



Town of Acton  
472 Main Street  
Acton, MA 01720

Telephone (978) 264-9612  
Fax (978) 264-9630

Board of Selectmen  
F. Doré Hunter, Chairman

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July 6, 2007

Re: Alexan Concord  
MH # SA -07-001  
Site Approval Application Notification Reply

Ms. Nancy Andersen  
Manager, Rental Programs & Development  
Massachusetts Housing Finance Agency  
One Beacon Street, Boston, MA 02108

Dear Ms. Andersen:

The Acton Board of Selectmen met with the proponent of this project for an extended period of time on June 25, 2007. While the Acton Board of Selectmen foresees many benefits to this project, it is very concerned about the following items:

- The proponent revealed that questions exist as to the legal status of the egress easement.
- The proponent's traffic study indicated access would be over "Old Powdermill Rd., a public way within the Town of Acton". Your letter of June 21, 2007, indicates the proponent questions whether this so-called road is, in fact, a public way.
- The proponent indicated the proposed 350 unit residential apartment community is expected to generate approximately 2,254 vehicle trips on an average weekday. Presently, Sudbury Road carries 3,990 vehicles per day. The proposed project will increase the traffic by 2,254 vehicles per day. This is a 56% increase.
- The 2,254 cars will be entering and leaving Sudbury Road at a point where there is limited sight distance. This is at the point where Sudbury Road leaves Acton and becomes Powder Mill Road in Maynard. The proponent's consultant has recognized these limitations and has proposed changes to the intersection. The changes include realigning the entrance with Sudbury Road, realigning and widening Sudbury Road in Acton and Powder Mill Road in Maynard, and construction of sidewalks. To accomplish these changes, it appears that land takings in both Acton and Maynard will be necessary. The ability of the proponent to obtain the necessary land for the improvements is paramount.
- The proponent's traffic study recommended Old Powdermill Road be reconstructed, as necessary, to create a minimum roadway cross-section of 24-36 feet.
- Item 2 of the proponent's traffic study represents the proposed changes in a general manner. The Town will be very interested in the details of the design. Presently, the intersection works due to the relatively light volume of traffic entering at this location and that its geometry forces most vehicles to use caution. Improving the geometry of the roadway even slightly may reduce the caution exercised today, causing more accidents, especially when you increase the entering traffic from approximately 200 vpd to over 2,254. The existing 85% speed was determined to be 28 mph. With improvements, this speed will rise. This will be of great concern particularly during winter icing conditions.
- The proponent indicated the unsignalized intersection at Route 62 and Sudbury Road in Acton is currently operating over capacity (level F) during the weekday evening peak hour. The proponent's traffic study indicates with the project built, both morning and afternoon peak hours will be at level F. The morning queue will be 26 cars which will block Westside Drive. The afternoon queue was not calculated, however, we believe it will extend into Maynard.

July 17, 2007

- The proponent indicated the signalized intersection at Route 62 and High Street in Acton is operating over capacity during the weekday evening peak hour for left-turn movements.
- The intersection of Parker and High Streets was evaluated in the proponent's traffic study. The proponent suggests minimal impact on this intersection due to the proposed development. The traffic counts in the proponent's traffic study did not concur with our recent counts on High Street. We believe the proponent should review its data and ours and make appropriate adjustments to its findings and recommendations for this area.
- The proponent has not provided any information as to the additional carbon imprint of the project and the associated traffic backups.

The Acton Board of Selectmen believes:

1. Questions exist as to the legal status of Old Powdermill Road and the Board asks the proponent to document the legal status of the roadway/easement.
2. The surrounding infrastructure in Acton and Sudbury is insufficient to safely accommodate the proposed project.
3. The proponent must provide vertical curbed sidewalks from the development to the Stop & Shop Shopping Center with associated signalized pedestrian crossings.
4. The proponent's consultant has determined that Sudbury Road and its intersection with Route 62 are severely inadequate for the intended use. The mitigation measures needed will be extensive, expensive and, in some cases, impossible to achieve without obtaining land from other parties.
5. Assabet River Watershed environmental impacts are not fully documented, including, but not limited to, the effects the project may have on the Nuclear Metals, Grace and Agway 21E sites.
6. Acton should be able to count 100 of the units towards Acton's 10% affordable housing count.

The proponent indicated the Town of Concord owns a parcel of land, which would provide direct access to Forrest Ridge Road in Concord. Forrest Ridge Road in Concord provides a direct connection to Route 62 and would alleviate the majority of impacts in Acton and Sudbury and decrease the carbon imprint of the project.

Based upon the above noted concerns, the Acton Board of Selectmen asks that MassHousing direct the proponent to provide access via Forest Ridge Road in Concord before granting approval.

Thank you for your time and consideration.

Regards,

Dore' Hunter  
Chairman, Board of Selectman  
and Veterans Service Officer, Town of Acton, MA

CC: Town of Concord Board of Selectmen  
Town of Sudbury Board of Selectmen

**Acton Community Housing Corporation**  
**Nancy Tavernier, Chairman**  
**TOWN OF ACTON**  
Acton Town Hall  
472 Main Street  
Acton, Massachusetts, 01720  
Telephone (978) 263-9611  
[achc@acton-ma.gov](mailto:achc@acton-ma.gov)

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TO: Acton Board of Appeals  
FROM: Nancy Tavernier, Chair, Acton Community Housing Corporation  
SUBJECT: Comments on Comprehensive Permit application for  
West Concord Development LLC (Alexan Concord)  
DATE: February 7, 2008  
cc Acton Board of Selectmen  
Roland Bartl

Members of the ACHC have reviewed the Application for a Comprehensive Permit for the proposed 350-unit apartment community located at 48 Old Powder Mill Rd. in West Concord and offer the following comments. Our comments relate only to the affordable housing components of the proposal. The context of our requests relate to the fact that the sole access to the 350 units in Concord is through the Town of Acton. We believe this gives the Town the opportunity to seek mitigation in a number of areas including the provision of affordable housing.

**1. Allocation of 10% of the units to Acton's Subsidized Housing Inventory**

ACHC requests the allocation of 35 of the 88 affordable units in Concord to be allocated to the Town of Acton, this represents 10% of the total unit count. This mechanism has been used in other communities, such as Marlborough, in the situation where a large affordable housing development is located on a town border as this one is. In addition to being located on the town line, this development's access is through Acton. To have such an impact on Acton without any of the benefits of the affordable units, does not seem to be good policy. Therefore, we are asking that you condition the decision on this allocation of units and further that the Applicant be responsible for the cost and implementation of the requested unit allocation through the DHCD.

**2. Acton local preference applicants equal to Concord local preference applicants.**

ACHC requests that eligible Acton local preference applicants be given equal standing to Concord applicants and be included in the 70% of the units set aside for local preference, including three bedroom units. ACHC uses the following local preference criteria:

(a) at least one member of the household is currently a legal resident of the Town of Acton.

(b) at least one member of the household is either a son or daughter, parent, or sibling of a current Acton resident.

(c) at least one member of the household is currently privately or publicly employed within the Town of Acton.

### 3. Waivers requested in the Application

Because this development will have a significant impact on the regional area especially in the area of housing, we oppose the granting of the following waivers requested by the Applicant:

#### Section 3.16 – Affordable Dwelling Units

ACHC believes information regarding the affordable dwelling units even though they are not located in Acton should be provided to the Town.

#### Section 3.18 – Unit Composition Schedule

ACHC believes information regarding the affordable dwelling unit composition even though they are not located in Acton should be provided to the Town.

#### Section 3.20 – Market Study

ACHC is very interested in the marketability of the dwelling units and believes a Market Study on the impact of this development in Acton should be required. Even though these units are not located in Acton, they will have a significant impact on rental and homeownership units elsewhere in Town and we believe the Town has a right to know what that impact will be.

#### Section 3.23 – Local Needs

ACHC believes it is imperative that the Applicant provides to the Town information on how the project will relate to the health or safety of the prospective occupants of the apartment community in Concord and the residents of Acton.

#### Conclusion

The Acton Community Housing Corporation has voted to ??????

**Acton Community Housing Corporation**  
**Nancy Tavernier, Chairman**  
**TOWN OF ACTON**  
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Telephone (978) 263-9611  
[achc@acton-ma.gov](mailto:achc@acton-ma.gov)

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**TO:** Jonathan Wagner, Acting Chairman  
Acton Board of Appeals

**FROM:** Nancy Tavernier, Chair  
Acton Community Housing Corporation

**SUBJECT:** Application No. 08-02 – 48 & 54 Powdermill Road, Concord, MA/Sudbury Road

**DATE:** March 19, 2008

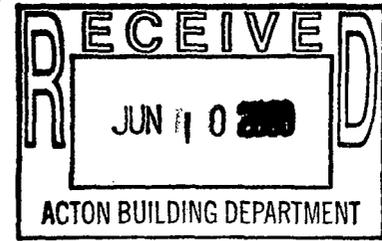
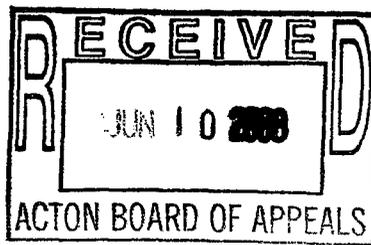
The Acton Community Housing Corporation stands by the comments previously submitted to the ZBA on February 7, 2008. As a follow-up to your first meeting, we submitted documentation from the Town of Southborough that detailed their successful efforts to have 10% of the units in a Marlborough development count toward their subsidized housing inventory. There was an identical situation with all the units located in Marlborough and 100% of the access from Southborough. While we understand the purpose of the comprehensive permit, in addition to a streamlined process, is to provide affordable housing in a regional approach, we do not think it is fair for one town to get all the benefit of that housing and the other to get only the negative impacts of traffic.

It is our understanding that Concord only needs 315 units to reach their 10% goal. The proposed project is for 350 units. ACHC is requesting 10% or 35 of those units to count toward Acton's subsidized housing inventory. That leaves 315 units for Concord. We fail to see how this would adversely impact Concord and would certainly be no financial impact on the developer except for the cost of negotiating the agreement between DHCD and the Towns of Concord and Acton.

We appreciate the challenging decision in front of the Board in regard to the jurisdiction issue. We will have members at each of your meetings to lend support and answer questions.

Thank you.

June 10, 2008



**TO: Jonathan Wagner, Acting Chair**  
**Acton Board of Appeals**  
**RE: Alexan Concord Development**

Dear Mr. Wagner:

The Board of Selectmen has reviewed the proposal for 350 rental units on property on the Acton/Concord/Maynard/Sudbury town lines for which all the actual housing units will be located in the Town of Concord. We have the following comments:

1. **Comprehensive Permit:** There is a legal question about whether the developer is entitled to obtain a comprehensive permit pursuant to M.G.L. c. 40B, where none of the units are located in Acton. That question is up to the BOA to resolve as part of the Board's adjudicatory function. The Board should obtain an opinion from legal counsel on the issue. The Selectmen do not feel that it is within our Board's purview to advise the BOA on that issue, where the issue is legally committed to the BOA to decide.

Should the BOA decide that the developer is not legally entitled to obtain a comprehensive permit under the circumstances, the Selectmen urge the BOA to include in its decision any conditions the BOA would require of the developer should the denial be overturned on appeal. That might avoid possible lengthy and costly further appeals.

The Selectmen also understand that, should the BOA decide that the developer is entitled to receive a comprehensive permit, DHCD regulations give the BOA the discretion to deny the permit because the development constitutes a "large project." In exercising its discretion, the Selectmen urge the Board to consider the traffic impacts of the development and the adequacy of any mitigation the developer is willing to provide to offset those impacts.

2. All the project's buildings will be located in the Town of Concord, but Concord maintains that there is no suitable public access to this parcel within their Town. The most obvious, safe and efficient access to the project is via Forest Ridge Road, which is privately owned. Forest Ridge is built to standards which would accommodate the traffic from the project and has sidewalks to Route 62. Concord is one of the owners of Forest Ridge Road and owns property abutting the road and adjacent to the project site, but maintains that deed restrictions prohibit using Forest Ridge as the primary access for the project. The BOA should obtain a legal opinion about whether it is feasible for Concord to negotiate changes in the deed restrictions to allow access through Forest Ridge Road.
3. If access is granted from a roadway owned by the Town of Acton, the Selectmen have grave concerns about the impacts that cars and trucks serving this large neighborhood will have on the safety of our streets, and the impacts in terms of air pollution and carbon emissions. With the rising price of gas it makes no sense to build such a large development without providing adequate pedestrian access to the nearby retail establishments and services. To this end, safe and inviting sidewalks and crosswalks

need to be built from the development to the nearby shopping plaza. In addition, as we would require for any development, improvements must be made to Sudbury Road to create safe access and egress. See the comments of the Acton Engineering Department for more details, as well as Acton's traffic study Peer Review.

4. In Acton, for such a large project, the Selectmen would require a secondary access, both for more efficient traffic flow, as well as to accommodate emergencies such as a blockage of the main access by fire, accident, or other unforeseen event. The BOA should ensure that the developer provides adequate secondary access, preferably full access, or emergency access if full access is not possible. The BOA should also condition a comprehensive permit by requiring a restriction against any additional 40B or other developments using the driveway on Sudbury Road.
5. In such a large project it is likely that there will be a high percentage of commuters into Cambridge and Boston. To this end, the Selectmen believe it is essential that there be a dedicated shuttle provided to take people to the train rather than each individual driving their own vehicle. The parking areas for the local commuter rail are already overcrowded with vehicles and cannot accommodate any more.
6. The increase in cars that will utilize High Street to access shopping and services in Acton will result in High Street, which is already dangerous for pedestrians, to become even more dangerous. People living on High Street do walk even though it is terribly risky. This project will exacerbate an already dangerous situation. The BOA should condition any comprehensive permit on the developer providing an adequate contribution to build sidewalks on High Street to mitigate the impact of increased traffic from the development on public safety.
7. The project, while providing regional affordable housing, does not offer any credit to Acton for affordable housing. In other communities with similar circumstances, some compensation in the form of crediting units to the Town who provided the only access available was negotiated. The Selectmen urge the BOA to seek similar compensation as a rationale for granting a comprehensive permit to a project that for the members of our community offers little in the way of saving deed restricted units for our own citizens. Indeed the price point of the affordable Concord units is beyond the means of many of our town workers. In lieu of the granting of units, the Selectmen seek a contribution from the developer that would be used to finance housing initiatives within the Town of Acton as recommended by our ACHC.
8. We encourage the BOA to look at this project with a regional view. We applaud the applicants' willingness to work with the towns, and they have agreed to set aside a portion of the land along the Assabet River to remain a green public space. They have expressed a willingness to make the required improvements on Sudbury Road, and provide safe pedestrian access to the nearby shopping center. Traffic studies have indicated that an additional traffic signal at the intersection of Sudbury Road and Powder Mill Road (62) is also warranted. Funds should be held in reserve to install such a signal as it becomes necessary.

Assuming the developer is legally entitled to obtain a comprehensive permit, the Selectmen urge the BOA to approve the project with proper mitigation, contingent on those conditions. The Selectmen will be meeting with the developer to discuss the extent of the mitigation they are willing to offer. In the absence of suitable mitigation, the ZBA should issue a denial.

Sincerely,

A handwritten signature in black ink, appearing to read "Lauren S. Rosenzweig". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Lauren S. Rosenzweig

Chair, Board of Selectmen

**Acton Community Housing Corporation**  
**Nancy Tavernier, Chairman**  
**TOWN OF ACTON**  
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472 Main Street  
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[achc@acton-ma.gov](mailto:achc@acton-ma.gov)

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**TO:** Acton Board of Appeals  
**FROM:** Nancy Tavernier, Chair, Acton Community Housing Corporation  
**SUBJECT:** Restated and revised comments on Comprehensive Permit application for West Concord Development LLC (Alexan Concord)  
**DATE:** July 30, 2008  
**cc** Acton Board of Selectmen  
Roland Bartl

On February 7 and March 19, 2008, the ACHC submitted comments to the ZBA on the proposed Alexan project currently being heard by the Board. We made the following requests for consideration:

- Allocation of 10% of the units to Acton's Subsidized Housing Inventory
- Acton local preference applicants equal to Concord local preference applicants
- Denial of four waivers requested in the Application

It is our understanding that discussions between the Towns of Acton and Concord and the applicant have been ongoing throughout the process. We have a general knowledge of the negotiating points but have not been involved and are not aware of the resolution of issues, if any.

Members of the ACHC have been kept up to date on the ZBA hearing proceedings and have discussed their positions at a number of ACHC meetings accordingly. ACHC's philosophy about affordable housing is less about providing the 10% count and more about providing and meeting a demonstrated housing need. The optimum housing goal is to provide a diversity of housing opportunities in the Town of Acton itself. To further this goal, the ACHC has revised its recommendation in regard to the allocation of units.

In lieu of the allocation to Acton of 10% of the Concord units, ACHC recommends that the applicant provide \$500,000 to be placed in the Community Housing Program Fund to be used for affordable housing purposes subject to the approval of the Board of Selectmen. The funds could be used in a variety of ways to support the Town's affordable housing goals. Funds could be used to help first time homebuyers purchase units, to assist senior citizens to make capital repairs allowing them to stay in their homes, to buy down existing units and make them deed restricted, and provide funds for other efforts. This amount of money could potentially add five actual units and could assist in providing an additional 17 units. WE have concluded that to have actual units in Acton as a result of this project would be more satisfying than having a 10% allocation to the count.

If the Board chooses to stay with our original request of the allocation of 10% of the units to Acton, we would ask that it be conditioned on having the applicant fund the legal expenses for this effort and that the Town of Concord agrees in writing to the allocation and will so petition the DHCD in support of the allocation.

Thank you for your consideration of our concerns.

# NEWS

## CHAPTER 40B

# Land sale falls through for 350-unit project

By Patrick Ball  
pball@cnc.com

Sale of the land of Old Powdermill Road, where West Concord Development LLC planned to construct a 350-unit 40B project has fallen through, town officials said this week.

At the Board of Selectmen's meeting Monday, Town Manager Chris Whelan told the board West Concord Development, an affiliate of Trammel Crow Residential, could not secure financing for the parcel by a deadline this month. The seller opted to put the property back on the market instead of extending the purchase agreement for a second time.

The failed sale is a curveball for affordable housing in Concord.

The 350 units currently count toward the town's affordable housing quota, but won't if building permits are not pulled within the first two weeks of November, one year after the project was approved. Last month, Robb Hewitt, vice president for development for Trammel Crow, said the developers

were trying to secure financing before pulling permits and "the construction financing market has been frozen." But he indicated he was confident the market would thaw, and West Concord Development would be first in line for financing when that happens.

With the failed land sale, the landowner can market the land as a site green-lighted for a 350-unit development, but the design belongs to Trammel Crow, and the 40B approval is in West Concord Development, LLC's name.

With more uncertainty than ever surrounding the fate of the development formerly known as Alexan Concord, West Concord Task Force Chairman Dan Holin says it's increasingly important to stay on top of potential real estate developments and land transactions, because "once the 40B card is pulled," towns lose much of their control over the projects.

"The fact that the town isn't meeting its 40B quota as it would have if Alexan happened means we in some

sense have to be in a more reactive than proactive mode," Holin said. "The whole idea for the master plan is to try to be proactive in articulating our destiny rather than reacting to what others think it should be."

The Alexan Concord project was approved last year after a long and complex permitting process. The project, permitted under chapter 40B, called for 350 units of housing on the outskirts of Concord, on Old Powdermill Road near the Acton, Maynard and Sudbury town lines.

Zoning Boards of Appeals in Concord and Acton attached several conditions to the project, which included requiring 80 units to be designated as affordable housing and local preference to all for towns and Hanscom Air Force Base.

In May, Concord's Board of Selectmen voted to designate the development as a Local Initiative Program, a state initiative proponents of the project said would open up unsubsidized financing opportunities for the developers at no cost to the town.

## TOWN NOTES

### Halloween party tickets

Tickets are now on sale for the Recreation Department's sixth-grade Halloween Party Friday, Oct. 30, at the Hunt Gym from 7

foam behind the exterior outlets. They can also check smoke detectors or provide other energy saving information. The first weatherization day will take place on Oct. 25. For more information call Julia Crozier at 978-318-3024 or for those

over 60 call the Concord COA at 978-318-3020. Funding for this program is provided in part by Concord Municipal Light Plant and other contributors through the Hugh Cargill Fund.

## SUBMISSION DEADLINE

CALENDAR items due PR TO at r cor MC  
Wednesday at 5 p.m., eight days prior to publication.  
Send to concord.events@cnc.com.

## Fifty-two years and 21 in

I joined Get in Shape for Women months, I have lost 30 pounds on my way to reaching my goal we been an amazing journey... the re mirror and how good I feel is so sure is down to 115/60 and I no blood pressure medicine. I've h clothes moving from a size 12 to also given me the confidence to s a Health and Wellness Coach. I eified my nutrition and fitness to health and wellness goals. The great motivators and very supp Women has been integral in my s the difficulties we all have with individually with each of their clie their goals!

Donna Les  
Age 52



Small

Call 1-877-304-4567 or

- Acton
- Danver
- Andover
- Lexington
- Arlington
- Marblehead
- Bedford
- Melrose
- Belmont
- Needham
- Bridgewater
- Newton
- Burlington
- Newton
- Cambridge
- North
- Concord
- Reading

## Exhibit B

### DEVELOPMENT AGREEMENT

This Development Agreement (this "Agreement") is entered into as of this 6<sup>th</sup> day of October, 2008, by and between WEST CONCORD DEVELOPMENT LLC, a Delaware limited liability company (the "Developer"), and the TOWN OF ACTON, acting by and through its Board of Selectmen, (the "Town"), for good and valuable consideration the receipt and sufficiency of which are hereby acknowledged. This Agreement represents the understanding between the parties with respect to the contributions and commitments of the Developer with respect to mitigating potential impacts arising from the development of a multifamily housing community by an affiliate of Trammell Crow Residential (the "Project"), located on Old Powdermill Road in the Town of Concord, with access off of Sudbury Road in the Town of Acton, as more particularly described on Exhibit A attached hereto (the "Site") and, in general, to promote the creation of affordable housing and the public welfare in the Town of Acton.

#### 1. GENERAL

- 1.1 The Developer has applied for a so-called comprehensive permit under M.G.L. c. 40B (a "comprehensive permit") from the Town of Acton Zoning Board of Appeals (the "Acton ZBA") in connection with access to the Project. The Project-related work in Acton involves primarily improvements to Sudbury Road and Powdermill Road. The Project includes 350 units of multi-family housing in Concord. In order to mitigate various potential impacts of the Project on the Town and to promote the creation of affordable housing and the public welfare, the Developer has agreed to pay for certain improvements as specified herein.
- 1.2 Construction of the Project is contingent on the granting of a comprehensive permit from the Acton ZBA, the granting of an order of conditions by the Acton Conservation Commission, permits and approvals from the Town of Concord and the Massachusetts Highway Department regarding various off-site traffic and roadway improvements, a groundwater discharge permit from the Massachusetts Department of Environmental Protection, and various other permits and approvals (collectively, the "Required Permits").
- 1.3 In consideration of the Developer's promises contained herein, the Acton Board of Selectmen agree not to oppose the Developer's requests for the Required Permits in order to effectuate the terms and intent of this Agreement. Nothing contained herein shall be deemed to be a guarantee of the successful or affirmative vote on any such Required Permit.
- 1.4 The Developer and the Town incorporate by reference an agreement, executed by the parties on August 14, 2008, which expresses the intent of the parties to enter into this Agreement and outlines the terms of this Agreement.

## 2. MITIGATION

2.1 In conjunction with the development of the Project, and to mitigate potential impacts of the development, the Developer agrees to contribute to the Town (the "Mitigation Payment") the following sums for the following purposes:

- a. \$500,000 to the Acton Community Housing Program Fund, a 501(c)(3) organization;
- b. \$250,000 for sidewalk construction in Acton in the vicinity of the Project (this \$250,000 portion of the Mitigation Payment does not include the construction of sidewalks along Sudbury Road and Acton's Powdermill Road (Route 62), which are improvements that the Developer has agreed to undertake in its written submissions to the ZBA independent of this Agreement);
- c. \$150,000 for unanticipated costs associated with the Project, to be used as determined by the Acton Board of Selectmen.

2.1.1 The Mitigation Payment amount shall remain the same for a period of five (5) years. Said five (5) year period shall commence on the date of issuance of a Comprehensive Permit from the Acton ZBA approving the Project, which permit and all conditions therein or related thereto must be consistent in all material respects with the Project as applied for by the Developer and as previously approved by the Concord ZBA and in all other respects acceptable to the Developer. After the expiration of said five (5) year period, the Mitigation Payment amount (or any portion thereof that remains unpaid at that time), shall be increased by the "CPI" from the date of issuance of the Comprehensive Permit by the Acton ZBA. "CPI" means the Consumer Price Index For All Urban Consumers (CPI-U) for the Boston area published by the Bureau of Labor Statistics, U.S. Department of Labor. If the Bureau of Labor Statistics should cease to publish such an Index in its present form and calculated on the present basis, a comparable Index or an Index reflecting change in the cost of living determined in a similar manner shall be utilized to calculate the payments due hereunder.

2.1.2 The Mitigation Payment amount is over and above any costs or payments associated with infrastructure improvements or other requirements upon which any of the Required Permits are conditioned. Nothing contained herein shall be deemed to limit the Developer's rights to appeal any condition of the Comprehensive Permit that renders the Project uneconomic.

*DD*  
*The Developer agrees not to appeal solely on the basis of the Mitigation Payment.*

2.1.3 The Mitigation Payment shall be due and payable pursuant to the following schedule:

- a. One-third (1/3) shall be paid upon the issuance of an occupancy permit for the Project's fiftieth (50<sup>th</sup>) residential unit;
- b. One-third (1/3) shall be paid upon the issuance of an occupancy permit for the Project's one hundredth (100<sup>th</sup>) residential unit;

- c. One-third (1/3) shall be paid upon the issuance of an occupancy permit for the Project's one hundred and fiftieth (150<sup>th</sup>) residential unit.
- 2.2 Notwithstanding any other provision of this Agreement, the obligation of the Developer to pay the Mitigation Payment hereunder shall become effective only if and when all Required Permits have been issued (and all appeal periods applicable thereto have expired without contest or appeal, or any such contests or appeals have been concluded in favor of Developer) for the Project permitting 350 rental units.
- 2.3 Upon becoming effective as aforesaid, each portion of the Mitigation Payment shall be paid to the Town by certified cashier's, treasurer's or bank check, or by wire transfer by the Developer within ten (10) days of its respective due date.
- 2.4 In the event that, prior to issuance of an occupancy permit for the Project's one hundred and fiftieth (150<sup>th</sup>) residential unit, the Town delivers to the Developer all necessary permissions, easements, and any other authorization required to allow construction of sidewalks in Acton (other than the sidewalks that the Developer has agreed in its written submissions to the ZBA to construct along Sudbury Road and Acton's Powdermill Road (Route 62) independent of this Agreement), the parties may discuss making the \$250,000 payment (or a portion thereof) for the sidewalk component of the Mitigation Payment (as described in paragraph 2.1(b) above) "in-kind," meaning that the Developer would construct the sidewalks during construction of the Project. In the event that Developer agrees to make the sidewalk component of the Mitigation Payment, or any portion thereof "in-kind," the Developer shall document the actual cost of constructing any sidewalk(s) that it builds, and the Town shall be entitled to receive the balance, if any, between the cost to the Developer and the \$250,000 portion of the Mitigation Payment for sidewalks, to be used by the Town for construction of additional sidewalks to offset impacts from the Project.

### 3. MISCELLANEOUS

- 3.1 The Town acknowledges that nothing contained herein shall prohibit or hinder the Developer from exercising Developer's rights to use the Site alternatively for the uses and purposes currently allowed under the current Zoning By-Law if and to the extent Developer does not elect to exercise its rights under the Required Permits.
- 3.2 The Developer may assign the rights and obligations contained in this Agreement to an assignee or transferee of the Required Permits. At least 10 days in advance of any such assignment, Developer shall provide the Town with written notice of the same together with reasonable evidence of the capacity and experience of the proposed transferee and its ability to perform the Developer's obligations hereunder. At the request of the Town, the Developer and/or the proposed transferee will attend a meeting of the Board of Selectmen in order to discuss the transferee's said capacity and the overall status of the Project at that time. All terms of this Agreement shall bind and inure to the benefit or burden of any successor or assign of this Agreement or any successor or assign of the Site, and all such successors or assigns shall assume the obligations hereunder in a writing which shall be delivered to the Town promptly after the assignment of this

Agreement. Such written assumption shall include contact name(s) and information for the assignee.

3.3 The parties anticipate that, if the Project is approved as proposed, this Agreement will be incorporated into the comprehensive permit from the Acton ZBA.

3.4 Notices

Unless otherwise specified herein, all required Notices hereunder shall be deemed sufficient if sent registered mail to the parties at the following addresses:

Town: Town of Acton  
472 Main Street  
Acton, MA 01720  
Attn: Town Manager

with a copy to

McGregor & Associates, P.C.  
15 Court Square - Suite 500  
Boston, MA 02108  
Attn: Gregor McGregor

Developer: West Concord Development LLC  
c/o Trammell Crow Residential  
35 Corporate Drive, Suite 400  
Burlington, MA 01803  
Attn: Robert D. Hewitt

with a copy to:

Goulston & Storrs, P.C.  
400 Atlantic Avenue  
Boston, MA 02110-3333  
Attn: Deborah S. Horwitz

3.5 The Developer acknowledges and agrees that this Agreement shall be binding upon the Developer and each of its successors or assigns as to the obligations which arise under this Agreement during their respective periods of ownership of the Project.

3.6 As and when requested by the Developer, the Town will promptly advise, in writing, the status of the Developer's obligations or satisfaction thereof under this Agreement for the benefit of existing and prospective mortgagees of all or a portion of the Project and such other persons as the Developer may designate.

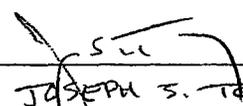
3.7 Amendments to this Agreement must be in writing and signed by both parties. Amendments to the terms of this Agreement may be agreed to on behalf of the Town by the Board of Selectmen. This Agreement shall be null and void and of no further force and effect if the

Developer withdraws its application for a comprehensive permit from the Acton ZBA, or advises the Acton ZBA that it relinquishes said permit.

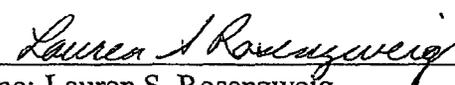
3.8 This Agreement is an enforceable contract, and shall be governed by the laws of the Commonwealth of Massachusetts. The parties hereby consent to non-exclusive jurisdiction of the courts of the Commonwealth of Massachusetts sitting in the Counties of Middlesex or Suffolk.

EXECUTED under seal as of the date and year first above written.

WEST CONCORD DEVELOPMENT, LLC

By:   
Name: JOSEPH S. TORZ  
Its: VICE PRESIDENT OF ITS GENERAL PARTNER  
Hereunto Duly Authorized

TOWN OF ACTON BOARD OF SELECTMEN

By:   
Name: Lauren S. Rosenzweig  
Its: Chair  
Hereunto Duly Authorized

Sept 10, 2015

Affordable Housing Gift Funds – samples of uses  
ACHC – Nancy Tavernier  
6/20/08

1. New construction units, not including land acquisition: ~\$220,000 per unit. (Willow-Central costs). Units can be sold for \$160,000 so net cost is \$60,000 per unit.
2. Land purchase, currently available 1/3 to 2 1/2 acres, for \$279,000 to \$595,000.
3. Existing condo units, garden style, subsidy needed to buy down to affordable price: \$70,000 per unit.
4. Existing condo units, townhouse style, subsidy needed to buy down to affordable price: \$100,000+ per unit.
5. Down payment and closing costs assistance: \$5000 grants to first time homebuyers both deed restricted and not. Gift funds allow this flexibility. (\$30,000 per year)
6. A capital fund giving grants of up to \$10,000 for low income homeowners to use for improvements on their home, allowing them to remain in the home. This could only be done with gift funds since these would not be deed restricted units and would be targeted to the elderly. (\$40,000 per year)
7. Sponsor homebuyer education courses. \$5000 per year.
8. Provide funds to Acton Housing Authority for maintenance and improvements of their properties, costs not eligible for CPA funds. (\$60,000)
9. Purchase scattered site condo units for the Acton Housing Authority to use for rental program: \$150,000-\$175,000 per unit.

Suggested affordable housing gift fund: \$500,000 would provide:

1 unit for AHA	\$150,000
Capital funds for AHA	\$ 40,000
Homebuyer ed courses	\$ 5,000
Capital funds for ACHC	\$ 30,000
Down payment ass't	\$ 20,000
Condo buydown 3 units	\$255,000

\$500,000 could also be combined with CPA and other gift funds to create \$1M to use for a land purchase and construction of up to 12 units in a mixed income development.