

**COMPREHENSIVE PERMIT WITH CONDITIONS PURSUANT TO
HOUSING APPEALS COMMITTEE’S DECISION ON STIPULATION BETWEEN
THE MARSHFIELD ZONING BOARD OF APPEALS AND
BEACON OCEAN SHORE LIMITED PARTNERSHIP**

Procedural History

1. On or about December 7, 2001 at 12:47 p.m., Beacon Ocean Shore Limited Partnership c/o Beacon Residential Properties, 150 Federal Street, Fifth Floor, Boston, MA 02110 (hereinafter, the “Applicant”), filed an application for a comprehensive permit, pursuant to G.L. c. 40B with the Marshfield Zoning Board of Appeals (hereinafter, the “Board”), to construct a multi-family low and moderate income housing development (hereinafter, the “Development”) located on Ocean Street in Marshfield, Massachusetts (hereinafter, the “Site”).

2. A duly advertised public hearing was opened on January 22, 2002 at 7:30 p.m. and continued to the following dates: March 12, 2002 at 7:30 p.m., April 30, 2002 at 7:30 p.m., June 18, 2002 at 7:30 p.m. and July 16, 2002 at 8:30 p.m.

3. The public hearing was closed on July 16, 2002.

4. The following documents and exhibits were received during the public hearing and are hereby incorporated by reference in the decision:

<u>Department/Company/Report</u>	<u>Author</u>	<u>Date</u>
Beacon Residential Properties	Peter W. Smith	12/05/01
Marshfield Fire Department	Deputy Chief Kevin Robinson	12/26/01
Marshfield Planning Board	Angus Jennings	01/07/02
Marshfield Dept. Public Works	Walter Fender et al.	01/15/02
Bonz/REA, Inc.	Robert H. Salisbury	01/17/02
Marshfield Airport Commission	Robert Merrill, P.E.	01/18/02
Horsley & Witten, Inc.	John M. Riordan, P.E.	01/22/02
Koningisor, Luciano & Assoc., Inc.	James E. Koningisor	02/05/02
H.W. Moore Associates, Inc.	Robert K. Carter	02/01/02
Marshfield Police Department	Robert W. Foulsham	02/22/02
Marshfield Airport Commission	Ann Pollard	03/01/02
Supplemental Submission	Beacon Residential Props.	03/06/02
Nixon Peabody, LLP	Ruth H. Silman	03/08/02
H.W. Moore Assoc.	Robert K. Carter	03/11/02
Koningisor, Luciano & Assoc.	James E. Koningisor	03/21/02
Koningisor, Luciano & Assoc.	James E. Koningisor	03/23/02
Marshfield Fire Department	Deputy Chief Kevin Robinson	04/04/02

Rexhame Beach Community Association	Robert J. Bowdring	04/01/02
Supplemental Submission	Beacon Residential Props.	04/16/02
Cannon Engineering	Glenn D. Cannon, P.E.	04/24/02
Aircraft Owners & Pilots Assoc.	Keith W. Holt	04/23/02
Marshfield Airport Commission	Robert Merrill, P.E.	04/29/02
Horsley & Witten, Inc.	John M. Riordan, P.E.	04/24/02
MA Div. Fisheries & Wildlife	Patricia Huckery	04/22/02
MA Div. Fisheries & Wildlife	Patricia Huckery	03/27/02
Citizens Voices of Marshfield	Peter Phillips	04/20/02
Citizens Voices of Marshfield	Peter Phillips	04/22/02
Citizens Voices of Marshfield	Peter Phillips	undated
Marshfield Dept. Public Works	Walter Fender et al.	04/30/02
Koningisor, Luciano & Assoc.	James E. Koningisor	05/15/02
Dufresne-Henry	Randy Christensen	04/30/02
Marshfield Housing Authority	Kathy Sullivan	05/16/02
Horsley & Witten, Inc.	John M. Riordan, P.E.	05/29/02
Viva Consulting	Laurie Gould	06/03/02
Supplemental Submission	Beacon Residential Props.	06/14/02
Marshfield Action Inc.	Maria Asvestos	06/18/02
Citizens Voices of Marshfield	Peter Phillips	06/17/02
Beacon Residential Properties	Peter W. Smith	06/20/02
Marshfield Board of Health	Peter Falabela	06/25/02
Marshfield Airport Commission	Robert Merrill, P.E.	07/09/02
Marshfield Housing Authority	Kevin Cantwell	07/12/02
Marshfield Housing Authority	Kevin Cantwell	07/12/02
Beacon Residential Properties	Peter W. Smith	07/15/02
Marshfield Action, Inc.	Maria Asvestos	undated
Marshfield Conservation Com.	Jay Wennemer	07/16/02
Edwards & Kelcy	James Winn	07/16/02
Marshfield Board of Public Works	Joseph Lambert	07/16/02
	Susan Christiansen	07/16/02
	Edward McPherson	07/15/02
Beacon Residential Properties	Howard Cohen	07/15/02
Marshfield Planning Board	Angus Jennings	07/16/02

5. On August 27, 2002, the Board issued its Findings and Decision granting the Applicant a comprehensive permit subject to conditions.

6. On September 18, 2002, the Applicant filed an initial pleading with the Housing Appeals Committee appealing certain of the conditions in the Board's Findings and Decisions.

7. On _____, 2004, the Applicant and the Board entered into a Stipulation agreeing to revised conditions to the comprehensive permit and filed that Stipulation with the Housing Appeals Committee on _____, __, 2004. Attached to that Stipulation was this Comprehensive Permit with Conditions Pursuant to Housing Appeals Committee's Decision on Stipulation Between the Marshfield Zoning Board of Appeals and Beacon Ocean Shore Limited Partnership (hereinafter, the "Comprehensive Permit with Conditions"). The Board and the Applicant agreed that this revised Comprehensive Permit with Conditions, which includes the revisions to which the Applicant and the Board have agreed, should supersede the comprehensive permit issued by the Board in its Findings and Decision of August 27, 2002.

8. The Housing Appeals Committee later issued a Decision on Stipulation adopting the parties' Stipulation in full and ordered the Board to issue a comprehensive permit in accordance with the Stipulation or, upon thirty days from the Decision on Stipulation elapsing without Board action, deeming this revised Comprehensive Permit with Conditions (which is incorporated by reference in the Stipulation), to be the action of the Board.

Findings

1. The Applicant, its heirs, successors and assigns (collectively, the "Applicant") is qualified pursuant to 760 CMR 31.01 in that:

(A) it is a "limited dividend organization" as that term is used in G.L. c. 40B, §.21 and 760 CMR 31.01(1);

(B) it has a funding commitment from a subsidizing agency as evidenced by the project eligibility letter from the Massachusetts Housing Finance Agency (hereinafter, "MassHousing") dated November 27, 2001. The Development will be constructed under the MassHousing 80/20 Program, the Massachusetts Development Finance Agency 80/20 Program, or the Commonwealth's Department of Housing and Community Development low-income housing tax credit program; and

(C) it has "control of the site" as that term is used therein in that it has legal and/or equitable interests in the Site as demonstrated by the purchase and sale agreement between Esther K. Stevens and David P. Stevens as Sellers and Beacon Residential Properties Limited Partnership as Buyer for the Site dated August 8, 2001. An assignment of the Purchase and Sale shall be presented to the Board prior to the issuance of a Building Permit.

2. The Town of Marshfield has not met the statutory minimum set forth in G.L. c. 40B, § 20 or 760 CMR 31.04 nor is affordable housing located on sites comprising one and one-half percent or more of the total land area zoned for residential, commercial or industrial use. The development of

affordable units consistent with this application will not result in the commencement of construction of such housing on sites comprising more than three tenths of one percent of such land area.

3. The Site is located on Assessors Map K9, Block 3, Lot 7A, Marshfield, Massachusetts. The Site contains approximately 30.9 acres and is zoned Business Highway (B-2), Airport, and Residential Waterfront (R-3) as set forth in the Marshfield Zoning Bylaw and on the Marshfield Zoning Map. A portion of the Site is also located within the following two overlay zoning districts: the Inlands Wetlands Zoning District and the Flood Plain Zone.

4. The Development shall consist of 150 dwelling units made up of 63 one-, 75 two-, and 12 three-bedroom apartments. The precise unit mix may be changed by the mutual agreement of the Applicant and the Board as an insubstantial modification of the comprehensive permit.

Unit Type	#Units
One-bedroom market rate	50
Two-bedroom market rate	60
Three-bedroom market rate	10
One-bedroom affordable	13
Two-bedroom affordable	15
Three-bedroom affordable	2

5. Each unit will be serviced by a public water supply and public sewer connection.

6. Marshfield’s water and sewer departments have indicated that the existing sewer main has adequate capacity to serve the proposed Development.

7. The Board retained the following consultants to assist in the review of the application:

- Engineering:** Horsley & Witten, Inc. – Jon Witten, John Riordan and Samuel Jensen;
- Mass. Housing Partnership Fund:** Mark Bobrowski, Esq. and Viva Consulting – Laurie Gould
- Traffic:** Cannon Engineering – Glenn D. Cannon, P.E.

Other aspects of the Development were reviewed by the Boards and staff of the Town of Marshfield and members of the citizenry.

8. The Board’s traffic and engineering consultants prepared detailed reports indicating that the construction of this Development would not endanger the public health or safety or the environment, subject to the conditions set forth below.

9. The proposed Development is consistent with local needs.

Conditions

The Applicant is hereby granted a Comprehensive Permit which includes all local permits, site plan approvals, special permits, and approvals by all local bodies having jurisdiction over the construction and operation of real estate including but not limited to the planning board, the board of selectmen, board of zoning appeals, and, when acting pursuant to any local by-law, the conservation commission, provided the Applicant must comply with the conditions set forth below and provided, further, that the Applicant must comply with all substantive requirements of all local rules and regulations except for those exemptions specifically set forth in Exhibit A.

1. Except as more particularly provided for in this decision, the Development shall be constructed in substantial conformance with the following plans of record:

Ocean Shores Preliminary Plans, including preliminary site, utility, site development, architectural, and landscape plans as follows:

- Partial Topographic Site Plan by Harry R. Feldman, Inc. revised September 23, 2002;
- Preliminary Site Plan by H.W. Moore Associates, Inc., dated January 28, 2004;
- Preliminary Site Grading & Drainage Plan by H.W. Moore Associates, Inc., dated October 22, 2003 with revisions dated October 28, 2003, November 24, 2003, and December 10, 2003;
- Preliminary Site Utility Plan by H.W. Moore Associates, Inc., dated October 22, 2003;
- Landscaping Plan by H.W. Moore Associates, Inc., dated October 22, 2003;
- Building Type I – Front Elevation Plan by L & M Design, dated January 28, 2004;
- Building Type “1” Plan – 1st Floor by L & M Design, dated January 28, 2004
- Building Type “1” Plan – 2nd Floor by L & M Design, dated January 28, 2004
- Building Type “2” Plan – 1st Floor by L & M Design, dated January 28, 2004
- Building Type “2” Plan – 2nd Floor by L & M Design, dated January 28, 2004
- Unit “A1”, Unit “A2”, Unit “A3”, Unit “B1”, Unit “B2”, Unit “B3” Floor Plans by L & M Design, dated January 28, 2004
- Unit “C1”, Unit “C2”, Unit “D” Floor Plans by L & M Design, dated January 28, 2004
- Elevation – Club House by L & M Design, dated January 28, 2004
- Floor Plan – Club House by L & M Design, dated January 28, 2004

A final site plan bearing the stamp of a Registered Professional Engineer including all final site design and all conditions and improvement required by the decision shall be submitted for the approval of the Board prior to issuance of a building permit. Any substantial deviation from these final approved plans and/or documents shall require a modification of this comprehensive permit by the Board as set forth in 760 CMR 31.03.

2. The Applicant shall provide 270 parking spaces measuring at least 9.0' x 18.0', or 1.80 spaces per dwelling unit. The site plan identifies the location of land reserved for 30 additional possible future spaces, which would bring the total to 2 spaces per unit. The Applicant will construct the additional spaces in the future if the Board determines that there is inadequate parking.

3. The Development will be financed under either the MassHousing 80/20 Program, the Massachusetts Development Finance Agency 80/20 Program or the Commonwealth's Department of Housing and Community Development low-income housing tax credit program and in each instance will be governed by the applicable agency's Regulatory Agreement. No less than twenty percent (20%) of the dwelling units shall be reserved in perpetuity for rental by households at or below fifty percent (50%) of the area median household income (the "affordable housing"). The affordable housing units shall be reasonably distributed across the Development.

4. To the extent permitted by state and federal law, the following preference shall be incorporated in the Development's resident selection plan, as approved by MassHousing or alternative state agency: preference for seventy percent (70%) of the affordable units shall be given to renters who are either (a) Marshfield residents; (b) the children or parents of Marshfield residents; (c) employees of the Town of Marshfield; or (d) employees of businesses within the Town of Marshfield. The Applicant shall administer the local preference program with the assistance of a monitoring agent, initially designated by the agency providing the state or federal assistance. In the event no state agency is involved with this monitoring, the agent for the resident selection plan shall be the Marshfield Housing Authority, provided it demonstrates that it has the requisite qualifications or retains a qualified consultant. In the event the Marshfield Housing Authority either opts not to serve or is not qualified to serve as the monitoring agent, the monitoring agent for the Development's resident selection plan shall be Citizens Housing and Planning Association, Inc. (CHAPA) or its equivalent. The Applicant shall bear the reasonable costs of the monitoring agent or necessary consultant(s). The Applicant shall fund the cost for the Marshfield Housing Authority to provide notice to residents on the Marshfield Housing Authority waiting lists of the availability of units at the Development. The Applicant shall provide written notice to the local community groups (the Marshfield Housing Authority, Marshfield Council on Aging, and Sowing Seeds) of an impending vacancy among the affordable units within thirty (30) days receipt of an intent to vacate notice or, in the event no notice is given, within thirty (30) days of a vacancy occurring.

5. It is expressly understood that the Applicant may seek to convert the affordable units from rental to condominium units for sale in accordance with the terms and conditions of applicable state and/or federal programs in effect at the time of such proposed conversion so long as such conversion does not reduce this Comprehensive Permit's contribution of 150 eligible housing units to the Town's ten percent (10%) housing unit threshold (regardless of whether the 10% threshold has been met at the time of the proposed conversion), or reduce the acreage contribution to the Town's one and one-half percent (1½%) land area threshold ((a) regardless of whether that threshold has been met at the time of the proposed conversion; and (b) if that threshold is still relevant under G.L. c. 40B, § 20), or reduce the contribution of eligible housing units to a subsequently enacted statutory or regulatory housing threshold in effect at the time of the proposed conversion.

6. The Development shall be connected to the public water and public sewer system. Prior to the issuance of any building permit, the Applicant shall provide evidence from the Water and Sewer Department to the Building Inspector that the utility connection plans have been approved and permits issued by the Water and Sewer Department.

7. During construction, the Applicant shall conform to all local, state, and federal laws regarding noise, vibration, dust and blocking of Town roads except as stated in Exhibit A. The Applicant shall at all times use all reasonable means to minimize inconvenience to residents in the general area. Construction shall not commence on any day Monday through Friday before 7:00 A.M., on Saturday construction shall not commence before 7:30 A.M. and shall not continue beyond 6:00 P.M. on any day. There shall be no construction on any Sunday or state or federal legal holiday. Hours of work may be extended beyond 6:00 P.M., Monday through Friday inclusive for emergency work only by informing the Building inspector of the need for said extension by 4:00 P.M. of that day. Dust control measures shall be provided to the Board for its approval prior to the issuance of a building permit.

8. The following aspects of the Development shall be and shall remain forever private, and the Town of Marshfield shall not have, now or ever, any legal responsibility for operation or maintenance of same:

- Roadways and parking areas
- Storm water management facilities
- Snow plowing
- Landscaping and maintenance of grounds
- Trash removal
- Street lighting
- On-Site utilities

The roadways within the Development shall not be dedicated or accepted by the Town of Marshfield.

9. Prior to the installation of the stormwater management system, final design shall be approved by the Board or its agent. All construction shall be done to best management standards.

10. The Applicant will construct the traffic mitigation improvements included on the Preliminary Site Plan, by H. W. Moore, dated January 28, 2004 and which is included within the plans set forth in paragraph 1 above. These improvements include decorative lights, inset stones for pedestrian crosswalks, pedestrian ramps, relocated traffic signage, cold plane and overlay pavement, replacement of pavement markings in the same locations and a sign announcing Rexhame Village. In addition, the Applicant shall provide \$5,000 to the Marshfield Fire Department to install so called "Opticon" controls at the intersection of Ocean Street and Webster Street. In no event shall the

Applicant be required to pay more than two hundred thousand dollars (\$200,000) (the “Maximum Contribution”) to implement that plan, including the Opticon contribution. The Maximum Contribution shall be expended on the traffic improvements given the highest priority by the Board.

11. Unless waived by the Board at a future date, the Applicant shall provide a permanent area to safely allow school bus passenger pick-up and drop-off at the main entrance to the development and shall submit a plan of same to the Board for its approval prior to the issuance of a Building Permit.

12. The Applicant shall provide a marked crosswalk across Ocean Street to facilitate pedestrian crossings to the sidewalk on the northern side of Ocean Street after consultation and coordination with the Department of Public Works.

13. All subsurface construction and underground utility construction shall be performed in accordance with current engineering and construction standards and in no manner shall any waivers from this be allowed. All sub-surface drainage structures shall have a minimum design of H-20 loading capacity requirement. All construction shall be done to best management standards. Upon completion of this work, the Applicant shall file as-built plans, endorsed and stamped by a Registered Professional Engineer, together with a certification by the Registered Professional Engineer that all work has been performed in accordance with the plans and specifications approved by this Comprehensive Permit with Conditions. The as-built plans and certification shall be provided to both the Board and the Marshfield Department of Public Works.

14. The Applicant shall provide a walking trail with seating areas adjacent to the wetland area at the retention basin. Walking trails will not be provided in the wetland buffer areas or in the wetlands or in the non-disturb areas as shown on the plans in order to protect habitat under the jurisdiction of the Natural Heritage Program.

15. The Applicant agrees not to cut any trees in the wetland areas except for the purpose of fire control, maintaining a healthy forest, and as may be necessary to comply with Federal Aviation Administration (FAA) requirements and, further, upon Conservation Commission approval that is pursuant to an order of conditions. No clear cutting of any kind is permitted in the wetland areas. However, the Applicant shall allow the Town of Marshfield to cut or remove any trees or brush deemed a hazard to the safe operation of the airport subject to the approval of the Conservation Commission and the Natural Heritage Program and in accordance with a Conservation Restriction to be placed on a portion of the land.

16. The Applicant will provide a minimum 100 foot undisturbed set back to the three vernal pools, a minimum of 140 foot undisturbed setback from wetlands on the southernmost portion of the site (nearest the airport) and a minimum setback of 35 feet on the southwestern portion of the site, all of which setbacks are labeled on the plans as “Non-Disturb Area.” Further, the stormwater management system will be designed to function properly during 100-year storm event, utilizing a coastal flood elevation of 8. A list of all pesticides, fertilizer, roadway agents and chemicals both organic and

inorganic in nature to be used in the maintenance of the grounds, sidewalks and roadways shall be submitted to the Conservation Commission for its comments and the Board for its approval prior to the issuance of an Occupancy Permit. The entire project is subject to review by the Marshfield Conservation Commission under the state Wetlands Protection Act and the Applicant will submit a Notice of Intent for the Commission's approval.

17. The Applicant shall promptly pay the reasonable fees of the technical experts and the legal counsel to the Board for review of the documents or plans described herein.

18. The Applicant shall be entitled to request a Certificate of Occupancy for any completed building, and the Building Inspector is authorized to issue such Certificate of Occupancy, prior to completion of the entire Development provided that the following conditions have been satisfied:

- (A) The Applicant has submitted, and the Board has approved, a final landscaping plan for all common areas of the Development.
- (B) All landscaping associated with the building to be occupied shall be completed, except in the event that such work is not completed due to weather conditions, in which case the Applicant shall be entitled to a temporary certificate of occupancy until the weather conditions allow for the Applicant to complete such work, provided that a performance bond or other surety in an amount as approved by the Board, is posted with the Town Clerk to insure completion of the work in a reasonable time period, as determined by the Board.
- (C) All parking spaces to serve the units within the building to be occupied, calculated at 1.8 parking spaces per unit, shall be constructed, and shall have at least a binder course of paving and shall be striped.
- (D) Any areas that remain under construction following issuance of the Certificate of Occupancy, from time to time, shall be appropriately restricted to provide public safety.
- (E) Any work shown on the approved plans referenced above pertaining to a specific building remaining to be completed following the issuance of the Certificate of Occupancy for such building shall be secured by a performance bond or other surety, in an amount set by the Board, posted with the Town Clerk for the Town of Marshfield acting through the Zoning Board of Appeals.
- (F) To prevent a disproportionate number of market rate units being occupied prior to completion and occupancy of affordable units, no market rate units exceeding 50% of the total market rate units shall be occupied unless 50% of the affordable units have been completed and occupancy permits issued therefore.

19. Except for good cause shown, all work shown on the approved plans referenced above shall be completed within three (3) years of the date of issuance of the initial building permit.

20. The Applicant shall pay the following fees:

- building, electrical, plumbing and gas permit fees at discount of 20%;
- water connection fee calculated at commercial rate with a 20% discount, estimated at approximately \$104,139 for 150 units;
- water conservation fee at discount of 20%;
- sewer connection fee of \$25.00;
- all other fees without any reduction.

21. Prior to the issuance of the final certificate of occupancy, the Applicant shall pay to the Town the sum of \$105,735 to remove inflow and infiltration from the Marshfield sewer system. In determining the payment for inflow and infiltration (I&I), the following formula has been used:

- Wastewater flow generated by Applicant based on the Department of Environmental Protection's Title V design flow criteria = 30,000 gallons per day (gpd)
- Applicant will remove 1.33 gallons for each 1.00 gpd of design flow = 39,900 gallons removed
- Cost to remove 1 gallon of I&I = \$2.65
- Applicant's I&I payment = \$2.65/gallon x 39,900 gpd = \$105,735

22. Exhibit A sets forth those exemptions, exceptions and waivers necessary to construct the Development pursuant to the Site Plan. No other exemptions, exceptions or waivers shall be implied except as specifically set forth in Exhibit A. Minor deviations from otherwise applicable local rules may be authorized by the Board in the subsequent review and approval of the final plans.

23. The Development will comply with State Building Code Requirements for NFPA 13 R Sprinkler system and multifamily fire alarm system. The NFPA system shall have a fire department connection at a location to be determined by the fire department. An emergency access lane will consist of stabilized gravel base overlain with four inches (4") of loam.

24. The Applicant shall enter into an Avigation Agreement with the Marshfield Airport Commission. Said Agreement shall include customary terms and conditions in accordance with standard practices for abutters to airports, without reservation. In the event the Applicant and the Marshfield Airport Commission cannot enter into such mutually agreeable Avigation Agreement within the next six months, however, the Applicant agrees to comply with the terms of the Avigation Agreement substantially in the form attached hereto as Exhibit B as may be changed, altered, amended or further conditioned by the Board. The Applicant shall include the following language in every lease that is signed for the Development: “Tenant has been informed and acknowledges that the Development is located adjacent to the Marshfield Airport, and acknowledges the right of the Airport to conduct its operations, which include flights and ground operations by any and all types of aircraft, 24 hours per day, seven days per week. To the fullest extent permissible by law, Tenant hereby waives his or her rights to pursue legal action concerning current or future airport activity.”

25. There will be one water meter per building. In the event the Development is changed from rental units to condominiums in the future, individual water meters will be provided to each unit as part of that conversion, at the owner’s expense.

26. The Applicant agrees that it will not use the name “Marshfield Commons” for the Development. The Zoning Board of Appeals hereby approves the name “Ocean Shores” for this development.

27. The Clubhouse shall be for the private use of residents and their guests only.

28. The Applicant shall cause to be performed an archeological survey pursuant to 950 CMR 70.00 and shall provide a copy to the Board prior to the issuance of a building permit.

29. The Applicant shall submit a plan showing all pavement markings, striping and signage to the Board for its approval prior to the issuance of any Certificate of Occupancy.

30. The Applicant will record a Conservation Restriction pursuant to its agreements with the Commonwealth’s Natural Heritage program which will include a portion of the parcel shown on Assessors Map K9, Block 3, Lot 7A. The Applicant will transfer the land described in such Conservation Restriction (approximately 22 acres) to the Town, subject to all the terms and conditions of the Conservation Restriction. Said property shall be maintained as a permanent buffer between the Marshfield Municipal Airport and the residential dwellings.

List of Exhibits

Exhibit A – List of Allowed Exemptions/Exceptions to Local Bylaws and Codes

Exhibit B – Avigation Agreement