I'm sorry, I think that's a mistake. I think it should be entitled to designate, construct and operate up to three of the units as, I think that we just want it as model unit. Then they could locate up to two construction trailers on the property. That's sort of standard.**

**Now also through the process you have heard from residents that were concerned about noise and possible vibrations and they are required to follow what everybody else, all other developers are required to follow. That's Condition 20.**

**You also heard a request and received a written request about construction activities. Somebody wanted the hours to be limited or actually delayed on the Saturday. So instead of following the 8 to 4 on a Saturday they did make a request to have it be 9 to 5. Unfortunately those hours are dictated by our ordinance and have to follow what the ordinance says. All of those enumerated holidays that they cannot work on are there is in this Condition No. 21. And there should be a noise study that's done that's outlined in Condition 22.**

**One of the things that is important that our city engineer had written correspondence to you appears in Item 24 noting that this project requires the filing of a Notice of Intent with the Waltham Conservation Commission. Part of this filing shall describe that the West Chester Brook wetland area has been partially filled with sand and sediment from the former hotel/restaurant parking lot on the site and from off site drainage from upstream properties and Totten Pond Road. And this comprehensive permit requires the petitioner to clean, subject to Conservation Commission review and approval, said sand area before the head walls are constructed for the new drainage system for the**

**development. In the event the NOI process results in design revisions for the Project, the Petitioner shall notify the Board and present whatever revised plans the Conservation Commission makes them do to you. So, it buttons that up.**

**This is important for anybody who is an abutter listening. At Condition 29, we do want to alert that any person aggrieved by this decision may appeal pursuant to Section 21 of Chapter 40B. Subsequent to the end of all applicable appeal periods and prior to the commencement of construction, the Petitioner shall record this decision in the Middlesex South Registry of Deeds and shall provide the board and inspector of buildings with a copy of this decision endorsed with the applicable recording information.**

**There's the standard language that if the comprehensive permit will expire if construction is not commenced within three years from the date the decision becomes final and they referenced the particular State regulations that control that. And then there are some provisions that talk about what happens if anything is going to be revised.**

**And on the final page of the decision it is the abutter's commitments you will during the vetting process of this have asked the applicant to communicate directly with some of the neighbors and residents who came before you and expressed their particular concerns and Items 1 through 6 address those issues. They also wrapped in some of the concerns that we saw in communications to the board in writing.**

**And so Item 1 is that the Petitioner will install a 6 foot opaque fence at the northeast corner of the site in the vicinity of the proposed children's play area.**

**No. 2 is the Petitioner will install "private driveway sign at 300 Winter Street driveway and provide hatched pavement markings at the top of driveway.**

**No. 3: Salt and other chemical deicing products will not be used within the 100 foot buffer to West Chester Brook.**

**No. 4. The Petitioner will work with the abutters to install construction porta-potties in a mutually agreeable location.**

**No. 5. The Petitioner proposed to extend the existing chain-link fence approximately 100 linear feet along the northern side of Totten Pond Road, along the 300 Winter Street property line subject to the Conservation Commission approval. Alternatively, should the Conservation Commission not approve said chain-link fence extension, the Petitioner will then install native plantings at the existing path/opening to discourage pedestrian trespass.**

**No. 6. This is if the Petitioner proposes to blast and that might not happen. But if they elect to do so or have to do so, the petitioner shall conduct a pre-blast survey in accordance with State Law for the interior and exterior of all structures for the property that abuts the site or are within three hundred feet (300') feet of anticipated blasting areas and for each residential unit at Town Homes at Brookside Woods at 300 Winter Street. The Petitioner's blasting contractor shall carry a minimum of \$5Million in comprehensive liability insurance for damage to structures caused by blasting which coverage shall be in force for the duration of the blasting at the locus.**

**Okay. So that is what has been put into this Draft Comprehensive Decision which is ready for the board to discuss further and vote upon tonight.**

**Mr. Sergi: I have to say counselor, you listened to us on a lot of these issues and you incorporated them at least to my satisfaction. So, I'm pleased with it and I don't have any further questions myself, but I will open it up to the board.**

**Steve, do you have any further questions?**

**Mr. Taranto: I do. Just a small matter for my own education. On Page 35 on Section F, No 3 there, where does the Pest Management Plan get submitted to? Does that go to the Health Department or the Building Department?**

**Attorney learned: I'm sorry, which number on Page 35?**

**Mr. Taranto: Page 35, under F, 3 at the very bottom regarding the Integrated Pest Management Plan.**

**Attorney Learned: It is to the Building Department.**

**Mr. Taranto: Thank you.**

**Attorney Learned: We could add those words if you wanted to.**

**Mr. Taranto: That somebody is responsible for getting this. I think this is a concernable issue. Thank you once again.**

**Mr. Sergi: Glenna?**

**Ms. Gelineau: Michelle, I just want to thank you for everything you have done and all your efforts. But I just want to prior to the final vote this evening I would like to make a few remarks that I would like to be a part of the formal record:**

**I am truly struggling with approving this project. I think despite what side we are on that this project is very aggressive to say the least. Three Hundred and Forty Units on the available acreage is intense. This project will impact infrastructure, traffic, neighbors and all municipalities. It will put an additional burden on our fire, police and schools and it**

is impossible to think that this project will not impact our city in an unprecedented way. I must point out that we must all consider the three projects that exist on the proposed or exist virtually on the same block. I understand that we have to take each project on its own merit. However, I do not believe that the State or even the housing court intended for any city to absorb over a thousand units on one city block all entering and existing on the same two lane street in an area that is already experiencing traffic issues and is not residentially inclusive.

I'm not sure that sidewalks or Three Hundred Dollars to the Fire Department is nearly enough to offset the impact of this project. I'm not sure what Three Hundred Thousand Dollars does. This building will be here for decades burdening said department. Three Hundred Thousand Dollars is a minor investment. The calls in this building will be in the double digits weekly between medical, elevator and alarm calls in dispense of a fire.

I contend that the State requests for developers to begin at the Zoning Board for 40B Projects, so in effect the city has some degree of input and can gain some help to offset the burden of these substantial projects. Here this Petitioner says they will give us a modest contribution but they want an additional forty (40) units. In my mind, there's been no compromise and \$2Million is unsubstantial for a project of this size.

As I said, I don't believe that the State will ask the City of Waltham to absorb a thousand units on what amounts to a single city block with the possibility of two to three thousand people living there. It benefits no one if our city resources and infrastructure cannot support the project. In theory we would be asking our city to house 5% of its population on one city block. All that being said, I do understand the risk to sending this project back to the State. So if I am to render a "yes" vote, I would need to see an increase in the intended benefit of affordability. Offering thirty units at 60%'s median income is not enough. The median income of Waltham is nearly \$130,000 and 60% of median income is not affordable and 80% is certainly not affordable. Furthermore the Petitioner is offering

**no three bedroom units at 60% basically eliminating families where the need for affordability is most prevalent. One more facet of this picture is that the project is circumventing the spirit of affordable housing.**

**My other major concerns which includes the school system which is a little bit tweaked since its final petitions that we just read. A thousand units on one city block cannot help but impact the schools where these children will attend. I feel significant compensation should be offered to the Waltham School System a Thousand Dollars (\$1,000.00) maybe once again is insignificant to offset what the city is being asked to be absorb in its already densely populated school system.**

**So I am having trouble getting to a yes vote. I feel strong that the petitioner should offer several more units at the 60% Median Income and a stronger position on contributing to the school system. I am not sure that I can vote in good faith and expect the neighbors and citizens of Waltham along with fire fighters, teachers and police to absorb the impact of this project. This board has trained me to think of the public good and the impact to the neighborhoods and my fellow citizens. And while I believe so strongly in affordable housing and our collective duty to provide more of it, I believe this project as presented not only circumvents the spirit of affordability but it presents unacceptable burdens to our city. Thank you.**

**Mr. Sergi: Matt?**

**Mr. Deveau: My comments would just echo what Glenna just said so I am going to keep them to myself. I have no further questions.**

**Mr. Sergi: Mark?**

**Mr. Hickernell:** I will echo the appreciation that the other board members have shown to Attorney Learned and I although everybody has worked on this and provided feedback and input, I'm not suggesting any changes by my next comments to the decision but with respect to the mitigation fund and also the sewer flow testing that is anticipated to be done if the project is approved in this form, can the board receive a report, it doesn't have to be from the petitioner, but the city engineer is going to be there too, can we find out what happens with the sewer flow test that's going to be done so we have some sense of, you know, there's different experts but I'd like to know how that turned out. And, also to get in the end some kind of accounting of the mitigation fund so we know how far down the list the priorities have got.

**Attorney Learned:** Certainly we could add a provision that both requests that you just made are included and the city engineer and the law department will provide that to the board.

**Mr. Hickernell:** Ya, if the project is approved, that would be great. Thank you. That's all I have to say.

**Mr. Sergi:** Michelle, you have heard some concerns here from the board. I don't know if we want to give an opportunity for the Petitioner to maybe address that.

**Attorney Learned:** Perhaps a quick recess could happen and the Applicant can consider amongst themselves whether they would be willing to increase the number of affordable units as requested by the member of our board and then they could come back and tell you what they decided.

**Mr. Hickernell:** I move for a five minute recess. Mr. Taranto seconded the motion and the board voted for a five minute recess.

**After five minutes, the board went back into their regular meeting.**

**Mr. Sergi: Can we hear from the Petitioner or the Petitioner's representative please.**

**Mike Cantalupa, Davis Companies: Thank you for the months you have taken to hear our case and the work that you have put into this. It's not lost in the stack of papers that are in front of you and the work that you did trying to move the business of the city forward. I understand the ask on behalf of the board. What I would like for you to consider is that as evidenced by the extent of the decision that was presented to you tonight that we have been pushed, as I think I said in our last meeting as far as we can go in terms of our contribution to the city. I understand the point of view that we have been pushing the envelope, our submission is entirely within the confines of the law that we are allowed to operate in and we are very confident of that. But not withstanding that, you've asked a lot of us and we think that we have contributed that and exhibited a higher degree of flexibility in additional contribution in terms of the contributions that were made, how they were categorized, how they are contributed to the city, what you can use them for and so we would ask you to consider the extent of that and the only other thing I would ask you to consider and I'm not quite sure how you evaluate this, the cities and towns that we are operating in and I think yours is one of them is considering the affordability percentage that is being asked under various affordability laws when a developer comes forward. My understanding is that the City of Waltham is considering reducing its percentage and again other cities and towns are doing that. The reason that they are doing that is that it is very difficult for developers to operate at a twenty or twenty-five percent affordability requirement and many projects are not getting built. And so, assuming your city passes this law it's very likely that this particular project affordability percentage at twenty-five percent will probably be the highest that you will see for years and years to come while projects go forward at theoretically at a lower percentage.**

**So I understand it's the board's job to push us and to make sure that we are contributing as much as we can to the community in which we develop in. I would ask you to consider, that from our perspective that you have done just that. You've pushed us to the point where we cannot contribute any more and we respectfully would ask you to approve the submission that we've made and allow us to go forward and to deliver the project at again what I think will be one of the highest affordability percentages that you'll see in a long time.**

**So thank your consideration. Thank you for the work that's been put into the decision. Thank you Michelle for the work you've done. I've done a lot of projects in a long career and I have never seen a forty page decision on a project that I've worked on and so I would ask that you to consider that you would push this as far as we can go. Thank you very much.**

**Mr. Sergi: Thank you. Okay. I think we are ready for a vote.**

**Might I entertain a motion to approve the Comprehensive Permit as presented tonight by Attorney Learned with the few modifications that we've requested.**

**Mr. Hickernell: So moved.**

**Mr. Sergi: May I have a second.**

**(There was no response from the board.)**

**Mr. Sergi: I mean doing a second doesn't mean you have to vote yes for it. It's just that we are going to move ahead with the vote.**

**(There was no response from the board.)**

**Mr. Sergi:** We've deliberated this long enough, I think we have to vote one way or another guys. So, otherwise it will get approved automatically.

**Mr. Taranto:** At the circulation to move this along, I will second it with that caveat.

**Mr. Sergi:** Okay. Thank you. With that done, how do you vote Steve?

**Mr. Taranto:** I vote no.

**Mr. Sergi:** Glenna?

**Ms. Gelineau:** No.

**Mr. Sergi:** Matt?

**Mr. Deveaux:** No.

**Mr. Sergi:** Mark?

**Mr. Hickernell:** Yes

**Mr. Sergi:** And the Chair votes yes.

**The vote was 3-2 in favor of denial.**

**Mr. Sergi:** The petition has been denied.

**Phil** do you want to come up. I know that you mentioned to me that - - -

Mr. McCourt: So earlier this evening we got a new date for 245-265 May 5th, right? And I didn't realize I thought any date after April 28th would work for him but he texted me that that's the one date that he's conflicted with so any date after that would be acceptable.

Mr. Sergi: How about May 12th?

Mr. McCourt: That would be great.

Mr. Ward: The only thing is that you already did the date and so the neighbors aren't here. So we can reserve the time on the 12th but on the 5th somebody is going to have to show up and say you want to extend it to the 12th. I know that sounds kind of stupid and legalistic but for the sake of the public - - -

Mr. Sergi: I hear you.

Mr. Hickernell: We'll be here.

Mr. McCourt: And I live a mile away and I can be here. Thank you.

Mr. Sergi: One more motion is in order.

On motion of Mr. Deveaux, seconded by Mr. Taranto, the board voted to adjourn at 9:20 P.M.

 Charr, 4/28/26

