



Notice of Decision

June 19, 1995

The decision of the Zoning Board of Appeals on the ~~appeal~~ petition of ... Hastings Village, Inc. ....

relating to the premises at ... 54-66 Hastings Street ... has been filed with the Town Clerk. The ~~appeal~~ petition was ~~granted~~ denied

Appeals if any, shall be made pursuant to the applicable Section of Chapter 40A, Mass. General Laws, as amended, and shall be filed within twenty (20) days after the date of filing of such notice in the office of the Town Clerk.

Ellen D. Gordon
Executive Secretary
431-1019

DECISION

of the

TOWN OF WELLESLEY

ZONING BOARD OF APPEALS

On Application of

HASTINGS VILLAGE INC.

For a

Comprehensive Permit (M.G.L. Chapter 40B)

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Dated: June 19, 1995

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ZONING BOARD OF APPEALS  
TOWN HALL WELLESLEY, MA 02181

JOHN A. DONOVAN, JR., Chairman  
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On June 23, 1994, the petitioner, Hastings Village, Inc. (HVI), 376 Washington Street, Wellesley, MA, filed a petition requesting a Comprehensive Permit pursuant to the provisions of MGL Chapter 40B, Section 21, to construct one apartment building, with a footprint of 24,200 square feet and a floor area of 158,308 square feet. The building would contain five and one-half stories to provide 87 apartments; 7 one-bedroom, 73 two-bedroom, and 7 three-bedroom units, of which 22 units would be designated as affordable housing. Parking for 159 cars would be provided; 97 spaces in a two-floor underground parking garage and 62 spaces on site. The project is proposed for a 95,267 square foot (2.18 acres) lot at 54-66 Hastings Street, in a Single Residence District and a Water Supply Protection District.

1. DESCRIPTION OF PROPOSAL

The petitioner, Hastings Village, Inc., has submitted a petition for a Comprehensive Permit pursuant to MGL Chapter 40B, Section 21, to construct an 87 unit apartment building containing 7 one-bedroom (6 with lofts), 73 two-bedroom (12 with lofts) and 7 three-bedroom units, of which 20 of the two-bedroom and 2 of the three bedroom units would be designated as affordable housing.

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The building will contain 5 1/2 stories at a height of 70.5 feet; the top half-story comprising the loft area for the fifth floor apartments. Two underground parking levels will contain 97 spaces, with 62 spaces located on grade.

The L shaped building will have a length of 265 feet fronting Hasting Street with a short leg on the northern side of the property. The building footprint will cover 24,200 square feet, or 25.4% of the lot; drives and outside parking will cover 26,120 square feet, or 26.4% of the lot; and landscaping will cover 44,947 square feet or 47.2% of the lot.

The exterior parking spaces are located at the northern and eastern sides of the building.

The petitioner's site development plans show relocation of the existing barrier across Hastings Street to the southern end of the property in order to allow access to the site only from the Worcester Street ramp via the northern end of Hastings Street. Permission to relocate this barrier must be obtained from the Board of Selectmen.

## 2. LOCATION AND SITE DESCRIPTION

The subject property, comprised of 5 building lots totalling 95,267 square feet, is located at 54-66 Hastings Street in a Single Residence (15,000 square foot) District and a Water Supply Protection District. The property is bounded on the north by a Business A District. The abutting property at 70 Hastings Street, contains a three-story office building occupied by Roche Brothers.

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The property is bounded on the west by the Town Forest (the Rosemary Brook Wellhead protection area), and to the South by a Single Residence District. The Fiske Elementary School is located directly opposite the site on the eastern side of Hastings Street. At the northern end of the property, a barrier across Hastings Street, 450 feet from the Worcester Street intersection, isolates the northern end of the street, allowing access to the Roche Bros. Parking lot and Silver Lake Dodge, but barring access to the portion of Hastings Street extending through the Single Residence District.

Furthermore, the site is located upgradient and within 700 feet of the Rosemary Well, 1,000 feet from the Longfellow Well and within the DEP designated Zone II recharge area for the Rosemary Brook Well.

3. RELIEF REQUESTED FROM EXISTING ZONING

- 3.1. Section II - Single Residence Districts - in which apartment buildings are not allowed by right, and Major Construction Projects require Site Plan Approval.
- 3.2. Section XVII - Area Requirements - under which the 95,267 square feet of a lot in a 15,000 square foot district could contain no more than 5 single family dwellings; and the lot coverage could be no greater than 25%. The percentage of lot coverage requested is 25.4%.
- 3.3. Section XX - Heights of Buildings or Structures - under which the allowed height of 45 feet would be exceeded by the proposed height of 70.5 feet measured from the average finished grade.

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3.4. Section XIVE - Water Supply Protection Districts - under which a Special Permit is required for a Major Construction Project, a parking lot, and rendering more than 10,000 square feet impermeable.

#### 4. PROCEDURAL HISTORY

Public Hearings on this petition were held on July 14, 1994, September 8, 1994, September 29, 1994, November 3, 1994, March 16, 1995, and May 11, 1995. Each Public Hearing was duly noticed in the Office of the Town Clerk and by mailing and publication in the Wellesley Townsman. Public Meetings were held on December 8, 1994, January 5, 1995, and February 9, 1995, all of which were posted in the office of the Town Clerk.

##### 4.1. Materials Submitted

A Comprehensive Permit Application was submitted which contained the following sections: Official Development Prospectus; Application; Request for Findings of Fact; Index of Exhibits; Exhibit A (Description); Exhibit B (Articles of Organization & Amendment; Letter from Murray Corman to Peter L. Fohlin regarding "limited dividend" developer, dated 3/28/89; Exhibit C (Purchase & Sale Agreement dated 6/22/94); Exhibit D (Letter from Shawmut Bank, dated 6/15/94); Exhibit E (Quitclaim Deed dated 3/20/84); Exhibit F (Report on Preliminary Oil and Hazardous Material Site Evaluation by Haley & Aldrich, Inc., dated January, 1992; Exhibit G (List of Requested Exceptions to Wellesley Zoning Bylaw) and Exhibit H (Preliminary Assessment of Traffic Impacts by Louis Berger & Associates, dated 6/20/94.

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The following plans were submitted with the petition: Existing Conditions, Locus Map, Site Development Plan, Grading & Utility Plan, Landscape Plan, Details Plan, all dated June 16, 1994 and signed by Christopher R. Mello, Registered Land Surveyor, and Clayton A. Morin, Professional Engineer. The following architectural plans were submitted: Conceptual Site Plan, Typical Unit Plans, Elevations, Parking Level, First Floor Plan, Second, Third & Fourth Floor Plan, Fifth Floor and Loft Plan, all dated June 16, 1994, drawn by David O'Sullivan, Registered Architect.

On July 8, 1994, Design Calculations dated June 30, 1994, prepared by Eastern Land Survey Associates, Inc. and a Grading & Utility Plan dated June 16, 1994, with no revision date, were submitted.

Copies of all the aforementioned plans and materials were distributed to the Planning Board, Design Review Board, Wetlands Protection Committee, Town Engineer, Board of Health, Fire Chief, and the Board of Selectmen. Letters of review were received from all of the above, as well as the School Committee, and are on file in the office of the Board of Appeals.

#### 4.2. PUBLIC HEARING - July 14, 1994

##### 4.2.1. **Petitioner's Presentation**

Mr. Robert Engler, of Stockard, Engler & Brigham, the development consultant, introduced the members of the development team: Logan Huffman, principal of Hastings

Village, Inc., the developer; David O'Sullivan of Miquelle MZO Group, project architect; James MacDowell of Eastern Land Survey Associates, Inc., project engineer; Donald Cooke of Louis Berger & Associates, traffic consultant; Susan Johnson of Newton Community Development Foundation, Inc., proposed management agent; and Attorney Steve Nolan of Hill & Barlow.

Mr. Engler gave an overview of the project, after which Mr. O'Sullivan, using a site plan graphic, described the site and the location of the building. He explained that the developer proposed to relocate the barrier across Hastings Street at the northern end of the property to the upper end of the site, so that all access to the site would be from the northern end of Hastings Street via Worcester Street. In an attempt to mitigate the size and height of the building, existing grades have been utilized, and as many trees as possible will be maintained. The front and rear building elevations facing Hastings Street and the Town Forest are 66 feet; the trees behind in the Town Forest are between 50 and 60 feet. Resident parking is largely contained in two underground parking levels, with outdoor handicap and visitor parking at grade level.

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Mr. MacDowell explained the proposed grading of the site. Sanitary sewer will connect to the building in two locations and will be connected to the sewer on Hastings Street. No sewer pumps are proposed. The site is underlain with very pervious sand/gravel deposits and exhibits virtually no runoff. The proposed stormwater drainage system will consist of several catchbasins throughout the paved portion, with trenched drains at the

garage entrance. All catchbasins and drains will connect to an underground recharge facility consisting of a trench four feet below grade filled with rock at a depth of three feet. Three underground trench systems are proposed to handle the roof runoff.

Mr. MacDowell noted that memorandums from the Wetlands Committee and the Town Engineer requesting additional information had been received, and the information would be provided.

Mr. Cooke gave a brief analysis of the traffic impact of the development at the intersections of Hastings/Worcester Street and Cedar/Worcester Street, and noted that the Mass. Highway Department has recently completed a 100% design plan for the Cedar/Worcester Street intersection which is expected to improve the Level of Service (LOS) from F to D. The LOS at the Hastings/Worcester Street intersection is A.

Ms. Johnson explained the scope of services offered by the Newton Community Development Foundation, the proposed management organization, and noted the affordable properties the Foundation manages. This concluded the developer's presentation.

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#### 4.2.2. Planning Board Presentation

Margery Marks, Planning Board Chairman, read into the record the letter of review from the Planning Board. The review noted that the proposed complex would be 39% denser than allowed in any zoning district in Wellesley, and that the proposed height exceeds

by 47% the maximum allowed height of 45 feet. The Planning Board recommended that the affordable units be affordable in perpetuity.

#### 4.2.3. Sheridan Hills Neighborhood Association Presentation

The Sheridan Hills Neighborhood Association (SHNA) submitted copies of its presentation to the Board, which contained the following: Opening Remarks, Zoning Bylaw and Concerns; MGL Chapter 40B; Environmental Concerns; Traffic Concerns; and Closing Remarks.

Katherine MacDonald (Zoning Bylaw) commented that the size, height and density of the project is not integrated into the residential character of the surrounding neighborhood, as the density is 40 units per acre, the lot coverage is 52% rather than 25%, and the height of the building is 3 1/2 times the height of the closest home. The site is in a Water Supply Protection District, above an aquifer directly connected to the Town Wells. The parking lots and building footprint would render 52.8% of the lot impervious.

Stanley Brooks (MGL Chapter 40B) stated that there were a number of questions regarding the "Standing" of the petitioner in regard to status as a limited dividend organization, the existence of a Subsidizing Agency, the fundability of the project and the sufficiency of the Site Approval Letter and proceeded to amplify the SHNA's concerns in each area.

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Mr. Donovan asked about the subsidizing agency. Mr. Engler responded that the Shawmut Bank was the subsidizing agency as a member of the Federal Home Loan Bank system, which provides discounted loans to its member institutions. The discounted loan is the subsidy and the Shawmut is the subsidizing agency.

Mr. Donovan asked what the level of involvement of FHLB and Shawmut would be in construction oversight and in seeing that the needs of the community and project are respected as compared to that of MHFA. Mr. Engler responded that the oversight agency would be the permanent lender, which has not yet been determined. He said that Shawmut has accepted the responsibilities of being a subsidizing agency, as its letter states the affordability requirements as a statement of condition. The purpose of a subsidizing agency is to impose the affordability regime on the project and to provide a low interest rate subsidy.

Mr. Engler stated that the site approval letter from Shawmut meets the two tests of such a letter: is the site acceptable for affordable housing as proposed, and does the developer meet the guidelines of the Federal Home Loan Bank's affordable housing program.

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Cynthia Hibbard (Environmental Concerns) explained that the site is adjacent to the Rosemary Brook Wellhead Protection Area and within the DEP-designated Zone II recharge area for the Rosemary Brook well. Two of the four town wells are within 1,000 feet down gradient from the site. The aquifer water directly beneath the site is part of the zone of

contribution to the well. Special care must be taken to avoid the risk of contamination to these wells as 1 1/2 acres of building and pavement would be immediately uphill and draining into a wellhead recharge area.

Ms. Hibbard critiqued the submitted stormwater drainage plan as inadequate in regard to the size of the catchbasins, the lack of control baffles, and the lack of a maintenance program. She questioned the precise level of the maximum groundwater elevation, as it appears that the underground garage would invade the groundwater table. She also objected to the wholesale clearing of trees on the site and noted that the proposed building would be two stories higher and almost three times wider than the Roche Brothers building directly below the site.

The SHNA gave a slide presentation which showed the site from various locations with the proposed structure superimposed from various angles to make their point that the proposed building would visually dominate the area from all elevations.

Dennis Pruslin (Traffic Concerns) Mr. Pruslin expressed concern that the submitted traffic study was unrealistic and incomplete, and that the traffic measurement was taken during school vacation week. The study concludes that safety at the Worcester/Hastings Street intersection is inadequate, and that ramp traffic capacity is unacceptable now, will be unacceptable after the Mass Highway Department upgrade, and more unacceptable with the proposed development.

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Mr. Donovan stated that the Board would prepare a list of considerations on which further information and/or plans would be requested to be submitted prior to the next Public Hearing scheduled for September 8, 1994.

#### 4.2.4. Information Requested for the Next Hearing

On July 19, 1994, a letter requesting the following information was sent to the developer:

1. An expanded traffic study, including all information requested by Bruce Campbell
  2. Calculations, plans and data requested by the Wetlands Protection Committee, designating data base as Wellesley datum or USCG
  3. All information requested by the Assistant Town Engineer, especially addressing issues raised as to the "substantial risk of contamination" and to the lack of adequacy of the water main.
  4. Certification from the Secretary of State of the incorporation of Hastings Village, Inc.
  5. Proof of status as a Limited Dividend Corporation.
  6. Substantiation that Shawmut Bank is a "Subsidizing Agency", willing to undertake oversight responsibilities during and after construction, itemizing specific oversight responsibilities to be undertaken.
  7. Verification of groundwater level.
  8. Documentation regarding origin and cleanliness of fill transported to the site.
  9. Topographical plan including site sections and grade elevations of site. Existing and final grades should be shown.
  10. Consistent setback dimensions on all plans and concurrence of architectural plan dimensions with site plan dimensions.
- Other minor items were also requested.

#### 4.3. PUBLIC HEARING - September 8, 1995

As none of the requested information had been submitted, the Board met in order to continue the hearing to September 29, 1994. Both the petitioner and the neighborhood association were informed of the continuation. Notice was given in the Wellesley Townsman and posted in the Office of the Town Clerk.

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#### 4.3.1. Interim Events

On August 8, 1994, the Board of Selectmen discussed relocation of the Hastings Street barrier with the developer. Town Counsel indicated that a proposal for removal of pavement to provide green space to separate the neighborhood would require discontinuance of a portion of the public way, which could only be accomplished through a public process such as a Town Meeting Action. The Board voted to have Bruce Campbell, Town Traffic Consultant prepare a study on whether to move, remove or leave the barrier in place.

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#### 4.3.2. Materials Submitted

On September 9, 1994, the following plans were submitted: Existing Conditions, Site Development, Grading & Utility, Landscape and Details. All plans were dated June 16, 1994, revised August 19, 1994, and signed by Clayton Morin, Professional Engineer, and Christopher R. Mello, Registered Land Surveyor. A note on the plans stated "Elevations refer to Hastings Street Sewer Datum." Also submitted was a "Response Package", dated September 8, 1994, in which each request was paraphrased, followed by an answer.

Letters of review were received from the Water/Sewer Division, the Wetlands Protection Committee, the Board of Health, and the Chairman of the Board of Public Works.

On September 22, 1994, the Design Review Board reviewed the proposed 87 unit apartment development, and commented that the attempt to integrate the design of the apartment building into the adjacent neighborhood of predominantly single family homes was unsuccessful.

4.4. PUBLIC HEARING - September 29, 1994

The focus of the hearing centered on the issues of standing, engineering and the updated traffic information requested by the Board.

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Mr. Nolan stated that under the New England Housing Fund, there is no specific limited dividend organization requirement. Hastings Village, Inc. has voluntarily agreed to limit the dividend to ten percent, and to accept that as a condition.

Mr. Nolan further stated that as to a "subsidizing agency", the Federal Home Loan Bank of Boston is already recognized on the affordable housing inventory of the State, under a program that is a close analogy to the one under which the developer is working. The Federal Home Loan Bank would be the subsidizing agency, with Shawmut Bank acting as its agent. The FHLB would require annual reports from Shawmut. There would be no direct relationship between the developer and the FHLB.

The Chairman asked, as there is no permanent financing in place, who would oversee that the dividend was limited to 10 percent and that affordability was protected. Mr. Nolan responded that they would find an institution that would be a FHLB lender, that would continue under the New England Housing Fund program, and would continue to do the monitoring for at least 15 years, which is the length of the loan.

Mr. Arthur, Chairman of the SHNA, commented that the New England Housing Fund is not listed in Chapter 40B as a subsidizing agency.

Douglas Stewart, Assistant Town Engineer, read the comments from the various Public Works departments.

Mr. Polletta noted that none of the submitted plans contained a benchmark or referenced Town of Wellesley or USGS elevations, nor were the plans live stamped and dated.

Mr. MacDowell said that the plans referred to a bench system on an As-Built plan prepared for the construction of the existing Hastings Street sewer, and measured from the sewer manhole inverts.

Joseph Duggan, Superintendant of the Water & Sewer Division, said that his judgment differed from the response of the developer which stated, "We believe that this development is in no way a risk of contamination." Mr. Duggan explained that the percolation tests done on the site show that the rate is more rapid than two inches per minute. The Rosemary and Longfellow wells are 40 and 47 feet deep and are unconfined in that there is not less pervious layer separating them from the surface. Therefore, they are at risk of contamination from surface land uses.

Mr. Duggan said that monitoring wells should be constructed by the developer prior to the onset of construction phase, as this phase itself represents a very real opportunity for groundwater contamination. The location of the wells, the screening provided, and the

monitoring of the wells is critical. The site should be monitored as close to the source as possible. Mr. Duggan agreed with Mr. Polletta that the installation of an MWRA gas/oil separator should be installed in the lowest level of the underground garage.

Mr. Polletta commented that the information on the groundwater elevations was not complete.

Don Cooke presented the results of the expanded traffic survey. He explained that the preferred option was to relocate the Hastings Street barrier to the southern end of the property so that all access to the site would be via the Worcester Street ramp onto Hastings Street. He stated that without the completion of the Mass Highway project, not only do the existing future operations fail, but there is no way to accommodate traffic from the proposed site. The major safety concerns are the rather limited site distance from the Hastings/Worcester Street intersection due to the vegetation and vehicles parked along the front of the Silver Lake Dodge property. The Cedar/Worcester Street intersection has been identified by the State as one of its high accident locations. Queue lanes on Worcester Street are extensive, often extending back to Hastings Street, and occasionally onto Route 9. The Mass Highway project, which will involve painting and signalization, will also include a widening within the Mass State right-of-way on the eastbound Worcester Street ramp. The widening would add 4 feet to the right lane of the eastbound ramp. There will be one 12-13 foot lane down ramp and two 11 foot lanes coming up ramp. These improvements are expected to be completed by July, 1995.

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Mr. Pruslin of the SHNA commented that the improvements would be nullified by bad weather or during the winter, when two lanes could narrow back into one.

Margaret Mongello, Upwey Road, read into the record a letter signed by 10 residents on Upwey Road regarding their experiences and problems encountered with the developer in terms of the Upwey Road subdivision, and information regarding the Indian River Subdivision in Ashland, which was also originated by the developer.

Bruce Campbell, Town Traffic Consultant commented that the safety problems focus on the severe site distance problem and the 50 mph speed of the cars exiting Worcester Street onto the ramp. The Mass Highway Department remediation plan does not extend the length of the ramp, but stops half way between Cedar and Hastings Streets. Improvement of the Hastings/Worcester Street intersection is essential, as the use of the intersection, which is mainly during business hours at present, will be extended through evening hours. There will also be increased danger due to the increase in cars making left turns across the two lanes of eastbound traffic on the ramp to access Hastings Street. This situation also must be remediated. No occupancy of any apartment building on Hastings Street should be allowed until the Mass Highway Department has completed its improvements.

The Board continued the Public Hearing to November 3, 1994. Mr. Polletta requested that the developer furnish test borings, determine the groundwater table level, and identify the material from the sand to the water table. A benchmark should be identified and

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the datum on which the elevations were based should be furnished. The drawings should be live stamped and dated. Mr. Donovan concluded that if the Board needed additional information, it would be requested immediately.

#### 4.4.1 Materials Requested

On October 12, 1994, the Board requested by letter the following information

1. Pro Formas using the MHFA Rental Projects Pro Forma for 16, 32, 53 and 87 units
2. The exact total of bedrooms, including space that could be used for sleeping, and the maximum number of occupants of the 87 unit apartment building.
3. Copy of the application for funding submitted to Shawmut Bank.
4. Two sets of live stamped, dated and signed copies of engineering plans.
5. Three tests borings, one of which to be made at location closest to Town wells. Document strata, water table and refusal. Plans to show locations of test borings to be accompanied by log identifying elevations and types of materials encountered.
6. Funding of a hydrologist as a consultant to the Board of Appeals.

#### 4.4.2 Materials Submitted

In response to this request, on October 27, 1994, the developer submitted responses to 1-4. On November 1, 1994, the developer submitted soil logs for borings B-1, B-2, B-3, B3a, and B-3b, all taken between October 27-28, 1994.

As the developer believes that the project as designed "poses no threat to the surrounding area or groundwater", the need for a hydrologist was not considered.

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#### 4.4.3. Interim Events

In the interim, the Water & Sewer Division of the Department of Public Works had

hired the firm of Woodard & Curran to review the submitted stormwater drainage plan. A report dated October 27, 1994, addressed to Joseph Duggan, Superintendent of the Water & Sewer Division, was submitted to the Board of Appeals. The report focused on actions to best mitigate the risk of contamination to the groundwater and aquifer during construction and post development, if the development were to be allowed.

On November 3, 1994, Paul Demit of the MWRA, submitted a memorandum entitled "Potential Impacts to Rosemary Brook and Longfellow Municipal Well Water Supplies" which focused on design and performance recommendations for the stormwater drainage system submitted by the developer.

#### 4.5. PUBLIC HEARING - November 3, 1994

Mr. Donovan opened the hearing by stating that the Board is seeking to allow some type of Affordable Housing project that would be in the interests of the Town.

Mr. Engler gave an explanation of the figures on the submitted pro formas, and stressed that downsizing the number of units would make the project financially unfeasible, and that nothing but 87 units would be feasible. He then gave a brief explanation of the other items submitted by the developer.

Paul Demit, MWRA representative, recommended that all provisions pursuant to Section XIVE of the Wellesley Zoning Bylaw be incorporated in the project. He further

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recommended that the parking lot should contain oil/water separators, with a regular monitoring and pump-out plan. He noted that the many stormwater disposal trenches were buried, and expressed concern as to long term maintenance.

Mr. Demit proposed a number of mitigation measures during the construction phase, and emphasized that groundwater monitoring wells should be installed downgradient of the site with periodic testing reports submitted to the Town in order that any potential contamination could be identified and the problem addressed before the contaminants reached the wells.

Mr. Demit explained that there is a direct hydraulic connection between what is under the site and the wells, and that water pumped from under the site goes directly to the wells.

Joseph Duggan discussed the Woodard & Curran report, noting that the consultant was also concerned with the subsurface disposal trenches, which would provide a direct injection into the subsurface Merrimac sand, which is a very permeable soil condition. Any runoff, which could have contamination of hydrocarbons which should be aerated. Any contamination would be a direct shot into the Aquifer, and hence into the wells.

Mr. Duggan stated that Woodard & Curran also recommended two on-site and three off-site and down gradient monitoring wells. There would still be a risk in anticipatory monitoring that contamination could appear and bypass the monitoring wells.

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Mr. Polletta stated that the plan submitted does not show the locations where the test borings were taken. The developer responded that the borings have not yet been completed, and that the boring locations have not yet been physically sited on a plan. The information should be available within a week.

Bruce Campbell, Town Traffic consultant, reviewed the traffic issue, and suggested that the Board require that the Mass Highway project be completed before the Hastings Village project were to be occupied. However, the State project does not include any improvements at the Hastings/Worcester Street ramp intersection. The State has not yet decided how much of Silver Lake Dodge's encroachment onto State land will be included in any remediation of the site distance.

Mr. Campbell suggested that any remediation plan proposed by the developer for the intersection would require State permission, and would have to follow State dictates, as the Mass Highway Department would have ultimate responsibility for the changes.

Mr. Campbell recommended that an acceleration lane be provided so that cars exiting Hastings Street to proceed up the Worcester Street ramp would have sufficient time to safely enter onto the ramp. He also recommended that full substantial protection of the westbound lane be provided for the entire length of the ramp.

Both Mr. Cooke and Mr. Campbell agreed that a deceleration lane for cars exiting Route 9 onto the ramp; an acceleration lane for right turns out of Hastings Street, and

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substantial protection for left turns coming down and across the ramp into Hastings Street were necessary for traffic safety.

Ms. Hibbard submitted a report on neighborhood concerns which included Contamination of Drinking Water Supply, Traffic Impacts, Vehicle & Pedestrian Safety, Visual Impacts, Impacts on Town Services, and Preservation of Affordable Housing.

Richard Warner read into the record the SHNA "Alternative Proposal" which involved a project consisting of 3 townhouses with 4 units in each townhouse, which would meet all the Zoning requirements of a Townhouse District.

Anthony Mooney, attorney for the SHNA, submitted a Motion to Dismiss the Comprehensive Permit Application.

Mr. Donovan stated that the Board would maintain discretion on the motion until a final decision was made. He further stated that the Public Hearing would be suspended until further notice, but a Public Meeting would be held on December 8, 1994 for the purpose of discussion with the developer on all the outstanding issues.

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4.5.1. Materials Requested

In a letter dated November 8, 1994, the Board requested that a new stormwater drainage plan, responsive to the recommendations of the MWRA, Mr. Duggan and Woodard & Curran be developed to reduce the risk of potential contamination to the wells from the

underground disposal trenches which allow parking lot contaminants to be sent directly to the aquifer, and the single chamber hooded catchbasins allowing emulsification of oil and water, which eventually flow to the aquifer.

The Board also requested a plan showing the groundwater flow pattern and the proposed location of the five recommended monitoring wells. Section drawings and estimated costs of the revised proposal were also requested.

4.5.2. Materials Submitted

On December 2, 1994, the developer submitted a Site Development Plan dated 6/16/94, revised 8/19/94. revised 10/25/94, revised 11/28/94, signed by Clayton A. Morin, Registered Professional Engineer, and Christopher R. Mello, Registered Land Surveyor. A letter of explanation of the proposed changes, signed by James MacDowell of Eastern Land Survey Associates accompanied the plan.

A review of the plans was made by Joseph Duggan, and a letter dated December 5, 1994 from Mr. Duggan stated, "No contours, no section or profile views, and no details were provided. It is therefore impossible for me to begin to evaluate if these plans are feasible."

4.6. PUBLIC MEETING - December 8, 1994

The Chairman presented the opinion of the Board that a project that was reduced in

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size would have merit, as the 87 unit proposal was too dense, and asked if the developer were willing to compromise on the size of the plan.

Mr. Engler stated that the developer needed to know all the conditions that the Board would impose in order to measure the density as a variable of the cost of meeting the conditions.

Mr. Polletta stated that although the developer has professed to providing the Board with all requested information, the letter from Mr. Duggan refutes that statement. Mr. Polletta explained that the installation of the MWRA Vented Gas Trap in the proposed building would also require a pump to lift the sewerage to the Hastings Street sewer line.

Mr. Donovan explained that although conditions could be imposed in a final decision, the water issue was extremely sensitive, and the Board would request that the stormwater drainage system be designed and reviewed prior to any decision.

Mr. Polletta stated that the information submitted related to the installed wells, but there were no elevations on the wells. There is also no documentation that the required separation level between the MWRA Vented Gas Trap and the groundwater can be satisfied. The requested documentation regarding the fill used on the site has still not been submitted. To date, only two test borings have been done.

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The Board commented that the requested information was being submitted in a piecemeal manner, which has not been coordinated.

The developer was of the opinion that all the requirements in the Woodard & Curran letter could be met as well as the traffic remediation agreed upon by Donald Cooke and Bruce Campbell. He agreed to return on January 5, 1995 with either a revised proposal downsizing the density and an improved stormwater drainage plan, or with a decision not to go forward.

4.7. PUBLIC MEETING - January 5, 1995

At the Public Meeting held on January 5, 1995, an alternative proposal for 52 units in a Townhouse configuration was presented.

4.8. PUBLIC MEETING - February 8, 1995

At the Public Meeting held on February 8, 1995, the alternative proposal for 52 units was discussed.

4.9. PUBLIC HEARING - March 16, 1995

The Public Hearing held on March 16, 1995 was devoted to negotiation between the Board and the developer regarding the density of the alternative proposal.

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4.10. PUBLIC HEARING - May 11, 1995

At the Public Hearing held on May 11, 1995, the developer presented a second alternative proposal of 44 units in the same Townhouse configuration as the first alternative proposal for 52 units. Buildings A and B, which front Hastings Street, would each contain 3 attached pods. Each pod contains two two-bedroom apartments and two two-bedroom with loft apartments on the second floor. The two buildings stretch the width of the lot, leaving a 20 foot setback on both the north and south sides. Building C, which is located at the rear of the lot, contains 5 pods moving from north to south across the lot with a 15 foot setback from the rear property line. Each pod contains two two-bedroom apartments on a lower floor and a first floor, and two two-bedroom with loft apartments. All three buildings have one underground parking space for each apartment and 32 additional outdoor spaces at the garages. None of the submitted plans show the exact location of the second outdoor spaces.

Twenty-three parking spaces, which appear to encroach into the public way, are located in front of Building A and B, and 7 spaces are located to the south of Building

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The proposed stormwater drainage system is located in the north northwest corner of the property. The new plan routes the volume of the parking lot and drive runoff through a multi-chambered oil and grease separator, and then sends the water to a lined detention basin (Basin A) for exposure and additional separation via a down turned outlet. Discharge from Basin A is routed through Basin B, which is designed with little detention capability due to a "V" notch weir and a stone channel strip in the center. Final discharge is offsite, onto Town land, in the form of surface water.

The area separating the upper configuration of Buildings A and B from the lower configuration of Building C is paved. The total paved area will be 24,680 square feet, or 26% of the lot. The total impervious area will be almost 54,000 square feet.

The plans and materials submitted were distributed to all the relevant reviewing Town Departments, and letters of review are on file in the office of the Board of Appeals. The revised stormwater drainage system plans were also reviewed by Woodard & Curran, and their letter of review is also on file.

The Board was of the opinion that the plans for the 44 unit proposal were not satisfactory, as the combination of the building footprint, the paved areas and the stormwater drainage system left very little open space on the lot. The Board agreed that the 23 parking spaces fronting Hastings Street could not be allowed. Although the stormwater drainage system had been improved, there was still important requested information that had not been submitted, so that the Board could not determine the degree of the risk of contamination to the Town Wells which might be present.

The Chairman asked the petitioner if he would like to rethink the proposal, addressing the concerns iterated in the letters from the Town Boards and Woodard & Curran, and return at a future Public Hearing with a revised proposal. The petitioner requested that the Board vote at that time.

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As the petitioner had insisted that the original petition for an 87 unit apartment complex would not be withdrawn until the Board had approved an alternative proposal, the Chairman called for a voice vote to grant or deny a Comprehensive Permit for 87 units. The Board unanimously voted to deny the original petition for 87 units. The Chairman then closed the Public Hearing.

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The issues in this decision fall into two separate categories: 1. Statutory Issues pursuant to 760 CMR 30.01; and 2. Development Issues pursuant to 760 CMR 31.05.

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5. STATUTORY ISSUES AND FINDINGS

5.1. Standing and Status of the Applicant

Pursuant to 760 CMR 31.01(1), in order for an applicant and the project to be eligible to submit an application for a comprehensive permit, three jurisdictional requirements must be met:

1. The applicant shall be a public agency, a non-profit organization, or a limited dividend organization.
2. The project shall be fundable by a subsidizing agency under a low and moderate housing subsidy program.
3. The applicant shall control the site.

The Board of Appeals agrees that the petitioner controls the site, but contends that the petitioner does not meet the first two jurisdictional requirements.

5.1.1. **Limited Dividend Organization**

The petitioner states in his application that he is a "limited dividend organization" within the definition of MGL Chapter 40B. A "limited dividend organization" is defined under 760 CMR, 30.02 as:

"any applicant which proposes to sponsor housing under MGL c. 40B; and is not a public agency, and is eligible to receive a subsidy from a state or federal agency after a comprehensive permit has been issued and which, unless otherwise governed by a federal act or regulation agrees to limit the dividend on the invested equity to no more than that allowed by the applicable statute or regulations governing the pertinent housing program."

The petitioner is not a public agency, nor is he a non-profit organization. The petitioner states in his application that he is a "limited dividend organization". Neither the petitioner's Articles of Organization, nor the New England Housing Fund Program, from which the subsidy would derive, have any restrictions as to the dividend on the invested equity. In fact, the only restriction specified in the New England Housing Fund program is that the housing must benefit "individuals or households with incomes at or below 140% of median income for the area". Neither the Federal Home Loan Bank of Boston nor the Shawmut Bank have any dividend restrictions either. Although the petitioner has stated that he will voluntarily accept a condition imposed by the Board of Appeals that the dividend shall not exceed 10%, the fact remains that there are no statutory or regulatory requirements regarding a limited dividend explicit in the proposed subsidizing program.

#### 5.1.2. Subsidizing Agency

The issue of a "subsidizing agency" and "site approval letter" are intertwined in this petition. The petitioner states that the subsidy will come from the New England Housing Fund Program (NEHF) of the Federal Home Loan Bank of Boston (FHLBB), and that Shawmut Bank is the "subsidizing agency" which has given, in the opinion of the petitioner, preliminary site approval to the project.

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Shawmut Bank does not qualify as a subsidizing agency. The applicable regulations define a subsidizing agency as "any agency of state or federal government which subsidizes the construction or substantial rehabilitation of low or moderate income housing and any housing authority acting pursuant to MGL c 121B, Section 26 (m). Shawmut Bank is neither an agency of the state or federal government nor a housing authority. It is a member bank of the Federal Home Loan Bank system and serves as the final conduit of funds received from the Federal Home Loan Bank of Boston through the New England Home Fund program. Therefore, it cannot qualify as a subsidizing agency.

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Federal Home Loan Bank of Boston is not a federal agency, but is a mixed ownership corporation created pursuant to the Federal Home Loan Bank Act. David Parish, First Vice President/Director of Housing and Community Development of the FHLBB has stated that the FHLBB is a wholesale lender; it is not a subsidizing agency as it does not grant subsidies per se. FHLBB administers the New England Housing Fund, which has no separate administrative capacity, nor is it a direct lending agency.

The subsidizing agency has the responsibility, not only of ensuring that the dividend on equity is limited to no more than 10%, but of making a written determination of Project Eligibility or Site Approval.

In the decision of CMA vs. Westborough Zoning Board of Appeals, Housing Appeals Committee Decision No. 89-25, the Housing Appeals Committee outlines the assurances of a

Site Approval Letter issued by the Mass. Housing Finance Association (MHFA), which can be used as a model for the assurances to be provided by any other "subsidizing agency".

An MHFA Site Approval Letter indicates that the project has undergone an extensive preliminary review. This includes site visitation to determine acceptability of the site; review and approval of the architectural design of the site and the individual buildings by design professionals; that the mix of market rate and affordable units, eligibility standards for occupants, duration of use restrictions are all acceptable; review of the pro forma statements by those with financial expertise to determine whether the profit margins are sufficient so that the project will be financially feasible, but not excessive; review of the developer's credentials and experience to insure that the developer is qualified to handle the particular project, and review of market conditions to insure that the completed project will be marketable.

Furthermore, and equally important is the implicit assurance that MHFA will continue to be involved with the project, monitoring changes and providing an even more thorough review of all the above issues before construction is permitted. As a lender for permanent financing, the MHFA continues to monitor the project throughout the life of the financing.

In this specific instance, the oversight of the project by the subsidizing agency prior to and during construction is critical due to the sensitive location of the site on top of an aquifer that feeds directly into the adjacent Town Wells and the danger during construction of contamination of the groundwater from which the wells are pumped.

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In the opinion of this Board, it is doubtful that the Federal Home Loan Bank, the New England Housing Fund or the Shawmut Bank has the interest or the capability of such oversight, or can grant the same assurances as those implicit in a Site Approval letter given by the MHFA.

Even the members of the petitioner's team do not agree as to which group to assign the designation of "subsidizing agency". At the Public Hearing on July 14, 1994, when asked about the subsidizing agency by Mr. Donovan, Mr. Engler responded that the Shawmut Bank was the subsidizing agency as a member of the Federal Home Loan Bank system. However, at the Public Hearing on September 29, 1994, Mr. Nolan stated that the Federal Home Loan Bank would be the subsidizing agency, with Shawmut Bank acting as its agent.

As neither the Federal Home Loan Bank of Boston nor Shawmut Bank qualify as a subsidizing agency, the petitioner cannot be considered as a limited dividend organization, and the site approval letter issued by the Shawmut Bank does not qualify as it has not been issued by a subsidizing agency. As the project must be fundable by a "subsidizing agency", the lack of a subsidizing agency renders the project unfundable.

This issue was brought up at the first and subsequent Public Hearings. Although the Board could have dismissed the petition for lack of standing, pursuant to the provisions of 760 CMR 31.05, at the onset of these hearings, it chose to give the developer an opportunity to present his petition and sufficient time for him to rectify this problem.

5.1.3. Findings

The Board finds that:

1. The petitioner is not a limited dividend organization.
2. There is no subsidizing agency involved in the financing of this project.
3. As the Shawmut Bank cannot be considered a subsidizing agency, the letter issued by Shawmut Bank cannot stand as a Site Approval letter.
4. As there is no subsidizing agency, this project is not fundable.

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Therefore, the Board of Appeals denies this petition on the grounds, among others stated below, that the petitioner does not have the "standing" required by 760 CMR 31.01 to apply for a comprehensive permit, as he has not met the jurisdictional requirements of this statute.

6. CONTROLLING PROVISIONS OF LAW

According to 760 CMR 31.06 - the regulations promulgated under Chapter 40B, the strength of the "...local planning need' side of the balancing tests of the Comprehensive Permit process shall consist of the degree to which the health and safety of the occupants or city or town residents is imperiled; the degree to which the design of the site and the proposed housing is seriously deficient; the degree to which additional open spaces are critically needed in the city or town; and the degree to which requirements and regulations imposed by the Board bear a direct and substantial relationship to the protection of such health, safety, design and open spaces."

7. TESTS UNDER CHAPTER 40B:

7.1 THRESHOLD TEST: The Board acknowledges that Wellesley does not meet any of the three requirements of Chapter 40B, Section 20.

7.2 BALANCING TEST: Because the "threshold test" of Chapter 40B has not been met by this application, consistency with local needs must be judged by the "balancing test," (760 CMR 31.06) as follows:

7.2.1 The Board acknowledges that there exists a regional and local need for low and moderate income housing. The Town has developed a comprehensive "Affordable Housing Reference Guide," and has completed an updated 1994 Comprehensive Plan for the Town. Both plans document the need for affordable housing and propose rational and achievable programs to begin to address the needs. However, the Board finds that the Hastings Village proposal fails, on virtually every basis, to affirmatively relate to the goals and objectives of these locally-developed plans and programs.

7.2.2 In reviewing the consistency of the Hastings Village proposal with "local need," as defined by Chapter 40B, the Board gave full consideration to the need "...to protect the health and safety of the occupants of the proposed housing, or to the residents of the Town, to promote better site and building design in relation to the surroundings, or to preserve open spaces, and the degree to which the Board was applying "...requirements and regulations as equally as possible to both subsidized and unsubsidized housing." It was the Board's decision that the Hastings Village proposal

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failed on each criterion, and that they were applying the same standards, requirements and regulation standards to Hastings Village as they would have applied to an unsubsidized housing development.

Development Issues and Findings.

7.2.3. In applying "...the local planning need side of the balancing tests of 760 CMR 31.06..." to the Hastings Village proposal, the Board found serious deficiencies in the following aspects of the proposal discussed below.

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## 8. DEVELOPMENT ISSUES AND FINDINGS

### 8.1. Health and Safety

#### 8.1.1. Adequacy of Water Drainage Arrangements

The critical health and safety issue from the initial Public Hearing and throughout the subsequent Hearings and Meetings, has always been the sufficiency of the proposed stormwater drainage system to minimize the risk of contamination to the Rosemary and Longfellow Wells. The proximity of the site upgradient of the Rosemary Well and the existence of the extremely porous soils on the site make the risk of contamination of these two wells a very critical issue.

The proposed site is located in the recharge area for the Rosemary Well, which is about 700 feet downgradient. The site is about 1,000 feet upgradient of the Longfellow Well. Longfellow pond and Rosemary Brook are located west northwest of the site. They provide

the natural hydraulic discharge of groundwater towards that direction. Drawdown from the two pumping wells steepen the natural groundwater gradient toward the west northwest and increase the speed of any contaminant movement toward the wells.

In a letter dated October 27, 1994, to Joseph Duggan, Superintendent of the Water & Sewer Division, Woodard & Curran state:

"The USGS maps of surficial geology for the area indicate sand and gravel overburden which can transmit large quantities of groundwater at high velocities.

"These indications of groundwater and surface water flow directions lead us to share the concerns of the Town Water and Sewer Division that any contamination at the site would impact the wells".

"Threats to groundwater quality can occur during the earthworks and construction of the buildings and during the use of the facility after completion."

Although the petitioner stated on Page 5 of the Response Package dated September 8, 1994 that, "We believe that this development is in no way a risk of contamination...", the Chairman of the Department of Public Works disagreed, as he stated in his letter to the Board of September 23, 1994,:

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"The Board of Public Works, acting as the Water Commissioners of the Town, recommend that, if a special permit is granted to the referenced proposed development of 54-66 Hastings Street, the project be considered a significant risk of contamination to the Town's water supply."

"We believe that environmental safeguard measures are necessary due to the porous soil conditions and the up-gradient proximity of this site to our public drinking water supply sources."

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The Wellesley Department of Public Works was so concerned with the adequacy of the petitioner's stormwater drainage plans in minimizing this risk, that it asked both the Massachusetts Water Resources Authority (MWRA) and an outside consultant, Woodard & Curran, to review the plan.

Both Woodard & Curran and the MWRA agree that prior to any further disturbance to the site, at least five groundwater monitoring wells should be installed; two to be located within the site, and at least three should be located about 100 feet from the Hastings Village property line west and northwest of the site on Town land and on the Roche Bros. lot.

Woodard & Curran state that the wells should be installed to provide detailed water table elevations which can be contoured to reveal groundwater flow directions in advance of any possible spills, and further to provide baseline water quality data for comparison with future sampling during and after construction.

Woodard & Curran are of the opinion that the groundwater level data from the wells should be developed into a groundwater contour map with apparent groundwater flow directions determined for the site and immediately down gradient. These flow directions should be acknowledged in the emergency response planning for construction and long term development.

Although the Board has repeatedly requested a plan showing the location of the monitoring wells, the installation of said wells and the compilation of a groundwater contour map, the petitioner has chosen to disregard these requests. Furthermore, the petitioner has never mentioned or submitted any type of monitoring plan or emergency response plan in the event that contaminants appeared in any of the monitoring wells, nor has he submitted any type of erosion control plan for the construction phase of the project.

Both Woodard & Curran and the MWRA agreed that the submitted plan contains several design risks. Woodard & Curran go on to say:

"The greatest source of concern in the proposed design is the use of storm water disposal trenches. These trenches are essentially a "direct injection" of the storm water into the aquifer which feeds the Town wells. Contaminants in parking lot runoff and any careless or accidental spills are sent directly to the aquifer with no possibility of detection or renovation."

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"Hooded catch basins are offered in the design as efforts to control petroleum in runoff. However, these are in catch basins with single chambers where water cascades through the grate into reservoir. The oil and water are emulsified so they can move together under the baffle and out of the basin to the aquifer."

"The Town goal should be to avoid underground disposal of parking area runoff where possible. The objective is to get parking area runoff into open surface basins where air, sunlight and settling can work to renovate water quality before discharge. Equally important is to insure that in the event of a spill, it can be noticed and there is a collection and holding point where clean-up efforts can be focused."

"It should be noted that subsurface disposal of storm water is not encouraged in the Town Water Supply Protection Bylaw in situations where it will create environmental risk. Runoff from the parking areas, covered or uncovered certainly presents that risk."

"Overland discharge of runoff using dual chambered oil traps, a detention basin and grassed swales may be an option. Undoubtedly the developer will be concerned about space for a detention basin. However, it may have to be considered the price of development in this area of high risk to the water supply."

"If it is deemed that the Town must accept underground disposal of parking area runoff, then we recommend changes to the system."

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Woodard & Curran propose a catch basin, two-chambered oil trap, aeration basin and ultimate disposal in a storm water trench as the less preferred option.

A revised Stormwater Drainage plan dated 6/16/94, revised 8/19/94/ 10/25/94, 11/28/94, signed by Christopher R. Mello, Registered Land Surveyor and Clayton A. Morin, Registered Professional Engineer was submitted on December 2, 1994. Accompanying the plan was a letter dated 11/29/94 from James MacDowell of Eastern Land Survey, which explained the proposed changes. Mr. MacDowell closes by stating that "the proposed modifications to the stormwater management system will result in an improved quality of runoff being discharged into the ground and will be consistent with the recommendations of the Town's Consultant".

In a letter to the Board dated December 5, 1994, Mr. Duggan, who had reviewed the revised plan, stated:

"No contours, no section or profile views and no details were presented. It is therefore impossible for me to begin to re-evaluate if these plans are feasible."

Mr. Duggan questions why the Woodard & Curran "preferred alternative" of a detention basin and grassed swales was disregarded, and closes by stating that "this submittal of November 29th is so incomplete that it cannot be considered as "the new stormwater drainage plan"."

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It is the opinion of this Board that the petitioner has chosen to "disregard" the "preferred alternative" of the Woodard & Curran plan for a very simple reason. As Woodard & Curran suggest, there simply is not sufficient space on this 2.2 acre site, due to the configuration of the 87 unit apartment building and the 62 outdoor parking spaces, to locate such a stormwater drainage system.

Although the Board repeatedly requested that test borings be done to determine where the groundwater elevation on the site actually is, particularly at the location of the proposed underground garage, this has not been done.

There is no depiction on any plan of any detail of the MWRA Vented Gas Trap or pumping mechanism required in any underground garage. There is also no documentation as to the precise level of separation between the pumping system and the high groundwater table. As any failure of this system would result in the direct injection of contaminants to the aquifer and then to the Town wells, this information is critical, as there is a distinct possibility that the MWRA Vented Gas Trap and pumping system might be at or below the maximum groundwater elevation.

#### 8.1.1.2 Finding

For all of the above reasons, it is the finding of this Board that the stormwater drainage plan as originally submitted and further revised is totally inadequate in minimizing the risk of contamination to the Town wells, constitutes a definite hazard to the health and safety of the Town, and is sufficient reason to deny this petition.

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8.1.2. Traffic

The proposed site is located on Hastings Street, south of Route 9. Hastings Street intersects both the Route 9 eastbound off-ramp to Cedar Street, as well as Cedar Street itself. A barrier to traffic is presently located on Hastings Street, just north of the site, which prevents through trips from Cedar Street to Worcester Street via Hastings Street. North of the barrier, Hastings Street provides access to the Roche Bros. office building and Silver Lake Dodge.

Worcester Street (the eastbound off-ramp from Route 9) is a two-lane bi-directional roadway which serves as the Route 9 eastbound off-ramp and provides access to Wellesley Toyota, Harvard Community Health Plan and Silver Lake Dodge. Hastings Street intersects Worcester Street to form a three-way unsignalized "T" intersection. Traffic exiting Route 9 onto the Worcester Street ramp was assumed to be travelling at 50 mph at this location. Hastings Street marks the transition point on Worcester Street between one-way eastbound off-ramp operation and two-way street operation. Left-turn only from Worcester Street westbound, and right-turn only from Hastings Street are allowed.

Both Don Cooke, the petitioner's traffic consultant and Bruce Campbell, the town's traffic consultant, agree that the relocation of the existing Hastings Street barrier to the southern end of the property is the preferred option in relation to traffic safety. Therefore, the intersections impacted by the proposed development with the barrier in its present location, will not be discussed.

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The intersections to be impacted by the proposed development, with the barrier presumed to be relocated at the southern end of the site, are the Worcester Street/Cedar Street intersection and the Worcester Street/Hastings Street intersection.

The Worcester Street/Cedar Street interchange has been recognized as one of the top 1,000 high accident locations in the State. The Mass Highway Department has already begun to implement its design plan to remediate this interchange. The additional traffic created by the proposed 87 unit apartment might require signalization changes, but, according to Don Cooke, could handle the additional volume from the development without significant problems. The level of service at this intersection is presently F. After the completion of the Mass Highway Department improvements, the level of service will be D. This calculation does not include the contribution of additional traffic from the proposed Hastings Village development. The Mass Highway Department contract is to be completed by the fall of 1995, and will attempt to correct the intersection of Worcester/Cedar Street.

The Hastings Street/Worcester Street intersection presently processes a relatively low volume of traffic and is at Level of Service A. Mr. Campbell notes that although police records show only one accident in three years at this intersection, in his opinion, this is remarkable in light of the current design. However, at present, the only motorists using the intersection are there during the day for the most part. The insertion of the traffic generated by the 87 unit apartment house would result in motorists at all hours of the day and night, which could result in a dramatic change in this accident record.

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There are three major interconnected problems at this intersection: 1. The limited sight distance; 2. The danger to vehicles making right turns from Hastings Street onto Worcester Street; and 3. The danger to vehicles making left turns into Hastings Street from Worcester Street westbound.

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In his Traffic Impact Report, Don Cooke states:

"Although there are sufficient gaps in the traffic stream for the limited number of movements to/from Hastings Street, the less than adequate sight distance provided can make the utilization of these gaps difficult. Field observations verify that although an excess of gaps exist, taking full advantage of those gaps can be nearly impossible given the obstructions to existing sight lines."

Both traffic consultants agree that the Hastings Street/Worcester Street intersection presents a serious sight distance problem to traffic exiting Route 9 eastbound, traffic exiting Hastings Street and westbound left-turning traffic. Vegetation, parked vehicles and a business sign associated with Silver Lake Dodge limit the available sight distance to approximately 130 feet at a location in which the sight distance required is between 375 to 475 feet.

Approximately 40 feet of Route 9 have been encroached upon by Silver Lake Dodge. A commercial sign, floodlights, planting of shrubs along the roadway and parking of for-sale vehicles occupy this space. In a letter from Sherman Eidelman, District Highway Director, dated October 12, 1994, Hastings Realty Corporation, owner of the parcel, was ordered to

cease and desist from utilizing any portion of State Highway land and to remove all encroachments from that portion of Route 9 within one month.

Subsequently, the Mass Highway Department decided that the measures outlined in this letter were too harsh, and determined that removal of encroachments back a distance of 10 feet would provide satisfactory sight distance.

To date, no improvement in the sight distance has been made. In fact, in a letter to Logan Huffman dated April 20, 1995, Don Cooke states:

"If sight-lines are to be cleared by moving obstructions on the Silver Lake Dodge site from the existing highway layout, the request must come from the Town."

The Board is of the opinion that, as a sight distance of 375 to 475 feet is required, even the removal of the Silver Lake Dodge encroachments an additional 10 feet to the rear, would still not result in the provision of a satisfactory sight distance.

However, the inadequacy of the sight distance is not the sole problem at this intersection. In a memorandum dated September 24, 1994, Bruce Campbell states:

"The focus for safety is the Worcester Street/Hastings Street intersection. The obvious problem here is that, no matter what is done at the intersection, there will always be an almost head-on collision pattern between high speed traffic exiting Route 9 eastbound and low speed traffic making a left turn onto Hastings Street."

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"The head-on collision pattern could be modified by widening Worcester Street and constructing a more pronounced neckdown for westbound traffic on Worcester Street. This neck-down on the north side of Worcester Street, would block westbound traffic from entering Route 9 the wrong way, and would force westbound Worcester Street traffic to turn left into Hastings Street. Street markings, including hash marks on the Route 9 off-ramp leading up to the neckdown would guide traffic exiting Route 9 and should also help to slow it down from the currently estimated 50 mph."

Mr. Campbell suggests that a long deceleration lane, signing and possibly even a "Stop" sign at Hastings Street be put in place, similar in scale to the improvements designed for the Mass Highway Department for Worcester Street as it enters Route 9 eastbound. This deceleration lane would begin in front of Silver Lake Dodge, would have to be constructed according to national standards, and will require a permit to enter the State Highway for the purpose of construction.

The Board had requested that an acceleration lane be provided so that cars exiting Hastings Street, making a right turn onto Worcester Street, could safely enter the street without being rear-ended by vehicles accessing Worcester Street from Route 9 at 50 mph.

The petitioner has proposed a remediation plan which consists of two lanes eastbound on Worcester Street; the right hand lane would be used as a deceleration lane from Silver Lake Dodge to Hastings Street, and an acceleration lane from Hastings Street to Cedar Street

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for vehicles entering Worcester Street from Hastings Street. The second eastbound lane would be for through eastbound traffic. The existing westbound lane would have a substantial neckdown at the base to provide storage and a measure of safety for vehicles attempting to cross the two eastbound lanes into Hastings Street. All of these remediation measures require the approval of the Mass. Highway Department.

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In a memorandum dated 5/2/95, Don Cooke states:

"the protected" right turn from Hastings Street could be accomplished with an actual physical island rather than with pavement markings, and longer deceleration and acceleration lanes could be provided. However, the resultant impacts to Silver Lake Dodge and the Harvard Community Health Plan office would be significantly increased by such designs. Based on preliminary discussions with the District 4 Office of the Massachusetts Highway Department, such impacts could make this project inviable."

8.1.1.2. Finding

It appears that although the petitioner has readily agreed to the need for the remediation measures requested by the Board, his ability to actually fulfill implementation of these improvements is dependent on many factors, including approval of the Town and the Mass Highway Department, and therefore are beyond the control of the petitioner. It does not appear that the needed improvements could be accomplished in the foreseeable future. Furthermore, in light of Don Cooke's memo of 5/2/95, the "preferred" mitigation will not be possible, and again, as in the stormwater drainage design, the Board would be in the position

of having to accept a substitute plan which will not provide the optimum vehicle safety. The Board finds the substitute plan to be unsatisfactory.

## 8.2. Building and Site Design

The housing development as proposed is a 5 1/2 story, 87 unit structure, 265 feet in length along Hastings Street, which is inappropriate for its 2.2 acre site and its proximity to the small residential scale Sheridan Hills neighborhood.

### 8.2.1. Height

The proposed building exceeds by 47% the maximum height allowed in Wellesley. The height of the building is between 66 and 70.5 feet from average finished grade. The maximum height allowed by Wellesley zoning is 3 stories or 45 feet. The maximum height allowed for a single family dwelling is 40 feet. The proposed building is 3.5 times the height of the closest home in this predominately one to two-story single residence neighborhood. The narrow commercial strip on the Worcester Street ramp is predominantly 2-3 story buildings.

This 5.5 story building will dwarf the buildings on both sides, block the view of the Town Forest where the trees range in height from 50-60 feet, and overpower the one-story Fiske Elementary School Building.

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8.2.1.1. Finding

This Board finds that the height of this building is clearly not transitional, as the petitioner suggests, and is totally inappropriate for the site and incompatible with its surroundings.

8.2.2 Bulk

This building has a footprint of 24,200 square feet, a floor area of 158,308 square feet, and covers 25.4 percent of its 2.2 acre site. The floor area of the home of the closest single family abutter is 760 square feet. Thirty-one homes of this size would fit into the footprint of this building.

In a comparison of volume, the closest abutter's home has a volume of 10,632 cubic feet; the Fiske School has a volume of 521,482 cubic feet; the Roche Bros building has a volume of 272,876 cubic feet; and the Hastings Village building has a volume of 1,269,939 cubic feet, or approximately 110 times the volume of the closest abutter.

8.2.2.1 Finding

This Board finds that the bulk of the proposed apartment building is clearly incompatible with its surroundings and therefore is unacceptable.

8.2.3 Density

The proposed site is located in a 15,000 square foot district, in which one dwelling per lot is allowed. Five single family dwellings could be constructed on this lot. The

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density of this project is 40 units per acre, or 39% denser than allowed in any zoning district in the town.

In CMA, Inc. v. Westborough Zoning Board of Appeals, No. 89-25, the Housing Appeals Committee ruled on a proposed affordable housing project to be located on an 11.1 acre parcel zoned industrial. The Housing Appeals Committee stated, on P.27,

"Similarly, the project as proposed is very dense, with approximately 18 units per acre."...

"...we agree with Ms. Thomas' conclusion that density of greater than sixteen units per acre is too great for this suburban setting.

"...Therefore, we find that the proposed development is consistent with local needs if it is reduced to 120 units in two buildings (for a density of twelve units per acre), and if two children's play areas, a basketball court and a swimming pool are provided as proposed." (Page 28)

The density allowed by the Housing Appeals Committee in the above case was 12 units per acre on an industrial zoned parcel. The density of the Hastings Village project, in a Single Residence District (15,000 s.f.) is 40 units per acre, or 3.3 times that which was allowed in an industrial area.

Even at Lexington Ridge, an affordable housing development often referred to by the petitioner's consultant, the density is no more than 11 or 12 units per acre.

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8.2.3.1. Finding

It is the finding of this Board that the proposed density of 40 units per acre exceeds any reasonable density allowance and is detrimental to the surrounding single family neighborhood in which it is located.

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8.2.4. Adequacy of Open Areas

Although the petitioner claims that 47.2% of the site will be landscaped, this statement applied to the original plan. In the revised stormwater drainage plan submitted on 12/2/94 for the Public Meeting on December 8, 1994, the areas to the north and west, originally marked "lawn", were replaced with "Aeration Basin A" and "Aeration Basin B", leaving far less than the original 47.2% of the site as usable open space.

Before being cleared by the developer, the site was forested and contained many mature and beautiful trees. Stands of trees still remain at the back of the site. Homeowners in the area have testified that removal of trees on site to date has increased noise levels and lighting impact from Worcester Street and the adjacent business areas. Further reduction of this tree stand, which abuts the single family neighborhood on Hastings Street would intensify these adverse impacts. In the revised stormwater drainage plan, "Aeration Basin A" is located where the remaining trees stand, creating doubt as to whether the trees would remain in a location required for a stormwater drainage system.

Furthermore, although the units are to be marketed as "luxury" units, there is no provision for any recreational area. There is no swimming pool, tennis court, basketball

court, or other recreational amenities, although the developer has stated that the target market is primarily young adults. Seven of the units contain three bedrooms, and might be rented by couples with children. Similarly, there is no provision for any type of playground area for these potential tenants.

Again referencing CMA v. Westborough, the developer in that case maintained that 56% of the site was recreational or open space. In that instance, provision was made for 3 "tot lots", a basketball court and a swimming pool, totalling approximately one-half acre of open space. According to the Planning Consultant, Carol Thomas, the rule of thumb based upon National Recreation Association standards would require two acres of on-site recreational space for the development as proposed, which would result in a ratio of approximately 1:5.5.

Using this ratio, the Hasting Village development should have a minimum of .4 acres devoted to recreational space.

#### 8.2.4.1 Finding

This Board finds that the lack of open and recreational space on the Hastings Village site represents a definite shortcoming in this plan for affordable housing. Furthermore, due to the constraints of this site, this deficiency cannot be remediated.

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9. COMPATIBILITY WITH TOWN'S NEED FOR AFFORDABLE HOUSING

The 1994 Comprehensive Plan has identified the groups in Wellesley that require assistance in meeting their housing needs. These groups are identified as young families seeking starter homes and older residents seeking housing units smaller than those they now occupy. Hasting Village, by its design and siting, does not address these identified Town needs.

In a letter dated November 11, 1995, the Planning Board states:

"From a planning perspective, any high density multi-family development should be proximate to public transportation and services such as a grocery store, dry cleaning establishment, a pharmacy and similar personal care services. There are no such facilities in the vicinity of the site. It is even more important that units housing lower income families be near such services because some of the families may not have adequate transportation to more distant shopping areas."

"The applicant acknowledges that the target market is married and unmarried individuals 20 to 40 years of age without children. We have noted that this market does not coincide with Wellesley's housing needs that require public assistance. We believe that the Hastings Village proposal, as it is presently constituted, does not address either the groups needing housing assistance or the market it proposes to serve, yet this proposal would have approximately 25 percent of its households reserved for low income households."

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9.1. Finding

The Board of Appeals is in complete agreement with this assessment. The Board finds that the proposed affordable housing development will not serve the affordable housing needs of the Town.

10. ABILITY OF THE DEVELOPER TO PERFORM

Although this issue is not usually within the province of the Board of Appeals, as it is more properly the concern of the subsidizing agency, this is a unique situation. Because there is no subsidizing agency to provide oversight, the ability of the developer to perform becomes a critical issue.

The developer has had no demonstrated experience in the construction of multi-family housing. This is a project of great magnitude to be located in an extremely environmentally sensitive area. The utmost care must be taken before, during and after construction to minimize any potential risk of contamination to the Town Wells.

The Planning Board states in its letter of November 11, 1994:

"The Planning Board feels obligated to convey its concerns about the ability of the applicant to perform and follow through on a project of this magnitude. There has been a larger than usual volume and number of complaints regarding the Upwey Road subdivision project, a development under the jurisdiction of the Planning Board. Although the street construction work itself at Upwey Road appears to have been properly completed and the street has been accepted by the Town as a public way, other aspects of the subdivision,

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including lot landscaping, private drainage facilities which the developer volunteered to provide and make a condition of the subdivision approval, and the intense dissatisfaction of the quality of construction by persons who have purchased homes, raises doubt about the applicant's ability to finish satisfactorily a job of the magnitude, complexity and sensitivity due to its proximity to environmentally critical land as proposed at the Hastings Street site."

"We have also learned that the applicant apparently abandoned a subdivision in another town and left it unfinished. The planning board in that community is in the process of attempting to collect on its surety."

The comments of the Planning Board have been substantiated by owners of homes in this subdivision, both at the Public Hearings and by letters to the Board. Documentation of the abandonment of a subdivision in Ashland entitled Indian River Estates, in which a detention area was not completed, was also submitted.

#### 10.1. Finding

The Board of Appeals finds it is reluctant to entrust a project of this complexity, particularly in the absence of an oversight agency, to this developer.

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#### 11. ALTERNATE PROPOSAL II (May 11, 1995)

As has been indicated above, the Board entered into discussion with the petitioner regarding Alternative Proposals I and II. As the discussion unfolded, the Board expressed its view that the total building footprint, the location of the buildings and the stormwater

drainage system were the controlling factors on the site. The number of units would have to be derived from the interrelationship of these three factors.

Although the Board has reiterated that neither the Board nor any Town Department will design any part of the proposal for the petitioner, it is the intention of the Board to set out the following guidelines, many of which have been previously discussed at the Public Hearings and Meetings on the original petition and the two Alternative Proposals:

#### 11.1. Footprint

In the opinion of the Board, the total footprint of the three buildings should be reduced. The combined ground coverage of the three buildings, the paved areas and the storm drainage system leave little space within the site and minimum setbacks to every lot line. Due to the topography of the lot, the existing footprint of the buildings require radical changes of elevations along the side yards and an 8% or greater slope at the paved entry and parking lots.

Elimination of Building C would be the best solution, as it would eliminate the need for a sewer lift station, allow for more open space, reduce the amount of paved area, and allow the necessary space for the stormwater drainage system. It is the unanimous opinion of this Board that the ground coverage provided by the three buildings is simply too dense for the 2.2 acre site. Buildings A and B could be brought forward, eliminating the 23 on-street parking spaces. The Board would not be averse to the possible addition of one floor in each of these buildings.

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Whether a third building can feasibly accommodate the health and safety factors cannot be determined based on the plans submitted by the petitioner. At the least, a third building would have to have a much smaller footprint to be acceptable.

#### 11.2. Stormwater Drainage System

In the opinion of the Board, the risks to the groundwater quality from any proposed development in this well recharge area from accidents, spillage during construction or from contaminated runoff after completion are still present in the plans submitted on April 21, 1995 for the May 11, 1995 Public Hearing.

Woodard & Curran, in a letter dated May 10, 1995, state that the "Least Risk Alternative" would involve placing the runoff from the site in a tight system, pumping it up to the Hastings Street drain system, and transporting it out of the well recharge area. At present, the Hastings Street surface drain system is overloaded and would have to be enlarged to handle additional water. The street drainage system is in need of relocation to protect the wells from existing risks.

We understand that the Town has no immediate plans which would enable the petitioner to utilize the Town drainage system on Hastings Street. This would be the most acceptable solution under the circumstances. The Board would encourage the petitioner to work with the Town to achieve this solution.

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However, if the above solution is not possible, the Board is willing to consider the plans submitted by the petitioner on April 21, 1995 for the Public Hearing on May 11, 1995, provided that the petitioner supplies the Board with all the information heretofore requested and agrees to any further modifications and refinements found necessary to reduce the risk of contamination to the Town wells.

In the opinion of the Board, it is critical to reiterate that before any stormwater drainage plan can be approved, the following information, repeatedly requested by the Board from the petitioner, must be submitted:

1. A groundwater contour map
2. A plan containing the proposed location of 5 monitoring wells; two wells to be located on site, and three offsite.
3. Complete test boring documentation.
4. Detailed plans regarding a monitoring system of the monitoring wells.
5. The location of a benchmark and its origin.
6. Documentation verifying the maximum high groundwater elevation.

### 11.3. Finding

Throughout the petition process, the Board has found and continues to find that Affordable Housing could be developed on the Hastings Street site, if the major issues of Standing, Health and Safety, Building Design and Traffic Safety could be resolved.

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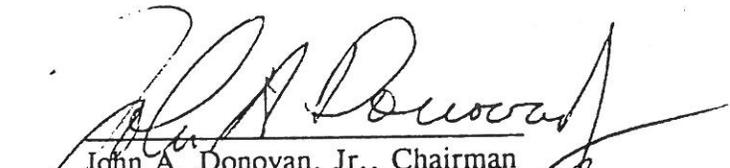
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12. CONCLUSION

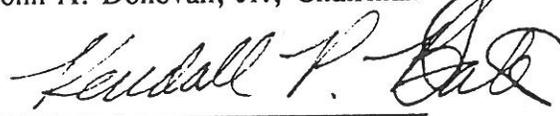
For all of the foregoing reasons, the petition for a Comprehensive Permit to construct an 87 unit affordable housing project at 54-66 Hastings Street is hereby unanimously denied by the Zoning Board of Appeals.

APPEALS FROM THIS DECISION, IF ANY, SHALL BE MADE PURSUANT TO MGL 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.

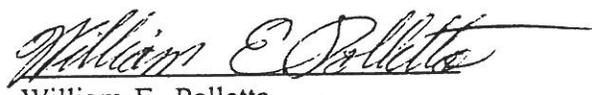
cc: Planning Board  
Board of Selectmen  
Board of Public Works  
Inspector of Buildings  
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John A. Donovan, Jr., Chairman



Kendall P. Bates



William E. Polletta

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