

DECISION  
of the  
TOWN OF WELLESLEY  
ZONING BOARD OF APPEALS  
GRANTED TO  
BURTT DEVELOPMENT COMPANY, INC.  
for a  
LOCAL INITIATIVE PROJECT  
COMPREHENSIVE PERMIT (M.G.L. CHAPTER 40B)

Dated: July 12, 2002

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TOWN OF WELLESLEY



MASSACHUSETTS

ZONING BOARD OF APPEALS

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ZBA 2002-12  
Petition of Burt Development Company, Inc.  
16 Overbrook Drive

On January 28, 2002, the petitioner, Burt Development Company, Inc., 20 Ledyard Road, Wellesley, MA filed a petition for a Comprehensive Permit for a Local Initiative Project (LIP), pursuant to the provisions of MGL Chapter 40B, Sections 20-22, to construct three two-story buildings, each of which will contain four three-bedroom owner occupied condominium units. Three of the four units will have a floor area of 2,070 square feet, including a full basement and a one-car garage. The fourth unit will have a floor area of 2,020 square feet, including a full basement and a one-car garage. One 2,070 square foot unit in each building will be designated as affordable housing. Each building will have a footprint of 3,303 square feet. Additional parking for seven vehicles will be provided on site. The project shall be located on a 68,138 square foot lot at 16 Overbrook Drive in a 10,000 square foot Single Residence District and a Water Supply Protection District.

The three affordable units will be sold to first time home buyers earning no more than eighty percent of the median annual income for residents of the Boston Primary Metropolitan Statistical Area. Deed Riders containing restrictions on the sale of these affordable units shall be recorded at the Norfolk Registry of Deeds. The remaining nine units shall be sold at market rate.

Funding for the project will be provided through the Wellesley Co-Operative Bank.

LOCATION AND SITE DESCRIPTION

The subject "U" shaped property is comprised of five potential building lots totaling 68,138 square feet, located at 16 Overbrook Drive in a 10,000 square foot Single Residence District and a Water Supply Protection District. The property is bounded on the north by a 10,000 square foot Single Residence

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District and a portion of the MDC Aqueduct, on the east by Overbrook Drive, on the south by a Business District, and on the west by residential homes in the Town of Natick. There is an existing brook, which crosses the northern portion of the lot. Edgemoor Avenue, a paper street, runs north to south, with a paved portion of the street exiting onto Worcester Street. Fairlawn Terrace, a paper street, borders the northern portion of the lot.

A Conservation Restriction will be placed on Lot B containing 12,396 square feet, at the northwest portion of the property.

#### HISTORY OF THE PROJECT

The project formally came to the attention of the Board of Selectmen in a memo dated September 21, 1999 from Stephen R. Burt requesting to partner with the Board in a Local Initiative Project. Three public meetings to discuss the project were held during the fall of 1999 and the winter and spring of 2000, after which the Board of Selectmen voted to partner with Mr. Burt. A LIP Partnership Agreement between Mr. Burt and the Board of Selectmen was drafted by Town Counsel and signed by all parties on May 15, 2000.

The Board of Selectmen then applied to the Department of Housing & Community Development (DHCD) for a Local Initiative Program designation for the Overbrook Drive project. A letter dated June 8, 2001 granting preliminary approval was received by the Board of Selectmen from Jane Wallis Gumble, Director of DHCD. This approval gave the applicant standing to go before the Board of Appeals to seek a Comprehensive Permit.

On January 3, 2002, the Wetlands Protection Committee issued an Order of Conditions (DEP 324-374) for the proposed townhouse development at 16 Overbrook Drive.

On January 28, 2002, the petitioner filed an application for a Comprehensive Permit for a Local Initiative Project, partnered with the Board of Selectmen, pursuant to MGL Chapter 40B, for construction of three two-story buildings, each of which will contain four three-bedroom condominium units of which one unit in each building shall be affordable housing.

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The following plans and written materials were submitted:

Sheet 2 of 7	Housing Site Layout	August 27, 2002	George N. Giunta, RLS
Sheet 3 of 7	Topographic Plan	August 27, 2002 October 27, 2001 November 10, 2001	George N. Giunta, RLS and James H. Lynn, PE
Sheet 4 of 7	Road/Driveway Plan And Profile	August 27, 2002 October 27, 2001 November 10, 2001 November 20, 2001	George N. Giunta RLS and James H. Lynn, PE
L-1	Landscape Plan	January 11, 2002	Dan K. Gordon, RLA

The following written materials were submitted:

1. Local Initiative Program Application for comprehensive Permit and Units Only Projects
2. Revised Hydrology Report II dated November 12, 2001, prepared by Carr Research Laboratory
3. Trip Generation Report dated January 28, 2002, prepared by Kim Hazarvartian of TEPP, LLC
4. Official Development Prospectus

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The first Public Hearing was held on March 14, 2002 at which issues regarding disposition of the two paper streets, concerns about the use of the "cut through" driveway to the paved portion of Edgemoor Avenue and onto Worcester Street; stormwater drainage calculations, design of systems and management and operation procedures; lighting; landscaping; resale of affordable units; and rental limitations on market units were discussed. The Board developed a list of plans and information it would require before the next Public Hearing.

Prior to the Public Hearing held on May 9, 2002, the Chairman of the Board, who had sat on the original hearing, passed away. Both the Acting Chairman, who had not sat on the original hearing, and Town Counsel agreed that, as the composition of the Board at the second Public Hearing would have changed, the Comprehensive Permit petition should be heard de novo. Mr. Burt subsequently agreed.

The Board voted to include the minutes of the first Public Hearing into the de novo Public Hearing and the Acting Chairman acknowledged that he had read those minutes and studied all documents in the initial submission. The Board made a Site Visit to the property on May 6, 2002.

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Prior to the May 11, 2002 Public Hearing, the following plans and written materials were submitted:

1. Sheets 2, 3, and 4 were revised as of April 17, 2002
2. Sheet 1 Title Sheet
3. Sheet 5 of 7 Detail Sheet 1 August 27, 2001 George N. Guinta, RLS and  
October 22, 2001 James H. Lynn, PE  
April 17, 2002
4. Sheet 6 of 7 Detail Sheet 2 August 27, 2001 George N. Guinta, RLS and  
November 20, 2001 James H. Lynn, PE  
April 17, 2002
5. Revised Official Development Prospectus

On May 11, 2002, the Board of Appeals held a Public Hearing at which Mr. Burt described the project and explained that the issues raised at the prior hearing, as well as the concerns of the Department of Public Works, had been resolved. The Board discussed the requested zoning overrides, the method used to calculate peak runoff, the capacity and design of the recharge systems, treatment of stormwater drainage, blockage of the cut-through to Worcester Street, the Regulatory Agreement, limitations on rentals of market units, distribution of condominium fees and restrictions on and the allocation of profits.

The Board decided to hold a Public Meeting on May 24, 2002 for the purpose of working out terms and conditions, including language of the Deed Rider, the Regulatory Agreement and the Monitoring Services Agreement, with Town Counsel and input from the petitioner, which would be contained in the written decision.

The Board voted unanimously to grant the requested Comprehensive Permit for a Local Initiative Project in accordance with MGL Chapter 40B, Sections 20-23, for construction, operation and sale of twelve owner occupied condominium units of which three would be designated as affordable housing, at 16 Overbrook Drive in a Single Residence District and a Water Supply Protection District, subject to construction in accordance with the last revisions of the aforementioned submitted plans and subject to the terms, conditions and agreements to be finalized at the working session on May 24, 2002.

The Board reconvened on July 11, 2002 and reviewed the finalized documents. The Board voted to grant the Comprehensive Permit subject to the Conditions as attached. This Comprehensive Permit is granted to the petitioner and may not be assigned to any other entity without this Board's specific approval.

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CONDITIONS

THRESHOLD

1. Control of the Site

The petitioner or an entity substantially owned by the petitioner shall demonstrate control of the site.

2. Subsidy

This is a LIP project entered into between the Board of Selectmen and Burt Development Company, Inc., who, together, rely on the expertise of the Department of Housing and Community Development (DHCD) as providing the required subsidy. Nevertheless, prior to the issuance of any building permit, evidence of financing approval shall be submitted to the Board of Appeals.

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✓3. Condominium Master Deed

Prior to the issuance of the first Certificate of Occupancy, a Condominium Master Deed and a document establishing the Organization of Unit Owners shall be submitted for review and approval by Town Counsel, and then recorded in the Norfolk Registry of Deeds. Condominium documents shall specify any variations in fees for the affordable units. The Board of Appeals reserves the right to approve these items. Maintenance schedules and responsibilities for the access roads, development infrastructure, and stormwater management system shall be specified in said documents, and not be materially amended without consent of the Board of Appeals.

4. Developer's Profit and Payments to the Town

The developer has agreed to the following and they are made conditions:

- a. To limit his financial return to a "developer's fee" equal to not more than 20% of "all development costs" (hard, soft, land and construction costs);
- b. To remit all "profit" (total sales of all units less development costs and developer's fee) to the Town; and

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- c. To guarantee that the amount to be remitted to the Town will be no less than \$100,000 in any event (“the guaranteed \$100,000”).

To monitor these obligations, prior to receiving its building permit, the developer shall file with this Board for its approval a pro forma showing the expected total development sales, development costs (including developer’s fee) and resultant profit. Prior to receiving its first Certificate of Occupancy, the developer shall file with this Board for its approval a final, but not yet audited budget showing the expected total sales, the actual development costs (including developer’s fee) and the expected profit.

The developer shall pay the guaranteed \$100,000 to the Town no later than upon the closing of the 7th market rate unit to be sold. The Certificate of Occupancy on the remaining 2 market rate units shall not issue until the guaranteed \$100,000 has been paid. Upon the sale of the last unit to be sold, and after the audit of the project’s financials by DHCD has been completed, and approved by this Board, all remaining profit shall be paid to the Town, which shall thereupon complete the developer’s obligations under this provision.

The Town shall hold, manage and disburse all payments received by it under this provision in a separate account, dedicated to establishing affordable housing in the Town, under the jurisdiction of the Board of Selectmen or its appointees for said purpose, to be expended in consultation with the Wellesley Housing Development Corporation (WHDC) in order to fulfill its goals.

HOUSING

1. Percentage of Affordable Units

Burt Development Company, Inc. and its successors or assigns shall maintain 25% of the owner occupied units (i.e., a total of 3 units) for “low and moderate income” households, defined by DHCD as households earning less than 80% of the median household income in the Boston Standard Metropolitan Statistical Area.

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2. Buyer Selection Criteria

Of the 3 affordable units, 70% (2 units) shall be offered first to Wellesley households or those households with Wellesley ties, which meet the definition of "low and moderate income" households. The Local Initiative Project Partnership (LIPP), or its designee, shall conduct a lottery, at the petitioner's expense, to solicit interest for the purchase of these units. Such a lottery shall be advertised in a newspaper of local circulation in the Town of Wellesley for at least 3 weeks prior to the lottery.

3. Determination of Income Eligibility

The LIPP shall submit for this Board's approval a detailed procedure to the Board of Appeals for determining income eligibility for the affordable units, consistent with other State affordable housing programs. Items such as income level for eligibility, maximum household income based on household size, method of reviewing income and determining asset limits for eligibility shall be included. This procedure shall be modeled after the Citizens Housing And Planning Association (CHAPA) model or some comparable model.

4. Affordable Units To Be Maintained in Perpetuity

Each of the 3 units designated as affordable housing shall remain affordable in perpetuity through a Deed Rider subject to approval in form and content by this Board and Town Counsel. Said Deed Riders shall be recorded at the Norfolk Registry of Deeds with the first sale of each of the affordable units and shall run with the land. The Deed Riders shall describe the procedure for reviewing the restrictions that the three units shall be maintained as affordable units in perpetuity as this condition requires.

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5. Regulatory Agreement

The LIPP shall submit for this Board's approval a Regulatory Agreement, which shall be executed prior to the issuance of Certificates of Occupancy for any of the units in this development. The Regulatory Agreement shall be modeled after the CHAPA model, or some comparable model.

6. Mix of Affordable Units

Affordable units shall not be separated, concentrated or isolated from market rate units, but shall be intermingled and dispersed throughout the development. All twelve units shall be comparable in quality and appearance.

7. Monitoring for Compliance

Prior to the issuance of Certificates of Occupancy for any unit in said development, provision shall be made in the form of a Monitoring Services Agreement or in some other form acceptable to the Board for designating the entity to monitor the affordable units and shall set forth the responsibilities for monitoring the sale and resale of the affordable units, including income eligibility of prospective buyers; the requirement for submittal of annual compliance reports to the Town of Wellesley; and the requirement for an accounting of the project costs and revenues after completion to determine if profits are within the liability requirement. All costs associated with the Monitoring Services Agreement shall be paid by the petitioner until all 3 affordable units have been sold, and thereafter, by the seller/owner of each affordable unit upon each resale.

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8. Marketing Plan

The petitioner shall submit for this Board's approval a marketing plan for all of the units in the development, which complies with all Fair Housing Laws. Said plan shall contain, to the extent legally allowable, a strategy for marketing the affordable units in compliance with aforesaid Section 2. Buyer Selection Criteria. The marketing plan shall further demonstrate a strategy for occupying all twelve units within a finite time period.

9. Sale and Rental Restrictions

The petitioner shall develop and sell the 12 units as owner-occupied condominiums and not as rental units. The Master Deed of the Condominium shall provide, among other things, that any lease or rental of a unit by a Unit Owner, other than by the Petitioner, shall be subject to the following conditions:

- a. Such lease or rental agreement shall be in writing.
- b. The lease or rental agreement shall apply to the entire unit, and not a portion thereof.
- c. The term of the lease or rental agreement shall be for a term of not less than six (6) months nor more than two (2) years, and may not be renewed or self-extending.
- d. No more than three of the nine market rate units shall be leased or rented at any one time without the approval of the Board of Appeals.
- e. The occupancy of any rental unit shall be for not more than the number of unrelated persons as provided in the Wellesley Zoning Bylaw.
- f. The lease or rental agreement shall expressly provide that the lease or rental is subject to the Master Deed, the Organization of Unit Owners, and the Rules and Regulations of the Condominium.
- g. A copy of the lease or rental agreement shall be provided to the Organization of Unit Owners.
- h. Leasing or renting of the three affordable units is prohibited, except as governed by the provisions of the Regulatory Agreement and the Deed Rider.
- i. All units shall be occupied by the buyer of the unit for a minimum of one year after initial occupancy, and for a minimum of one year after each transfer of ownership, prior to any rental or leasing of said unit unless given prior consent by the Board of Appeals.
- j. Rental solely for investment purposes is not permitted.
- k. The foregoing provisions of the Master Deed shall not be amended without the prior approval of the Board of Appeals.

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10. Project Countability

Without limiting the rights of the Petitioner granted under this Comprehensive Permit, all 12 units allowed under this Comprehensive Permit shall count toward the Town's quota of affordable housing units pursuant to MGL Chapter 40B, Sections 20-22.

However, in the event that some third party State agency or other interested party take the position that only the affordable units should so qualify, and should such a position prevail in a decision rendered by a court of final jurisdiction, such decision shall not affect the validity of this Comprehensive Permit in any way.

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SITE CONDITIONS

1. Governing Site Plan

The construction of the three buildings shall be as shown on the last revision of the Definitive Housing Plan dated April 17, 2002, stamped by George N. Giunta, Registered Land Surveyor.

2. Landscaping

The petitioner shall endeavor to work with Nakhaee Hamid, owner of 20 Overbrook Drive, to develop a plan to provide screening plantings to be located on the property at 20 Overbrook Drive. Any plan agreed upon by both parties shall be filed with this Board. Absent agreement, the petitioner shall provide sight impervious fencing at a height no greater than six (6) feet on the petitioner's property, which shall be limited to the distance along the rear lot line of 20 Overbrook Drive.

3. Air Conditioning

All air conditioning compressor units shall be located at the rear of each of the three buildings at a distance no closer than 20 feet from the rear and side lines of the property. Every effort shall be made to provide the lowest type decibel unit feasible for this use.

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4. Lighting

All artificial lighting used to illuminate the exterior premises shall be arranged and shielded so as to prevent direct glare from the light source onto any adjacent property. No freestanding light stanchion shall be of a height greater than 7 feet. All pole lighting shall be on a central timer.

5. Use of Roadways

The condominium documents shall include a provision that no vehicle shall park in the access lanes at any time, except those vehicles allowed by the regulations of the Americans with Disabilities Act, or those vehicles temporarily on the site, including but not limited to vehicles for the purpose of delivery or moving, construction, repair or maintenance, public or private transportation, or those vehicles of an emergency nature.

6. Signage

Any signage identifying the premises shall not exceed an area of one foot by three feet and a height of four feet, and shall be set back a minimum of six feet from any property line.

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7. Utilities

All utilities serving this development shall be installed underground, including any extensions from existing lines or poles external to the subject property. All existing overhead utilities and pole located on the premises shall be removed and replaced with underground service.

Any underground irrigation system shall be designed and constructed in compliance with Department of Public Works standards and approval.

8. Barrier

A barrier sufficient to prevent access and egress by motor vehicles shall be placed at the southwest corner of the access road.

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STORM WATER

1. The Order of Conditions (DEP 324-374) issued by the Wetlands Protection Committee on January 7, 2002, is hereby incorporated into this decision.
2. Copies of all submissions of and in regard to the Storm Water Management Plan shall be sent to the office of the Board of Appeals.
3. Recharge galleys located at the lower end of the site shall have impervious bottoms and sides.
4. Floating oil pillows shall be placed in the catch basins at the point where the driveway crosses the brook.
5. The Conservation Restriction on Lot B containing 12,396 square feet shall be executed by the Town, which will then seek approval of said Restriction from the Department of Environmental Management in order that said Restriction shall be in effect in perpetuity.
6. The petitioner shall prepare suitable maintenance manuals for the stormwater drainage system, which shall be submitted to the Wellesley Department of Public Works for approval. The manual shall follow the guidelines set forth in the Massachusetts Stormwater Guidelines for Design and Maintenance of Stormwater Systems. The manual shall be kept on site at all times, and all maintenance personnel and managers of the site shall be familiar with it. A final copy of the manual shall be filed with the Department of Public Works.

The manual shall describe what activities are required if an accidental release of any pollutants occurs. The manual shall require immediate notification of any spill to the

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Town Health Department and the Department of Public Works. The manual shall be prepared by a Professional Engineer, who is also a Licensed Site Professional. The manual will describe how often the catch basins, oil separators and detention basin are to be inspected; the standards used in the inspection; and the threshold event that requires cleaning. The manual shall also specify that each inspection and the results of said inspection be reported to the Department of Public Works.

Following the initial sale of the last of the 12 owner occupied units, the responsibility for the maintenance of said drainage system shall be the responsibility of the Organization of Unit Owners, and said responsibility shall be described in the Master Deed.

7. There shall be no floor drains in the garage spaces inside any of the three buildings on site.
8. No petroleum products, fuel or solvents shall be stored on site during construction.
9. No fueling of vehicles or equipment shall occur on site within 200 feet of the brook during construction.
10. All fill brought on site shall be clean fill, free of trash, organic material and debris.

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#### REQUESTED WAIVERS

1. The Board hereby waives the requirements contained in the following Sections of the Zoning Bylaw for the stated purposes:
  - a. Section XVIII - Area Regulations – Requirement of only one dwelling unit per lot.

The proposed plan includes construction of three buildings with four dwelling units in each building on one 54,951 square foot lot.

b. Section XIX – Yard Regulations – Requirement of 30 foot front setback and 20 foot side yard setback.

The proposed plan includes construction of two buildings with a minimum front setback of 25 feet and one building with a minimum side yard setback of 16 feet.

c. Section XXIIA – Signs and Identification Devices – Requirement of all signage in a Single Residence District having a total area of no more than one square foot with a minimum setback of 15 feet from any property line.

The proposed signage will have an area of 3 square feet and a minimum setback of 6 feet from any property line.

d. Section XIV-E – Water Supply Protection Districts – Requirement that soil overburden shall not be lowered to finished exterior grades less than five (5) feet above the maximum groundwater elevation.

The proposed recharge galleys at the lower end of the property will not have a soil overburden at a finished exterior grade of five (5) feet.

2. Compliance with all requirements of the Zoning Bylaw not specifically listed above shall be required.

#### GENERAL CONDITIONS

1. This Comprehensive Permit approves the construction of 12 units of residential housing in 3 buildings, with associated accessory structures, facilities and landscaping. Three (3) units shall be reserved for sale and occupancy by low or moderate income Residents. Any substantial deviations, as determined by the Board, from the approved plans, including but not limited to changes in the building sizes, number of units per building, exterior façade, roadway and infrastructure location or design specifications, lighting or screening, shall require approval of the Board of Appeals. It shall be the decision of the Board whether such modification requires a public Hearing.

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2. Compliance with all terms and conditions contained in the LIP Partnership Agreement dated May 15, 2000, between the Board of Selectmen and Stephen R. Burt is required. Copies of all plans and written material required under this Agreement shall be submitted to the Board of Appeals.

In any case where the terms of this Comprehensive Permit Decision and the LIP Partnership Agreement differ, the terms of this Comprehensive Permit shall prevail.

3. Construction of the development shall be in conformance with the plans identified herein, with modifications as required by this decision.

4. Any changes to said plans occurring during the design and/or construction phases of this project shall be subject to prior review by the appropriate Town board and/or department prior to the commencement of such changes. All revised plans or documents submitted to other Town departments or Boards, including the Inspector of Buildings and the Department of Public Works shall also be submitted to the Board of Appeals.

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5. All requirements of the Town of Wellesley Fire Department shall be met.

6. All requirements of the Department of Public Works and Municipal Light Plan shall be met, including, but not limited to the requirement that water, sewer and electric connections, together with drainage connections, be made in accordance with DPW and MLP standards and installed and maintained at no cost to the Town of Wellesley.

7. Exterior construction activities shall be confined to between the hours of 7:00 a.m. and 6 p.m., Monday through Friday, and between the hours of 9:00 a.m. and 1 p.m. on Saturday.

8. All construction shall be completed within two years from the date of issuance of the building permit, unless a new application is filed with and approved by the Board of Appeals extending such time.

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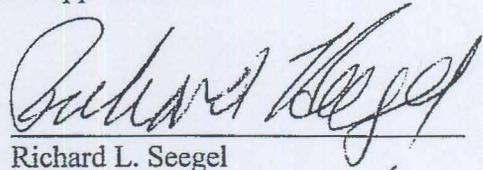
9. The petitioner shall provide a written snowplowing protocol to the Town Engineer, with a copy to the Board of Appeals, to ensure that snow shall not be plowed or stockpiled on abutting properties.
10. A Performance Bond, or other security deemed satisfactory to this Board, shall be provided to ensure installation and completed construction of all improvements in accordance with the plans approved by this decision and the proper functioning of the roadway, drainage system, screening, landscaping, walkways, emergency accesses, as-built plans and other conditions, as required by this decision. Said bond, or other security, shall be submitted to the Board of Appeals for its approval prior to the issuance of building permits for any units in the development.

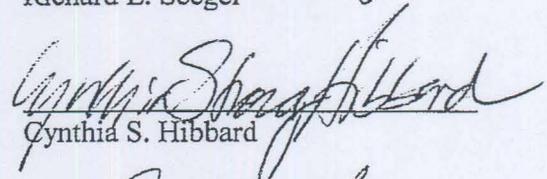
The type and form of such performance bond, or other security, shall be submitted for the review and approval of Town Counsel prior to being accepted by the Board of Appeals.

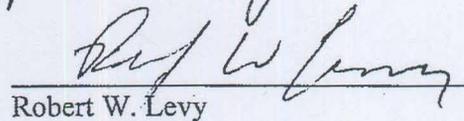
APPEALS FROM THIS DECISION, IF ANY, SHALL BE MADE PURSUANT TO GENERAL LAWS, CHAPTER 40B SECTIONS 20-23, AND SHALL BE FILED WITHIN 20 DAYS AFTER THE DATE OF FILING OF THIS DECISION IN THE OFFICE OF THE TOWN CLERK.

Cc: Planning Board  
Wetlands Protection Committee  
Board of Selectmen  
Town Engineer  
Inspector of Building  
Town Counsel  
edg

Dated and filed in the Office of the Town Clerk  
On Friday, July 12, 2002

  
Richard L. Seegel

  
Cynthia S. Hibbard

  
Robert W. Levy

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