

HOUSING APPEALS COMMITTEE  
AN-CO, INC.

Decision # **90-11**  
Appellant: **AN-CO, INC.**  
Appellee: **HAVERHILL BOARD OF APPEALS**  
Date: **June 28, 1994**  
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DECISION

I. PROCEDURAL HISTORY

In June, 1990, An-Co, Inc. (the developer[1]) submitted an application to the Haverhill Board of Appeals for a Comprehensive Permit pursuant to G.L. c. 40B, s. 20-23 to build 120 units of subsidized, affordable housing under the

Commonwealth's Homeownership Opportunity Program (HOP). After due notice and public hearings, the Board denied the permit on October 17, 1990. From this decision the

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developer appealed to the Housing Appeals Committee.[2] The Committee held a conference of counsel, conducted a site visit, and held a de novo evidentiary hearing, with witnesses sworn, full rights of cross-examination, and a verbatim transcript.

Following the presentation of evidence, counsel submitted post-hearing briefs.

## II. FACTUAL BACKGROUND

Thirty duplex units and fifteen quadraplex units of homeownership housing are proposed on a 28.9 acre parcel of land in Haverhill in the vicinity of North Avenue, Newton Road, and Interstate Route 495. Route 495 runs east and west in this area. North Avenue and Newton Road are parallel roads about one mile apart, which cross the interstate highway without intersections to provide access. Both roads run north and south, with North Avenue to the west and Newton Road to the east. On North Avenue, a few yards north of Route 495, a smaller road, Brickett Lane, branches off to the east, following Route 495 toward Newton Road. It runs along the Route 495 right of way for about 2,000 feet, and then meets Country Club Lane at a "Y" intersection. Brickett Lane ends there. One branch of Country Club Lane

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goes about 1,000 feet north, away from Route 495, to the clubhouse of the Haverhill Golf and Country Club; the other branch continues along Route 495 until it dead-ends after about 500 feet. The development site begins at this dead end. The site is considerably longer than it is wide, and extends the remaining half mile along the northern edge of the Route 495 right of way all the way to Newton Road. The developer proposes to extend Country Club Lane into the western half of the site, where the majority of the housing units will be.

The center of the site is undevelopable wetlands, and the eastern end of the site will contain a smaller number of housing units with access by means of a roadway from Newton Road.

## III. JURISDICTION

Three jurisdictional elements must be proven by the developer: that its proposal is fundable by a subsidizing agency under a low and moderate income housing subsidy program, that it is a limited dividend organization, and that it controls the site of the proposed development. 760 CMR

31.01.

A. Fundability

The Housing Appeals Committee regulations, 760 CMR

31.02(2), provide:

A project shall be presumed fundable if a subsidizing agency makes a written determination of Project Eligibility or Site Approval. Thereafter, the project shall be considered fundable

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unless there is sufficient evidence to determine that the project is no longer eligible for a subsidy.

The HOP program is jointly administered by the Executive Office of Communities and Development (EOCD) and the Massachusetts Housing Finance Agency (MHFA). 760 CMR 37.03. It is undisputed that the MHFA made a project eligibility determination by letter of May 7, 1990. Exh. 2. This would normally dispose of the matter since no later evidence was introduced indicating that the project was no longer eligible for a subsidy.[3]

On its face, however, the eligibility letter raises an issue never before addressed by this Committee. The letter (Exhibit 2) states:

This site letter will have an effective date of two years from the date of this letter. Should construction not commence on this development within that time period, or should the effective period of this letter not be extended in writing by the Agency, it shall be considered to have expired and to no longer be in effect.

This expiration provision and fundability in general were discussed several times during the Committee's hearing.[4] See, generally, Tr. III, 57, 60-61; IV, 5-17, 124-

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128; V, 83-100. Both parties contacted the MHFA informally seeking clarification of the project's current eligibility for funding. See Tr. IV, 8, 14. No such clarification was forthcoming, however. The record before us gives no indication that the MHFA formally took any position on the fundability of this proposal after the May 7, 1990 project eligibility letter or that it either approved or denied any extension of that letter. Neither

did the MHFA take any position with regard to whether or not the two-year limit should be tolled during a Housing Appeals Committee appeal. See Tr. IV, 9. Therefore the question is presented to us in its starkest form--as a matter of law, is the two-year limitation in the MHFA project eligibility letter tolled by the appeal to the Housing Appeals Committee?

In general, the imposition of an expiration date by the MHFA in its project eligibility letter is entirely consistent

with the comprehensive permit scheme. Though the statute was enacted to reduce delays in obtaining the approvals necessary to build affordable housing, the process is still sometimes a lengthy one. Thus, for the MHFA to encourage the recipient of a preliminary subsidy approval to

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move promptly to the next step, that is, to apply for a local permit, is perfectly appropriate.

But each application for a comprehensive permit is different, and the policy implications with regard to the expiration date and possible extensions granted by the MHFA will be different in each case. For instance, it is probably reasonable to foreclose the right of a developer to apply for a permit if it has done absolutely nothing in the two years after receiving the MHFA letter; but because developers frequently encounter unexpected difficulties, it is less clear whether the norm should be to expect construction to begin within two years.

But we are concerned only with the specific facts presented in this case. Here, upon receiving the eligibility letter from the MHFA, the developer acted promptly. It filed its application with the Board within two months, and five months later took the appeal to this Committee. At one point in our hearing, there was a two-year hiatus, but we do not think that the developer should be penalized for this since it is not uncommon for comprehensive permit appeals, like other litigation, to be protracted. To apply the expiration date strictly in this case would mean dismissing the appeal after the developer has expended considerable time and money both presenting its proposal to the Board and to this Committee. And in future cases, the Board, by denying a permit and prolonging an appeal, could force the

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developer to return (perhaps repeatedly) to the subsidizing agency to reestablish eligibility.

Our regulation creates a presumption of fundability until some actual evidence becomes available "that the project is no longer eligible...." 760 CMR 31.02. The implication of this is that while an appeal is pending a developer should not have the additional burden of presenting affirmative evidence that project eligibility has not been withdrawn by the MHFA. The

purpose of chapter 40B is to eliminate both substantive and procedural barriers to building affordable housing. *Hanover v. Housing Appeals Committee*, [363 Mass. 339](#), 347, 351, 294 N.E.2d 393, 403, 405. We do not believe that the intent of the statute is to "produce a result that is contrary to common sense and sound reason" by placing such an additional hurdle

before the developer, and we therefore hold that the expiration period in the MHFA letter is tolled in this case. See *Crocker v. Martha's Vineyard Comm'n*, 407 Mass. 77, 551 N.E.2d 527, 530 (1990) (holding that where a development plan must be reviewed by both a planning board and the Martha's Vineyard Commission, tolling of a time limitation in the Subdivision Control Law is necessary to effectuate the purposes of that statute and the enabling statute of the commission). This is consistent with the holding in *Belfer v. Bldg. Comm'r of Boston*, 363 Mass. 439, 294 N.E.2d 857 (1973) that a zoning code provision which caused a variance to expire within two

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years if not used must be tolled while the variance itself is the subject of an appeal.[5]

#### B. Limited Dividend Organization

We have held repeatedly that it is the role of the subsidizing agency to ensure that the developer is a proper, limited dividend organization at the time the project receives final subsidy approval. *Owens v. Belmont*, No. 89-21, slip op. at 3-4 (Mass. Housing Appeals Committee Jun. 25, 1992). Under the definition in s. 30.02 of our regulations, a limited dividend organization means "any applicant which is eligible to receive a subsidy...", and thus, "the [project eligibility] letter establishes... limited dividend status." *Crossroads Housing Partnership v. Barnstable*, No. 86-12, slip op. at 9 (Mass. Housing Appeals Committee March 25, 1987). The courts have concurred in our interpretation. *Maynard v. Housing Appeals Committee*, 370 Mass. 64, at 67, 345 N.E.2d 382 (1976); *Hanover v. Housing Appeals Committee*, *supra*, 379, 420 (1973) ("...the question of standards for eligibility as a limited dividend organization is properly left to the appropriate State or Federal agency.")

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Particularly since the purposes of the Haverhill Fairways, Inc., as set out in its Articles of Organization (Exh. 1, Art. I, para. 2), are limited to "building a low and moderate income housing development" with distributions to shareholders limited as required by the HOP program, we conclude that the developer is a limited dividend organization. *Hanover*, *supra*, at 379, 420.

#### C. Site Control

The Board has raised questions about the ownership of the land at both entrances to the proposed site.[6] In both instances, the confusion arises out of complications from the land takings that were necessary when the interstate highway was built.

The Country Club Lane entrance to the site is at the point where Country Club Lane currently ends,[7] immediately

adjacent to the Route 495 right of way. The development site combines several small lots which were lopped off at unusual angles by the land taking for the highway. Exh. 6, sheet 2. As a result, the space between the highway right of way and a parcel abutting the development site was not wide enough for the access roadway. To accommodate the entrance, the developer has made arrangements to purchase from the Commonwealth a small, triangular portion of the highway right of way.[8] Tr. IV, 25-26, 29, 31-38; Exh. 9, 10A, 10B.

Site control, like the question of whether the applicant is a limited dividend organization, is a matter that is primarily of concern only to the subsidizing agency. For this reason our regulations state:

[A] preliminary determination in writing by the subsidizing agency that the applicant has sufficient interest in the site... shall be considered by the Board or the Committee to be conclusive evidence of the applicant's interest in the site.

760 CMR 31.01(3). Our regulations make this provision because of the understanding that the subsidizing agency

will conduct a thorough review of the site when final subsidy approval is given immediately before construction. We rely on the agency to withhold final approval and authorization to begin construction until the developer establishes definitively that it controls the site. The Supreme Judicial Court approved of this procedure in a similar situation where the Committee also had before it an MHFA site approval or project eligibility letter:

We believe... the Legislature intended to define the requisite property interest for a permit in terms of the selected financing agency's property interest requirements. [The statute] does not require the applicant for a comprehensive permit to establish before the board or committee a present title in the proposed site.... [But], the applicant must, of course, satisfy any property interest requirements of the selected financing program before the funding issues and before the conditional permit becomes operative.

Hanover, supra, at 377-78, 419-20. In the case before us, the MHFA letter (Exhibit 2), together with the Mass. Division of Capital Planning and Operations' acceptance of the developer's proposal to purchase the land (Exhibit 9), is sufficient to establish site control at the Country Club Lane entrance.

We acknowledge, however, that the city has an interest in ensuring that any lingering questions about ownership of this land are publicly laid to rest before construction begins.

And while the final subsidizing agency approval would be enough to address this concern, we have also made specific provision for it in our condition VI-3, below.

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The situation at the Newton Road entrance is just as complicated. In 1954, Newton Road (Route 108) was straightened. A new right of way and a new highway were created and the old right of way and pavement remained. The development site and another parcel no longer abutted on the new Newton Road, but they continued to have access to it by using the old paving. Tr. II, 30-34; Exh. 11. In 1962, Interstate Route 495 was built in this same area, and part of the old paving was eliminated. Tr. II, 34. This eliminated access to the site, and as a result, a small, 400 square foot parcel of land was taken by the Commonwealth in order to restore access. Tr. II, 34-37, Exh. 11, 11A. That is, a small piece of land was taken so that a vehicle would be able to leave the development site, travel a few yards on the old Newton Road paving, cross the 400 square foot parcel, and enter onto the new Newton Road. Thus, there is access to the site from Newton Road over this small section of public roadway. Tr. II, 40-42.

The developer's original plans showed a new access route going directly from the site to Newton Road. See Exh. 6, sheet 5. But this route had to cross a different piece of land, the ownership of which is unclear. This created the site control issue raised by the Board.

During the hearing before this Committee, however, the developer modified its plans for the Newton Road entrance. It now intends to use the slightly convoluted access over

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the existing public roadway. Tr. IV, 93; V, 71-73; Exh. 11. The developer clearly has the right to provide access as shown in Exhibit 11, and this renders the site control issue moot. (Also see our condition in s. VI-2(a), below.)

#### IV. INTERVENTION

Early in the hearing, a direct abutter, the Haverhill Golf and Country Club, moved to intervene. As is the Committee's customary procedure, the motion was held in abeyance, but the country club was permitted to participate fully in the hearing as *amicus curiae*, calling and examining witnesses, and presenting oral and written arguments.

The Haverhill Country Club's motion to intervene is denied. The motion alleges that the country club will be injured in two ways: because of traffic problems along Brickett Lane and because of deficiencies in the design of the storm water drainage system.

The parties reached a settlement agreement with regard to traffic. Agreement (filed Aug. 17, 1993); Tr. VII, 3-4.

Though it had the opportunity to do so, the country club raised no objection to this agreement, and thus this is no longer at issue.

With regard to drainage, the interests of the Board and the country club in ensuring that the peak rate of runoff is not increased (see s. V-A, below) are substantially similar, and therefore intervention is inappropriate under our regu-

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lations. 760 CMR 30.04(2). What is at issue is not diversion of surface water onto a single abutter's land (cf. 760 30.04(3)(c)), but the prevention of flooding of a small stream. The town has an obligation to protect all downstream properties, of which the country club is one.[9]

#### V. LOCAL CONCERNS

Where the Board has denied a comprehensive permit, the ultimate question before the Committee is whether the decision of the Board is consistent with local needs. Pursuant to the Committee's procedures, the developer may establish a prima facie case by showing that its proposal complies with state and federal requirements and other generally recognized design standards. 760 CMR 31.06(2). Thereafter, to prevail, the Board must prove first, that there is a valid health, safety, environmental, or other local concern which supports the denial, and second, that such concern outweighs the regional need for housing. 760 CMR 31.06(6); also see *Hanover v. Housing Appeals Committee*, supra, 365, 412 (1973); *Hamilton Housing Authority v. Hamilton*, No. 86-21, slip op. at 11 (Mass. Housing Appeals Committee Dec. 15,

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1988).

To meet its burden, the Board raised issues concerning storm water drainage, traffic safety at the Newton Road entrance to the site, and evacuation of the site in case of an emergency at nearby natural gas storage tanks.[10]

A. The Board has proven no deficiencies in the storm water drainage system design.

Whenever buildings and roads are built, the amount of land available for storm water to leach into the ground is reduced. As a result, both the volume and rate of storm water runoff increase. It is important, therefore, to ensure that the post-development peak rate of runoff not

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exceed the peak rate prior to development. This is particularly

true in the case before us, where immediately downstream from the wetlands on the site is the carefully controlled ponding system of the Haverhill Country Club.

Unless a very large percentage of a site is to be covered by impervious surfaces or there are unusual site conditions, [11] achieving a zero increase in runoff rate is normally a fairly straightforward matter of providing detention areas for the increased volume of runoff caused by the new impervious surfaces.

The drainage issue here is presented in an unusual posture. In most cases in which the developer expects technical issues concerning drainage to be in dispute, it submits both schematic drainage plans and supporting calculations as part of the comprehensive permit application. The town engineer reviews these, and provides comments to the board of appeals. Thus, nearly all drainage issues are reviewed and resolved at one time. That is, issuance of the comprehensive permit constitutes approval of the plans and calculations in lieu of the town engineer's approval, and all that is required before construction is the town engineer's sign-off on detailed construction plans. 760 CMR 31.09(3).

Nevertheless, this approach is not required. See Owens

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v. Belmont, supra, slip op. at 11-12, 13-14. In the case before us, schematic plans without calculations have been submitted. The developer took this approach because full calculations had been done for several other, larger developments previously proposed for this site. See Tr. II, 118. Both schematic drainage designs and full drainage calculations [12] were prepared for a proposal of 258 housing units and for a proposal of 60 large, single-family houses.

Tr. II, 122; IV, 101. Each of these had more impervious surface and greater environmental impact than the current proposal. Tr. II, 122; IV, 101. The developer's engineer, Paul Marchionda, testified that the calculations showed that these developments would comply with the runoff requirements. Tr. II, 122-124, 119; IV, 101-102. He then went on to explain that as a result it was unnecessary to perform the actual calculations in order to prove that the schematic drainage system put forth for the current proposal could be fleshed out with final engineering plans. Tr. IV, 100-104, 121; V, 10-12; II, 119-124. Because of the expense of preparing yet another set of calculations, the developer submitted only basic schematic plans, without supporting calculations.

The acting city engineer, John Murphy, testified very briefly for the Board concerning drainage. Tr. VI, 76-77, 83-84, 90-91. He presented no evidence with regard to site

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conditions, possible drainage problems, previous calculations

he had reviewed, or any calculations or other work of his own. He neither challenged Mr. Marchionda's testimony that the previous, larger proposals had complied with the drainage requirements, nor did he question Mr. Marchionda's assertion that the previous calculations showed that satisfactory final engineering calculations and drawings could be prepared at a

later date. He only reiterated that those calculations had not been done (Tr. VI, 76, 83-84), and expressed his concern that he would never have a chance to review them (tr. VI, 90-91).

We find that the developer has established a prima facie case with regard to drainage and that the Board failed to sustain its burden of rebutting it by proving that there are deficiencies in the design of the storm water drainage system.

Nevertheless, the city engineer's concern that he might have no further opportunity to review the plans is a serious one. Therefore, in this decision we are approving only the basic outline of the drainage system as described in the schematic plans. As directed in our condition in s. VI-4, below, the developer must submit full calculations and detailed construction drawings to the city engineer for review and approval prior to construction.[13]

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B. The Board has established no deficiencies with regard to traffic safety at the Newton Road entrance.

The developer introduced the minimum amount of evidence necessary to establish that the Newton Road (Route 108) entrance complies with generally recognized traffic safety standards. Tr. IV, 93, 95; Exh. 7, 11; also see Tr. VI, 74, 48. The Board presented no evidence in rebuttal. Further, in the short section in its brief on Newton Road, the Board primarily addressed the issue of site control (see s. III-C, above), and raised no specific objections based upon safety. Brief of the... Board..., p. 9. The Board has not only established no deficiencies with regard to traffic safety, but also, by not briefing this issue or presenting evidence, has waived its claim. See *Lols v. Berlin*, [338 Mass. 10](#), 13-14, 153 N.E.2d 636, 639 (1958).

C. Though the Board has proven that the project as proposed will cause a hazard with regard to emergency evacuation and access, an improved roadway will satisfy local concerns.

The Essex County Gas Co. Liquified Natural Gas and Propane Plant is a large storage facility located about one half mile from the proposed site and about one quarter mile from Brickett Lane. Exh. 12, 14; Tr. VII, 14. Nearly five million gallons of liquified natural gas (LNG) and a half million gallons of liquified propane gas (LPG) can be stored

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on the premises. Both gases are dangerous. They are not only highly combustible, but are also heavier than air, and can form a large cloud capable of suffocating people who enter it. Tr. V, 114-118; VI, 10, 14-21; VII, 19, 37-38.

The Haverhill Fire Department has prepared an Evacuation Plan (Exhibit 13) for the area. In case of a major incident at the plant, residents of the proposed housing are unlikely to be in immediate danger since they are separated from Frye's

Pond by a small hill. Exh. 12. But they would be within the area sealed off to traffic and evacuated. Tr. VI, 38. A large gas cloud might well flow downhill to the area around Frye's Pond, which is immediately adjacent to Brickett Lane. If the residents' only way of leaving the site were along Brickett Lane, they could easily inadvertently enter the gas cloud, with disastrous results. See Tr. VI, 33-39.

Thus, the Board has shown that a significant public safety hazard exists because of the possibility of a major spill at the gas storage facility. It is not of the sort of hazard, however, that automatically precludes all nearby development. There are, for example, a number of other houses as close to the facility as the proposed site. Tr. III, 11-12. But, particularly given the large size of the proposed development, if the only egress were westward via Brickett Lane, through the low-lying area near Frye Pond, a life-threatening hazard outweighing the need for housing

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would exist.

Fortunately, there is another route for evacuation--eastward, parallel to Route 495. The critical question before us, however, is to what design standards an emergency roadway along that route should be built.

The developer proposes a sixteen-foot-wide, crushed stone and gravel roadway connecting the two ends of the site. It would have "lock boxes" or "break-away" gates at either end to prevent unauthorized use. We suspect that this would be accepted in many locations in many towns. But we must examine the specific characteristics of this site and this municipality and, more important, the evidence put before us by the parties in this case.

The Board introduced evidence of significant problems with the developer's proposal. The roadway proposed would be unpaved. The Board cited difficulties with snow plowing and road maintenance, and showed that because of the danger of heavy fire trucks sinking into the ground, the fire chief has issued a general order prohibiting fire-fighting apparatus from leaving paved roads. Tr. VI, 45-46, 79; Tr. VII, 26-28, 39-47. While these concerns might be met by paving a one-lane width of the roadway, the Board also pointed out that gates do

not ensure adequate access in an emergency. In addition to problems with operating the "lock boxes," there is a significant danger of people blocking the road by illegally parking cars outside the gates. Tr. VII, 29-32.

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Finally, there was unequivocal testimony that because of these concerns, the sort of emergency access proposed here has never before been approved in Haverhill. Tr. VII, 33, 41.

The developer introduced no evidence whatever to rebut the Board's contentions about access. On the other hand, its

engineer conceded that a larger road could be constructed where the gravel road been planned. Tr. V, 16.

We accept the Board's position (as stated by the deputy fire chief; see Tr. VII, 33-34, 36) that access must be provided through the site by a full, standard, twenty-eight-foot-wide roadway, as is planned for the rest of the development.[14] (See condition in s. VI-2(b), below.)

#### VI. CONCLUSION AND ORDER

Based upon review of the entire record and upon the findings of fact and discussion above, the Housing Appeals Committee concludes that the decision of the Haverhill Board of Appeals is not consistent with local needs. The decision

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of the Board is vacated and the Board is directed to issue a comprehensive permit as provided in the text of this decision and the conditions below.

1. The comprehensive permit shall conform to the application submitted to the Board except as provided in this decision.

2. The comprehensive permit shall be subject to the following conditions:

(a) The development shall be constructed as described in the application filed with the Board on June 26, 1990, subject to any modifications as shown on Exhibit 6, the 1990 site plans prepared by Marchionda and Associates, Inc.; and Exhibit 11, the May 1991 revised plan of the Newton Road Access.

(b) The paved portion of Brickett Lane and that section of Country Club Lane that connects the proposed development to Brickett Lane must be widened to a minimum width of twenty-eight feet with one five-foot-wide sidewalk for the entire length of the roadway, running from the development to North Avenue, unless a lesser

width is agreed to by the Haverhill city engineer.

(c) Traffic signals must be installed at the intersection of Brickett Lane and North Avenue at the

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developer's expense.

3. Prior to commencement of any construction, the developer shall satisfy Haverhill city officials that it has obtained all necessary final approvals from state and federal transportation agencies and the subsidizing agency with regard to access roads and with regard to issues concerning control of the portions of the site through which access roads will pass. The developer shall thereafter record with the register of deeds a plan of land

substantially similar to definitive plans required under the Subdivision Control Law. The developer shall follow the following procedure or such other procedure as may be acceptable to the Board and permissible under law:

(a) The developer shall submit the documentation of state and federal approvals and the plan of land to the Haverhill Planning Board or its agent. In conformity with 760 CMR 31.09(3), the Planning Board or its agent shall review such plan only to ensure that it complies with state and federal law and that it is consistent with the comprehensive permit, which shall include consistency with local requirements which have not been overridden by the comprehensive permit. Upon the recommendation of the Planning Board or its agent, the Haverhill Board of Appeals shall then endorse the plan for recording by the register of deeds with the

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following words or similar words: "Approved under the Subdivision Control Law by the Haverhill Board of Appeals acting for the Haverhill Planning Board pursuant to the power granted by G.L. c. 40B, s. 21. This plan is subject to the conditions contained in the comprehensive permit granted [date]."

4. Prior to commencement of any construction, the developer shall submit full storm water drainage calculations and detailed drainage system construction drawings to the city engineer for review and approval.

5. Because the Housing Appeals Committee has resolved only those issues placed before it by the parties, the comprehensive permit shall be subject to the following further conditions:

(a) Construction in all particulars shall be in

accordance with all presently applicable local zoning and other by-laws except those waived by this decision or in prior proceedings in this case.

(b) The subsidizing agency may impose additional requirements for site and building design so long as they do not result in less protection of local concerns than provided in the original design or by conditions imposed by the Board or this decision.

(c) If anything in this decision should seem to

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permit the construction or operation of housing in accordance with standards less safe than the applicable building and site plan requirements of the subsidizing agency, the standards of such agency shall control.

(d) No construction shall commence until detailed construction plans and specifications have been reviewed

and have received final approval from the subsidizing agency, until such agency has granted or approved construction financing, and until subsidy funding for the project has been committed.

(e) No construction shall commence until the Housing Appeals Committee has fully complied with the Massachusetts Environmental Policy Act (MEPA), M.G.L. c. 30, s. 61-62H. Upon issuance of the Certificate of the Secretary of Environmental Affairs on the Final Environmental Impact Report (FEIR) with regard to this project, the applicant shall file that certificate and the FEIR with the Committee. The Committee shall retain authority to modify this decision based upon the FEIR, other reports prepared in connection with MEPA, or other information, all in accordance with the Committee's regulations under MEPA, 760 CMR 31.08(3).

(f) The Board shall take whatever steps are necessary to insure that a building permit is issued to the applicant, without undue delay, upon presentation of construction plans which conform to the comprehen-

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sive permit and the Massachusetts Uniform Building Code.

This decision may be reviewed in accordance with the provisions of G.L. c. 40B, s. 22 and G.L. c. 30A by instituting an action in the Superior Court within 30 days of receipt of the decision.

Housing Appeals Committee

Date: 6/28/94

/s/

Werner A. Lohe Jr.  
Acting Chairman  
/s/  
Grace A. Abruzzio

/s/  
Joseph P. Henefield

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[1] An-Co, Inc. and an affiliated corporation, Haverhill Fairways, Inc., will develop the housing jointly. An-Co owns the parcel of land, and Haverhill Fairways, as a limited dividend organization, will do the actual construction. Exh. 1, 3; Tr. IV, 22-25. Together, the two corporations are referred to hereafter as "the developer."

[2] The parties stipulated that the town has not met any of the statutory minima defined in G.L. c. 40B, s. 20 (see 760 CMR 31.04), thus foreclosing the defense that its decision is consistent with local needs as a matter of law pursuant to

that section. Interim Order, s. I-4 (June 3, 1993).

[3] For a discussion of the history and function of the site approval or project eligibility letter, see CMA, Inc. v. Westborough, No. 89-25, slip op. 4-9 (Mass. Housing Appeals Committee Jun. 25, 1992).

[4] Occasional reference was also made throughout the hearing to complications caused by the legislature's decision not to appropriate new funds for the HOP program for the past several years. No evidence was presented nor was any argument made that the program is no longer a valid subsidy program