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ZONING BOARD OF APPEALS
TOWN HALL WELLESLEY, MA 02181JOHN A. DONOVAN, JR., Chairman
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FRANKLIN P. PARKER
SUMNER H. BABCOCKZBA 89-1
Petition of Capital Site Management Associates
418 Worcester StreetProdedural History

Pursuant to due notice, the Zoning Board of Appeals held a Public Hearing on Thursday, January 12, 1989 at 8 p.m. in the Great Hall of the Town Hall, 525 Washington Street on the petition of CAPITAL SITE MANAGEMENT ASSOCIATES requesting a Comprehensive Permit, pursuant to the provisions of MGL Chapter 40B, Section 21, which would allow construction of 1 building with 3-5 stories, to provide 56 condominium units of which 17 would be designated as Affordable Housing, with associated parking and landscaping, on a 2.57 acre parcel of land at 418 WORCESTER STREET, in a Single Residence District. Said parcel is located on the southern side of Worcester Street, and is bounded by Single Residence zoned properties on Wareland Road, Maugus Hill Road and Eaton Court. The western corner is bounded by a Business District fronting on Washington Street.

On December 14, 1988, the petitioner filed its request for a hearing before this Board and thereafter due notice of the hearing was given by mailing and publication.

A court stenographer, furnished by the petitioner, was present at the hearing. The petitioner agreed to furnish the Board with a copy of the transcription.

The Petitioner's Presentation

John Panagako, president of Capital Site Management Associates, the petitioner,

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introduced Jaime Sabino, Meryl Epstein and Evan Slavitt, his attorneys; Surendra Vaidya, an engineer from BSC; Michael Walsh, fire consultant; and Philip Hresko and Marko Crescentini of Hresko Yost, the architects for the project.

Mr. Panagako gave a short history of the site, the design changes of the project, including the issues of density and access. He said the price of the affordable units would be between \$58,000 and \$98,000, but did not state the price of the market units.

Mr. Hresko gave a slide presentation of local buildings to illustrate the evolution of design of the project. Using a table model and design boards, he demonstrated how, if the central building were faced in a copper material, the mass of the building would be downscaled.

Mr. Hresko then presented a revised set of plans, dated January 12, 1989, which were not part of the original submission, and proceeded to describe the project. The new plans showed a ground floor garage with 87 parking spaces, 2 of which were Handicap, and 4 outside spaces; an arrival point with a 40 foot radius circle and a ramp into the garage. Mr. Hresko said the revisions were in response to Planning Board comments, but that the Planning Board had not seen the new plans.

Mr. Hresko explained the new profiles of the entry drive, the path and the fire lane. None of the submitted plans showed the path which would be constructed along the right-of-way. The elevation of the path rises from 160 to 212 feet over a distance of 285 feet from Washington Street to the top of the site.

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Mr. Hresko said the average slope of the entry drive is 10.3%. On the new plan, the cul-de-sac entrance has been lowered to allow an 8% slope for the access road. The curves of the serpentine road have been reduced from 4 to 3 and the radius of the turns is now 48 feet.

The Board asked if the Fire Chief had seen the new plan. Mr. Hresko said, "a plan like this, lacking dimensions, has been submitted to the Fire Chief." As of January 12, 1989, there is no indication that the Fire Chief has seen these plans.

The Board stated that it was impossible for the Board to review plans that had been filed and then have the architect bring before the Board at the hearing, new plans which had never been seen by any of the other reviewing Boards.

Mr. Slavitt responded that in each case, the new plans were in response to concerns raised by reviewing Boards. Although none of these Boards had reviewed or approved the revisions, the approval would come from the Board of Appeals.

Mr. Panagako added that the redesign of the access road was the result of a meeting of his fire consultant, traffic engineer and Chief Black. However, in a letter dated December 22, 1988, Chief Black said he had never met with the traffic consultant; and on January 6, 1989, Chief Black wrote that he did not approve the plans he had seen to date.

The Board questioned if there was now fire access to all sides of the building. Mr. Hresko said that the new plans show two fire lanes on the north and east sides, but agreed that one-half of the building is still inaccessible. Mr. Slavitt added that the building would be fully sprinklered.

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The Board again expressed concern as to holding a hearing on plans that had not been reviewed by Town Boards. The Board stated there must be some certainty about what was being built and was concerned about the fairness of a hearing on plans regarding which there had been no input.

Mr. Slavitt said that the density and safety issues had been discussed, and that the technical issues, such as electricity and drainage, would be addressed in the final plans. Mr. Slavitt stated that the presentation was the "project", and for the Board to understand that the project fits in with the neighborhood, is safe and is a reasonable way of addressing Town needs.

The Board asked how the needs of the handicapped would be met. Mr. Hresko said that one first floor unit and two underground parking spaces would be designated handicap. Mr. Slavitt said that the building is a private rather than a public one, so that handicap access regulations would not apply and that the building was not designed to take that "mix" of people.

The Board asked if provisions for children had been made, as the HOP program is designed for starter families. Mr. Slavitt said that only the courtyard facilities were available, and that there would not be a large child population.

The Board asked if plans had been made to stabilize the soil in an area in which there had been past problems. Mr. Hresko said that a Soil Engineer and a Structural Engineer would devise a proper method of construction.

Mr. Slavitt reiterated his opinion that the issue before the Board was whether the project fits in with the area and whether it can be safely built. The Board questioned the availability of proof that it could be safely built from the

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information submitted. Mr. Slavitt responded that it was his opinion that this information could be gathered from viewing the plans and from the architect and engineer present. Following the issuance of a Comprehensive Permit, Mr. Slavitt said that details would be submitted to the Building Inspector.

A discussion regarding the submitted plans for the sewer system followed. The Board asked if the developer was aware of the possibility that the Town system could not handle the proposed product from the new site. Mr. Vaidya said he was not aware of this, but Mr. Slavitt said that the questions the Town Engineer had posed regarding the sewer layout were "just somebody reading the arrowhead wrong about the direction", and that no one had actually rejected the sewer plan. The Town Engineer had asked that calculations be done. Mr. Slavitt said this was a technical issue that would be addressed with the final building design.

The Board asked if the calculations requested by the Town Engineer had been submitted. Mr. Vaidya said they had been; Mr. Panagako said they had been filed with the HOP application; Mr. Slavitt said Mr. Panagako was in error. Mr. Slavitt said that the additional calculations requested by the Town Engineer in his letter of January 4, 1989, had not been performed, but would be done in due course. The figures do not relate to the general design, but to the mechanics. Mr. Slavitt added, "Attachment of sewer pipes is an engineering problem that will always be solved."

The Board responded that in September, 1987, the architects had received a letter from the Town Engineer requesting that plans be provided in accordance with a check list which included the calculations in question. The Town Engineer had stated in

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his letter of January 4, 1989 that there was not sufficient information to determine if the existing Town utilities could handle the output from the proposed project. The Board asked for verification that the Worcester Street sewers could handle the project.

Mr. Slavitt said that the project has been downsized several times, changing the baseline for drainage, electrical and sewer calculations. Once the project is accepted, final calculations can be made. He said that ultimately, the calculations will show the project can be plugged into the Town sewer system.

The Board again reviewed the adequacy of the parking plans. The submitted information mentioned 4 handicap spaces; the submitted plans showed 4 visitor spaces, but no handicap spaces; and a total of 91 underground spaces. The new plans show only 87 interior spaces, two of which would be handicap spaces (1 guest/1 owner), and 4 exterior visitor spaces. The Board asked if the total number would now meet the parking requirements because of the redesignation of spaces.

Ms. Sabino responded that there are no parking requirements in a Single Residence zone, and that the parking requirements in a Limited Apartment District are per unit with no separate designation of visitor versus owner.

This ended the official presentation, whereupon the Board heard comments from the public.

Citizens' Comments at the Hearing

Tony Parker, Chairman of the Board of Selectmen, read into the record a letter of opposition from the Board of Selectmen, which had been previously submitted to the Board of Appeals. Mr. Parker stressed that the Board's objection was not to

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affordable housing in general, but to this particular project as submitted to the Board of Appeals. The basic issues are density; safety, particularly that of the access road; traffic; the infrastructure in relation to the deficiencies expressed by the Town Engineer; design inadequacies in relation to providing housing for first time buyers; qualifications of the developer; and the inadequacies and inconsistencies of the submission.

James Copek, 16 Lilac Circle, expressed opposition to the petition.

George Tully, 19 Maugus Hill Road, was concerned that the Board's questions regarding density, soil erosion and sewerage had not been answered.

Estelle Rosenberg, 46 Maugus Hill Road, voiced concern about the effects of soil erosion in light of past history, and suggested that a bond be secured for the Town's protection. She said the area is still zoned Single Residence regardless of the developer's continued mention of a Multi-family zone. Finally, she asked where the public could view a project, similar to the one proposed, which had been built by the developer.

Mr. Panagako said that the partnership had not built any residential or commercial buildings, although individual partners had. Mr. Slavitt said that the qualifications of the developer were not within the mandate of the Board, but were exclusively within the funding agency.

Paul Shackford, 12 Fells Road, strongly urged denial of the permit as approval would set a precedent for large, high-density developments.

Rick Ciardella, 63 Pine Plain Road, expressed concern about landscape development in regard to the slope.

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Sue O'Neil, 23 Wareland Road, questioned the accuracy of the landscaping plan on which half of the proposed trees were planted on abutting properties, as mentioned in a letter of review from the Park Department. Mr. Hresko said it was a graphic error.

Richard Aldrich, 26 Lathrop Road, stated that since 1987, he has represented a group of Maugus Hill residents opposed to the project. He said the petitioner had suggested that the Board have a broad overview of the project, but should not get into technical issues. The purpose of a Comprehensive Permit, he said, was to combine into one review by one Board a review otherwise conducted by several Boards. It would be a mockery if the responses of the individual Boards were made irrelevant by new plans being presented at the hearing.

Mr. Aldrich said the project density exceeds HOP guidelines. He added that there is no possibility of off-site parking at this site, and therefore, no potential for meeting parking excess.

David Daly, 9 Damien Road, Board of Selectmen, questioned the duration of affordability of the units. Mr. Slavitt said that the minimum requirement is 40 years, but that the developer is committed to covenants that would run for the duration of the association, and that as long as the association controlled the building, there would be control on the resale price of the affordable units. Mr. Daly questioned the possibility of such a covenant, but Ms. Sabino said there were deed restrictions that could continue that were not contingent on financing.

Mr. Daly stated that the Planning Board's position is that Wellesley has met its land quota in regard to Affordable Housing, that therefore, that the local zoning bylaws could not be overridden. Mr. Slavitt said he was reluctant to give a legal

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opinion on the issue. He said the petitioner was looking for a decision now, and not to the event of an appeal.

Joseph Rosenberg, 46 Maugus Hill Road, read into the record the section of MGL Chapter 40B, Section 20 that pertains to "Consistent with Local Needs". He also quoted from a letter dated December 28, 1988, to Robert Marsh from Joseph Flatley, Director of MHP, as to funding agency requirements of a credit check, reference check and evaluation of past experience of the developer.

Sara Johnson, 30 Eaton Court, Board of Selectmen, cited the portion of Mr. Flatley's letter pertaining to the criteria in Chapter 774 regarding increased density under which a community can deny a Comprehensive Permit: a) the developer does not meet the requirements of the housing program, b) the project poses a threat to public safety; and c) the need for public housing has already been met.

Ms. Johnson said that in regard to density, HOP guidelines have been exceeded; there is no local support; and that according to Town zoning in the area, only 23 units could be built. In regard to public safety, the Fire Chief's review of the submitted plans stated that the access to the building was inadequate. The Planning Board has shown that Wellesley's land quota of 52.15 acres has been met as 70.23 acres are presently devoted to subsidized housing. As all three conditions for a denial of a comprehensive permit pertain, Ms. Johnson asked the Board to deny the request.

Mr. Slavitt refuted the fact that the 3-bedroom requirement of affordable units had not been met. According to the plans, he said, there are 17 affordable units; 3 will be rental, of which 2 are 3-bedroom. Of the 14 salable affordable units, 7 are

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3-bedroom making a total of 9 3-bedroom units which meets the requirement.

Mr. Slavitt said that the technical aspects of density were not an issue that the Board must explore, as it is a HOP criteria to be decided at the HOP level. He said that the Board should focus on the merits of the proposal and was not limited to the December submission, but could consider everything presented until the hearing closed.

Mr. Shackford questioned what merits the Board should consider, as Mr. Slavitt has said that the technical aspects of the access road, sewerage, electricity and drainage should not be included in the consideration.

Stephen Burke, 45 Wareland Road, took issue with the developer's claim that he had been responsive and accommodating. Mr. Burke said details have been omitted or changed, and that the developer keeps trying to tell the Board what its responsibilities and its charges are, and what it should and should not do. He said the project was not sensible for this site or this area; and that it was not sensible to expect the Board to approve plans that have been criticized with a promise from the developer that specifics would be provided later.

The Board commented on the deficiencies of the submitted traffic study: 1) no count at the entrance intersecting the ramp; 2) no count at the intersection of the ramp and Route 16 with information regarding left turns and u-turns; 3) no LOS (Level of Service) analysis of a "Build" versus a "No Build" situation.

Mr. Panagako said the traffic study was a study of the impact of the site on the intersection. The study stated the impact would be .8% during peak hours, and that the intersection of the ramp with Route 16 was rated "C", which is acceptable. The

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Board commented that had the study included the deficient areas, the figures might be different.

Ms. Johnson quoted from a preliminary review dated December 29, 1988, by Bruce Campbell, Town Traffic Consultant, of the submitted traffic study. Mr. Campbell stated that the increases in the critical westbound direction are in the order of 28%-40%. This figure pertains to traffic leaving the site, entering the access ramp on Route 9.

Susan Driscoll, 29 Wareland Road, said that she understood the site was considered desirable because it was within walking distance of shopping and transportation, but in reality, it is accessible only for those who are athletically inclined and not for a mother with a stroller, a child on a bicycle or someone in a wheelchair.

Mr. Panagako responded that according to MHFA, the site was approved for just that function.

Hugo Separini, 11 Wareland Road, registered opposition to the petition.

David Daly requested that the Board review the Site Plan Approval letter from MHFA, as the Board of Selectmen had questioned whether approval had actually been given.

Jim Brown, 94 Beechwood Road, said he believed the MHFA site plan approval was contingent on several conditions, one of which was community support.

The Board asked if the updated plans shown at the hearing had been submitted to HOP. Ms. Sabino said the plans had not been submitted to HOP as they had only been completed within the last day. She added that the only information submitted to HOP that the Board had not received was the affordability studies.

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There being no other evidence or comment offered, the Public Hearing ended.

Public Meeting on Decision

On January 18, 1989, the Zoning Board of Appeals held a Business Meeting at 7 p.m. in the office of the Planning Board, 525 Washington Street. All the members sitting on the Board at the Public Hearing were present. By a voice vote taken by the Chairman, the Zoning Board of Appeals unanimously voted to deny the petition of Capital Site Management Associates for a Comprehensive Permit. The reasons for said decision are hereinafter set forth.

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STATEMENT OF FACTS

The property in question is located at 418 Worcester Street, in a Single Residence District on a 2.57 acre parcel of land. The property is bounded by Single Residence zoned properties on Wareland Road, Maugus Hill Road and Eaton Court. The western corner is bounded by a Business District fronting on Washington Street.

The petitioner is requesting a Comprehensive Permit pursuant to the provisions of MGL Chapter 40B, Sections 20-23 to construct 1 building with three to five stories, to provide 56 condominium units, 17 of which would be designated as Affordable Housing.

The following plans were submitted on December 14, 1988: Cover Sheet containing Wellesley Estate Proposal Information; Macro Site Plan (A-1) dated 12/30/87, 11/21/88; Micro Site Plan (A-2) dated 12/30/87, 11/21/88; Parking Level Plan (A-3) dated 12/30/87, 11/21/88; First Floor Plan (A-4) dated 12/30/87, 11/21/88; Second Floor Plan (A-5) dated 12/30/87, 11/21/88, 11/30/88; Third Floor Plan (A-6) dated 12/30/87, 11/21/88, 11/30/88; Fourth Floor Plan (A-7) dated 12/30/87, 11/21/88, 11/30/88; Fifth Floor Plan (A-8) dated 12/30/87, 11/21/88; Roof Plan (A-9) dated 12/30/87, 11/21/88; North West and North East Elevations (A-10) dated 12/30/87, 11/21/88; South East and South West Elevations (A-11) dated 12/30/87, 11/21/88; Section Through Lobby Looking North East/South West Court Elevation (A-12) dated 12/30/87, 11/21/88; Wall Section (A-13) dated 11/21/88. All of the above plans were submitted by Hresko Yost Associates, Inc. and signed by Nancy Yost, Registered Architect.

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Also submitted on December 14, 1988 were the following: Plan of Land and Boring Locations dated 12/5/88; Grading Plan dated 12/5/88; Utility Plan dated 12/5/88. All of these plans were prepared by the BSC Group and signed by Dennis Harvel, Registered Professional Engineer.

Accompanying the plans was a document entitled "Wellesley Estates-An Affordable Housing Proposal" prepared by the petitioner. A Traffic Impact and Access Study, dated September, 1987, prepared by Vanasse Hangen Brustlin, Inc. was also submitted.

On December 27, 1988 a Site Plan (L-1) dated 11/30/88, signed by Nancy Yost of Hresko Yost was submitted.

All of the above mentioned plans and materials were distributed to the appropriate local boards.

On January 3, 1989, a Plan of Land and Boring Locations, dated 12/5/88, signed by Stephen Springer, Registered Land Surveyor of the BSC Group was submitted. The number of copies submitted was insufficient for distribution to the local boards.

The Design Review Board held preliminary reviews on the proposal on April 23, 1987 (80-100 units); May 27, 1987 (80 units); September 8, 1987 (62 units) and a final review on December 29, 1988 (56 units) at which time the Design Review Board voted unanimously to disapprove the plan as presented.

All of the plans and materials dated prior to January 3, 1989 were also distributed to the Planning Board, Wetlands Protection Committee, Town Engineer, Board of Health and Fire Chief pursuant to MGL Chapter 40B, Section 21. Written responses from each of the above were received and are on file at the ZBA office. The Town Engineer stated that the submission materials and plans were inadequate for a definitive

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review. The Fire Chief stated that he was unable to approve the project as submitted. The Planning Board, on January 4, 1989, voted unanimously to recommend denial of the Comprehensive Permit request.

Although not required by MGL Chapter 40B, Section 21, copies of all of the above-mentioned letters of review were sent to the petitioner.

Letters of comment and review were also received and are on file from the Board of Selectmen; Bruce Campbell, Town Traffic Consultant; the Natural Resources Commission; the Chief of Police; the School Committee and the Historical Commission.

At the Public Hearing held on January 12, 1989, the petitioner presented to the Zoning Board of Appeals a new set of plans dated January 12, 1989. None of these plans had been reviewed by the above-mentioned local boards.

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DECISION

Capital Site Management Associates, a Massachusetts General Partnership, seeks to obtain a comprehensive permit under the authority of MGL Chapter 40B, Sections 20-23.

The Zoning Board of Appeals has made a careful study of the evidence presented.

The area proposed to be developed for 56 condominium units, of which 17 would be affordable housing, contains 2.57 acres, located at 418 Worcester Street, in a Single Residence District. Access would be gained solely from a road to be constructed from Worcester Street (Route 9 Access Ramp).

The petitioner is requesting a comprehensive permit which would include the following requested exceptions to the current Zoning Bylaw: 1) Single Family Use; 2) Density; 3) Height: the height of some sections of the building is between 70 and 80 feet; the allowed height is 45 Feet; 4) Number of Stories: the developer's narrative states 4 stories, although the submitted plans show a fifth floor; three stories are allowed; 5) Site Plan Approval.

Noncompliance with the State Funding Agency Selected by the Petitioner (HOP)

In the opinion of the Board, the petitioner does not meet the requirements of the state funding agency in several specific areas, the most critical of which is the proposed density of the project.

According to Page 17 of the HOP Guidelines for Communities and Developers, September, 1988:

" The density relief requested should be reasonable given the general zoning

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and development pattern for the area contiguous to the project site. Unless there is local support, the level of relief sought may not exceed the higher of: a) 4 times the density of the surrounding neighborhood or b) 8 units per acre."

In this instance, there is no local support for the increased density. The area in which the site is located is currently zoned Single Residence with a minimum lot size of 20,000 square feet. The lot size of 118,536 square feet of the proposed project would accommodate 23 units at 4 times the density of the surrounding neighborhood. The HOP guidelines would permit 21 units on the site. The petitioner is requesting 56 units, which, in the opinion of the Board, is too great a density for the specific site and the area.

According to HOP guidelines, one-half of the affordable units must be 3-bedroom units. Of the 17 affordable units in this proposal, 9 should be 3-bedroom units.

Due to the total inconsistency of information on the cover sheet, the tables on the individual floor plans and the identification of the units on each floor plan, the number of 3-bedroom units appears to be 7 or 8. The cover sheet of the submitted plans states 7 affordable units will be 3-bedroom.

MHP Questions and Answers for Interested Home Buyers 5/86 states the purpose of the HOP program is:

"to give moderate-income households their first chance to buy and own a home...The purpose of this program is to reduce costs for first-time home-buyers by adding to the supply of affordable housing."

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The target group for the HOP program is families, some of whom will have children. There are no designated play or recreational areas provided. The remaining open space on the site is comprised of a steep hill.

The site plan approval letter dated November 4, 1988 from MHFA states that the number of units exceeds recommended standards for the HOP program. This issue has been addressed above. The letter continues:

"a) the proposed access road to the site must be designed in such a way as to be appropriate for emergency vehicle use and for adequate safety in adverse weather conditions

b) A traffic study should be submitted as part of any further application funds evaluating increased traffic flow, the speed of oncoming traffic and any safety impacts that may result, and the visibility of cars emerging from the site.

It should be noted that these issues represent major questions relating to the overall feasibility of this development..."

In the opinion of this Board, these issues have neither been adequately addressed nor resolved. In letters dated December 22, 1988 and January 6, 1989, the Fire Chief has stated that he does not approve the plans for the access road or the accessibility of fire equipment to the building. The traffic study submitted by the petitioner is deemed inadequate by the Town's Traffic Consultant, an opinion with which this Board concurs. There was a substantial difference in the impact of 8% stated in the submitted study versus Mr. Campbell's preliminary estimate of between 28% and 40% impact, and his final estimate of between 59% and 89%. There was no information as to the speed of the oncoming traffic or visibility.

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Consistency with Local Needs

There are two major criteria to be used in determining whether there exists a consistency with local needs. The first is referred to in MGL Chapter 40B, Section 20, which states "the need...to promote better site and building design in relation to the surroundings", while HOP Guideline, Appendix A, II MHFA Design Guidelines for Homeownership Proposals states:

"A. Architectural Treatment

VISUAL IMPACT IN RELATION TO COMMUNITY

- The building form should be appropriate and integrated into the topography and the neighborhood.
- The density characteristics and building form of the proposal should conform to and not detract from the surrounding area.

D. Site Design

- A complete landscape plan which maximizes existing natural features or otherwise enhances open space is highly desirable."

In the opinion of the Design Review Board dated January 5, 1989, the proposal does not provide adequate and attractive living and recreational areas for families, is not appropriate and integrated into the surrounding area, will detract from the surrounding area, and does not contain a complete and thorough landscape plan.

Although a comprehensive permit could not be rejected simply on the basis of a developer's inexperience, this developer's inexperience is relevant in this particular proposal. Neither the petitioner, Capital Site Management Associates, nor its president, John Panagako have had any residential or commercial building experience. Considering the complexity of the site in relation to soil erosion and

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drainage problems, the Zoning Board expresses its grave reservations about granting a comprehensive permit to this untested developer under the present circumstances.

The second criteria is found in MGL Chapter 40B, Section 20 which discusses "the need to protect the health or safety of the occupants of the proposed housing or of the residents of the city or town". In the opinion of the Board of Appeals neither the health or safety of the occupants nor the health and safety of the residents of the town would be protected were a comprehensive permit to be granted for this project.

The first threat to the safety of the residents of the proposed housing is the access road from the entrance on the Route 9 access ramp to the top of the site. The submitted plans show a proposed grade of 10% with reverse turns which exceeds the maximum grade of 9% allowed by the Town. Exiting traffic would have a restricted line of sight due to the horizontal and vertical curves. The retaining walls make the road a spiral, and no profile of the access road has been provided.

The Fire Chief, in a letter dated December 22, 1988, said that access to the building for fire equipment is inadequate. The plans show access for vehicles to only one corner of the building via the steep, winding driveway. This is unacceptable for a building of this size and occupancy. He added that Note #6 on the submitted Grading plan is incorrect, as no meeting with a traffic consultant to design the driveway layout ever took place.

Although revised plans were presented at the hearing, the Fire Chief has neither seen nor approved of the new plans.

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A review of the landscaping plan by the Park Department dated December 29, 1988, states that the white pines, proposed to be planted along the driveway, will compound the north facing slope by completely shading the road surface, resulting in severe icing conditions during the winter. The Park Department also noted that one-half of the proposed trees had been located on abutting properties.

The safety of the proposed building and site is totally inadequate and unsafe for the occupants. Two sides of the building are inaccessible to fire equipment, one of said sides containing five stories. (See Fire Chief's comments stated above.) Although the developer stated at the hearing that the building would be fully sprinklered, a sprinkler system protects the building for insurance purposes, but does not fully guarantee human safety. Regardless of the sprinkler system, two sides of the building would still be inaccessible to other emergency vehicles, such as ambulances.

No fire lanes and only 1 fire hydrant are shown on the submitted plans. In the letter from the Fire Chief to Mr. Panagako, dated January 6, 1989, he states that fire protection information is inadequate as to fire flow available at the site, fire flow available for the building, and the plans to provide fire flow are inadequate. In the letter of December 22, 1989, the Fire Chief stated that the information was not accompanied by documentation of a Registered Professional Engineer, as required. He adds that the Hresko Yost Fire Protection Memo does not coordinate with the submitted plans.

In the opinion of this Board both the building and the site would not protect the health and safety of its occupants.

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The Pedestrian Access to the site would not protect the health and safety of the residents of the proposed building. In the submitted plans, no pedestrian access was shown. A pedestrian access to be constructed along the right-of-way which appears in the submitted plans was discussed at the hearing, but no definitive plan was shown. Such an access, if constructed from Washington Street to the site, would be steep and would involve stairs. Furthermore, no evidence was submitted to establish that the petitioner would have the legal right to build permanent improvements with the right-of-way.

The submitted plans show a sidewalk along the access road. This pedestrian way does not constitute reasonable or safe access as the road is circuitous, steep, difficult in bad weather, and the visibility of pedestrians to vehicular traffic at the turns would be limited.

Traffic from the site would create an adverse impact on the safety of both the residents of the building and the residents of the Town. Although the submitted traffic survey estimates an increased impact of .8%, in a letter dated January 11, 1989, Bruce Campbell, the town traffic consultant, estimates the increase in the critical westbound direction on Worcester street to be between 59% and 89%, which is an additional increase over his preliminary estimate of 28% to 40%, noted in his letter of December 29, 1988. He adds that there would be an LOS change from D to E or E to F, which is not acceptable.

Mr. Campbell further states that the submitted traffic survey is incomplete as there is no traffic count for Route 9 (Worcester Street Service Ramp)/Route 16 intersection; no information regarding left turns or u-turns; no LOS for a "Build" and a "No Build" condition; and that there is no sight clearance from the entrance

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road to the western ramp rendering access dangerous.

The safety of handicapped residents and handicapped visitors has also not been protected. There is only 1 handicap space for a resident and 1 handicap guest space, which is inadequate. Handicap access to the building must be through the garage. There is no usable pedestrian access for handicapped persons to the site, as the proposed pedestrian access would be steep and have stairs, and the sidewalk along the driveway would not be negotiable.

Although not specifically related to the health and safety of the residents, in the opinion of the Board of Appeals, the parking plan is inadequate. The submitted information states 4 handicap spaces will be provided; the submitted plans show no handicap spaces, but 4 visitor spaces and 87 owner spaces in an underground garage. The new plans presented at the hearing showed 87 underground spaces, of which two were handicap (one owner space/one visitor space) and 4 exterior visitor spaces. As there is no off-site parking available, there is no potential for meeting visitor or owner excess.

In the opinion of the Board, the infrastructure of the project presents serious potential problems to both unit owners and town residents.

According to the Town Engineer's letter of January 4, 1989, additional capacity for drainage from the proposed site is not available. Design and calculations of run-off were inadequate, and there was no definitive storm drainage system plan submitted. No design or calculations for an underground dispersion system were submitted, so there is no definitive indication of feasibility.

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According to the Town Engineer, the layout for the water is unacceptable and the design is incomplete. Definitive design showing the location of the hydrants and the 30 foot wide fire lane has not been provided, nor does the design detail show how the pump will operate without having an adverse effect on the town electric and water systems.

The Town Engineer indicates that the design for the sewer is incomplete and the layout is unacceptable. No calculations have been submitted regarding sanitary sewer flow indicating that the town has the excess capacity available to accept the proposed flow.

According to the Town Engineer, the existing town electrical system does not have the capacity to serve this project.

Although the petitioner has repeatedly stated at the hearing that these technical details can be worked out and the required information submitted subsequent to approval of the petition, the Board is of the opinion that the petitioner has not submitted sufficient information to show that the construction of this project can be done safely and without adverse impact to existing town utility systems.

The soil conditions of the site present serious problems to town residents if the site were to be developed. The U.S. Soil Conservation Services's Soil Survey Report for the Town of Wellesley (1983) states that the soil type on the site is of the Paxton series, limitations of which include slope, stoniness and slow permeability in the hardpan substratum. The project site is classified as having "severe" constraints, meaning that "one or more soil properties or site features are so unfavorable or difficult to overcome that a major increase in construction effort, special design or intensive maintenance is required".

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In 1955, during construction of single family homes in the area, a massive mud slide occurred causing considerable damage to property at the foot of the hill on Washington Street, and costing the Town considerable financial outlay. A wall which supports the hill of this site is adjacent to a municipal parking lot as well as a private parking lot. There is concern that this structure would not be able to withstand additional pressure from a large scale development.

Neither an erosion control report nor a roadway design depicting underdrainage have been submitted.

In the opinion of this Board, the Zoning Bylaws of the Town of Wellesley are consistent with local needs following the comprehensive hearing.

Non-compliance with Procedural Requirements: Standing and Status of Applicant

According to 760 CMR, Section 31:01 Standing and Status of Applicant:

"An applicant shall submit to the Board and the Committee the following evidence of its organization which shall be sufficient to establish its standing:

- a) Evidence of its organization as a public agency, non-profit organization or limited dividend organization.
- b) Evidence of its interest in the proposed site.
- c) Written communication from the subsidizing agency indicating that the site is acceptable.

The Board has determined that the petitioner does not have the requisite standing or status.

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In the first instance, the petitioner, Capital Site Management Associates, is a General Partnership which was formed on December 30, 1986. Nowhere in the Agreement of General Partnership, or in the Wellesley Estates - An Affordable Housing Proposal is there documentation that the petitioner is a Limited Dividend organization.

In the second instance, the Board is of the opinion that there is insufficient documentation of the petitioner's interest in the site. The Purchase and Sale Agreement, dated December 16, 1986, is signed by John Panagako for Capital Site Management, Inc., a corporation which the Board has been informed, according to the Massachusetts Secretary of State's office, is not in good standing in the Commonwealth of Massachusetts. The deed to the property at 418 Worcester Street, dated December 30, 1986, names the purchaser as Kevin Hartigan, Trustee of the 418 Worcester Wareland Realty Trust. Although Mr. Hartigan is presently one of the General Partners of Capital Site Management Associates, the deed to the property on which the petitioner proposes to build is not in the name of the petitioner, and therefore, the petitioner, itself, has no interest in the site.

In the third instance, the Site Plan Approval letter from MHFA, dated November 4, 1988, does not appear to give unqualified approval as noted heretofore.

Therefore, this Board has determined that the petitioner does not have the appropriate standing as the three criteria which determine standing and status have not been sufficiently documented.

Noncompliance with Procedural Requirements: Local Action Prerequisite

In the opinion of this Board, the petitioner's submission is incomplete as he has failed to submit the following under 760 CMR S31:02 Local Action Prerequisite:

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"2a) Preliminary site development plans showing the locations and outlines of proposed buildings, the proposed locations, general dimensions and materials for streets, drives, parking areas, walks and paved areas; and proposed landscaping improvements and open areas within the site."

1. No surface parking spaces are shown, although at the Design Review Board meeting on December 29, 1988, the petitioner stated that 3 surface parking spaces would be constructed. At the hearing, the petitioner presented a new plan showing 4 surface parking spaces. The submitted plans do not show proposed locations, general dimensions and materials of these spaces.
2. No materials are shown for the underground parking area.
3. No depiction of the proposed walkway from the site to Washington Street is shown on any plan submitted. The proposed location, general dimensions and materials are not shown for the pedestrian access.
4. The location, dimensions and materials of the proposed 30 foot fire lanes are not shown on any submitted plan.

"2b) A report on existing site conditions and a summary of conditions in the surrounding areas, showing the location and nature of existing buildings, existing street elevations, traffic patterns and character of open areas, if any, in the neighborhood."

1. None of this information has been supplied.

"2d) A tabulation of proposed buildings by type, size (number of bedrooms, floor area) and ground coverage, and a summary showing the percentage of the tract to be

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occupied by buildings, by parking and other paved vehicular areas, and by open areas."

1. Number of bedrooms - the information as to the number of two-bedroom versus three-bedroom units is not consistent on the cover sheet, the table on the floor plan of each floor, and the floor plan itself. There is a question as to the actual number of two-bedroom and three-bedroom units, both affordable and market priced.
2. The summary figures showing percentages are present on the cover sheet, but are inaccurate.
3. The proposed 30 foot fire lanes are not shown, nor is that figure included in the percentage of paved vehicular area.

"2f) A preliminary utilities plan showing the proposed location and types of sewer water and drainage facilities including hydrants."

1. Sewer - the location of the sewer is shown, but according to the Town Engineer the definitive design including layout and profiles should be provided, as the submitted layout is unacceptable.
2. Water - the layout is unacceptable. Definitive design should be provided.
3. Hydrants - the location of only 1 hydrant is shown. The location of the additional 3 hydrants noted in the Development Prospectus are not shown on the submitted plans.
4. Drainage - the plan is inaccurate as to the dimensions of the town storm drain. A 12" drain is shown, whereas the existing town drain is actually 10". Due to this error, there is a serious question as to whether the

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existing town drain has the capacity to receive the proposed flow from the site.

These omissions were fully discussed at the hearing or alluded to as incorporated in the letters from the Town Engineer, the Park Department, and the Fire Chief noted at the hearing.

Submission of New Plans

MGL Chapter 40B, Section 21 states:

"The board of appeals shall forthwith notify each local board, as applicable of the filing of such application by sending a copy thereof to such local boards for their recommendations...The board of appeals, in making its decision on said application, shall take into consideration the recommendations of the local boards..."

At the public hearing, the petitioner presented new plans dated January 12, 1989, which had not been reviewed by any of the local boards to which the submitted plans had been sent for review. In the opinion of the Board of Appeals, the submitted plans which were reviewed by the appropriate local boards must be the plans on which a decision is based, as there has been no review or recommendations of the local boards regarding the new plans presented at the hearing.

Consistency with Local Needs as a Matter of Law

MGL Chapter 40B, Section 20 states:

"Requirements or regulations shall be consistent with local needs when imposed by a board of zoning appeals after comprehensive hearing in a city or town where (1) low or moderate income housing exists which is excess of ten per

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cent of the housing units reported in the latest decennial census of the city or town or on sites comprising one and one-half per cent or more of the total land area zoned for residential, commercial or industrial use.

"According to the statistics compiled by the Planning Board, the Town of Wellesley has met and exceeded the General Land Area Minimum of 1.5% devoted to low or moderate income housing as follows:

Total of land zoned for residential, commercial & industrial use	4,820 acres
Total public land excluded (Town owned)	1,046 acres
Total State owned public land excluded	297 acres
Total of land minus exclusions	3,477 acres
Statutory minima of 1.5%	52.15 acres
Total site acres for subsidized housing in Wellesley	70.23 acres

(See Appendix B attached)

We therefore find that low or moderate housing exists in Wellesley on sites comprising 1.5% or more of the total land area zoned for residential, commercial or industrial use, after excluding public land.

According to 760 CMR S 31.06 Procedures in Determining Consistency with Local Needs:

"(1) Where a city or town has met any of the statutory minima, as defined in MGL C40B, S20 and 760 CMR 30:04, the decision of the Board shall be consistent with local needs and is therefore final."

In light of all of the above issues and for all of the above reasons, the Zoning Board of Appeals has undertaken to review the petition to see whether the Town's

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local bylaws shall be imposed. There is no question that they should be and they hereby are imposed on this project in its entirety.

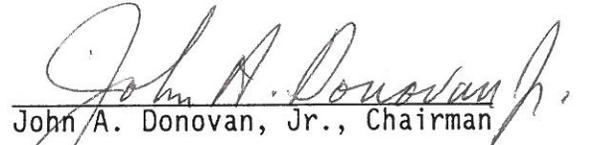
Conclusion

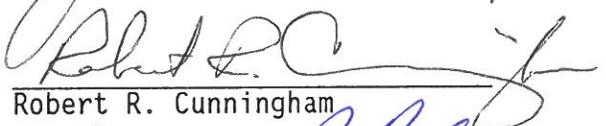
Therefore, this Board hereby imposes upon the applicant the Town's local zoning and other requirements applicable to this project. Further, in the event that the Town's regulations shall be determined not to be consistent with local needs, the Comprehensive Permit being applied for, not being susceptible to allowance with any reasonable modifications, is hereby unanimously denied.

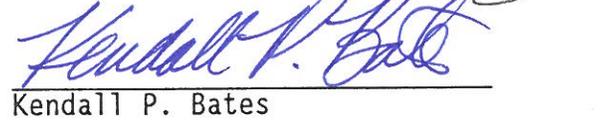
APPEALS FROM THIS DECISION, IF ANY, SHALL BE MADE PURSUANT TO MASSACHUSETTS GENERAL LAWS, CHAPTER 40B, SECTION 21, AND SHALL BE FILED WITHIN 20 DAYS AFTER THE DATE OF FILING OF THIS DECISION IN THE OFFICE OF THE TOWN CLERK.

cc: Board of Selectmen
Planning Board
Inspector of Buildings

edg


John A. Donovan, Jr., Chairman


Robert R. Cunningham


Kendall P. Bates

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WELLESLEY SUBSIDIZED HOUSING

DATE	UNITS	NAME OF PROJECT	ACREAGE
1988	11	SECTION 8	-----
1988	5	707	-----
1987	8	MBCC	45.37
1982	36	ARDMORE	1.2
1978	125	GLEN GROVE	3.8
1976	57	WESTON ROAD & RIVER STREET	1.55
1975	12	WALDO COURT	.45
1972	40	MORTON CIR ADDN	-----
1958	36	MORTON CIRCLE	2.86
1955	--	WELLESLEY WOODLANDS	-----
1950	89	BARTON ROAD	15
1946	--	BARTON COURT	-----
CURRENT TOTALS	419 (12/28/88)		70.23

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