



TOWN OF WESTON

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Weston PB Comments to Weston Board of Appeals 751 BPR/Mill Creek 40B Application June 19, 2019

Overview

These are comments by the Weston Planning Board (PB) to the Weston Zoning Board of Appeals (ZBA) on the 40B Comprehensive Permit application for 751 Boston Post Road.

The comments are driven by four sources related to the application: a. a request by the Board of Selectmen (BOS) for extensive community outreach, a collaborative process across Town Boards/Committees and the applicant, and an expedited permit from the Town (providing "safe harbor"); b. a three-month Working Group; c. two PB hearings and two PB meetings; and d. 40B legal background. Related details on b-d are included as appendices.

All told, the comments are based on over three months of comprehensive outreach, study, negotiations, and 26 meetings and hearings with over ten Town officials, three independent experts, 30 neighbors, Town counsel, and the applicant and the applicant's team of experts.

Comments are divided into the following sections:

- A. A Full Set of Concerns
- B. A Full Set of Mitigations and Regulated Approvals to Address Those Concerns
- C. The Applicant's Presentation of Mitigations to ZBA
- D. Recommended Steps for ZBA to Fulfill BOS Request

- Appendix I. Appendix I. Weston 40B Background
- Appendix II. 751 Working Group
- Appendix III. 40B Traffic Safety Case Law
- Appendix IV. Background on Working Group Negotiations
- Appendix V. Planning Board Guidelines for Landscape Buffer

Overall, the PB feels the above collaboration, resulting mitigations, and review results in a much improved proposal for the applicant, the neighbors, and the Town; as such we feel that the ZBA has the opportunity to complete the BOS request.

We wish to extend our appreciation to the neighbors for their patience, time, and ideas and to the applicant for their professionalism in reaching this volume and quality of resolutions.

A. A Full Set of Concerns

The PB has found 59 concerns across 12 categories associated with the design as submitted to the ZBA – given the depth of the research, we are confident this is a comprehensive list.

The concerns are:

1 Traffic	
1a	Additional traffic on an already congested Route 20
1b	751 BPR Residents using Love Lane as a cut through to avoid a left turn onto BPR
1c	Exacerbating already congested and difficult conditions for current residents to enter BPR
1d	Potentially unsafe turning movements from entrance and egress
1e	Impacts to safety of existing intersections
1f	Assuring access is sufficient and safe for fire and ambulance
1g	Assuring access is sufficient and safe for school buses and children
2 Density	
2a	Additional students in school system possibly requiring additional facilities and staff
2b	Overcrowding of units, leading to greater than predicted occupants and impacts
2c	Dens or lofts will be converted to bedrooms allowing overcrowding
2d	Methods for enforcing occupancy limits
2e	Feasibility of reducing unit count
2f	Feasibility of reducing bedroom count
2g	Feasibility of reducing unit size
2h	The parking ratio at less than 2 cars per unit is insufficient
3 Visual Impacts	
3a	For residents at 3, 4 and 6 Elliston
3b	For residents at 741, 745 and 775 BPR
3c	From Boston Post Road
3d	From Rail Trail
4 Environmental Impact	
4a	From construction and operations to the wetlands
4b	Reduce energy usage
4c	Utilize green building measures (energy, water usage, building materials)
4d	Preserve northwest upland field (adjacent to the rail trail)
4e	Preserve north field adjacent to the rail trail
4f	Identify and protect any species of concern
4g	Minimize or eliminate impacts to Cherry Brook

5 Existing Structures	
5a	Preserve and reuse Greek Revival house (visible from Route 20)
5b	Preserve and reuse historic Farnsworth house
5c	Preserve and reuse the west wing of the Farnsworth house (designed by a notable Boston architect)
5d	Preserve and reuse the east wing of the Farnsworth house (designed by a notable Boston architect)
5e	Preserve and reuse the historic barn (representative of an agricultural period in Weston)
6 Infrastructure	
6a	Ensure sufficient water pressure in an area where pressure is already low
6b	Ensure proper capacity in the existing water system to service the development
6c	Relocate the secondary water service from Elliston Road to avoid construction impacts
6d	Eliminate the emergency access from Elliston Road
6e	Provide new sidewalk fronting the property
6f	Maintain the connection of the existing trails to Rail Trail
6g	Maintain public access to the existing trails on the property
7 Neighborhood Nuisances	
7a	Prevent pedestrian (tenants) cut through on Elliston Road
7b	Prevent overflow parking on sideroads
8 Housing Inventory	
8a	Project must remain eligible for inclusion on the SHI in perpetuity
8b	Project must remain rental so that all units count in the SHI
8c	Project needs to be designed for ADA accessibility
8d	Affordable units need to remain affordable in perpetuity
9 Construction Impacts	
9a	Minimize construction duration and associated traffic, noise, dust, parking
9b	Safe access for large construction vehicles
10 Public Health	
10a	No contamination by wastewater system to Cherry Brook and wetlands
10b	Mitigate noise from generators and HVAC units
10c	Relocate amenities to minimize noise impact on neighbors
10d	Minimize glare and lights spillage from the property
10e	Avoid toxic materials in construction and operations
10f	Detect/contain/remove potential pollutants from previous farm operations

11 Community Contributions	
11a	Provide community contribution to the Merriam Fund (housing assistance)
11b	Provide community contribution for sidewalk to Town Center
11c	Provide community contribution to the Rail Trail
12 On-Site Infrastructure	
12a	Provide safe and sufficient wastewater capacity
12b	Minimize or eliminate wastewater treatment plant noise, smell, toxicity
12c	Design the site for safe vehicle, bicycle and pedestrian movements
12d	Provide ADA access throughout the site

B. A Full Set of Mitigations and Regulated Approvals to Address Those Concerns

Below is a full set of mitigations which address the above concerns. The mitigations are agreed to with the applicant (for more on this agreement, please see Appendix IV).

The development areas and mitigations – mapped to the addressed concerns are:

Architecture			
	Mitigation	Concern	
Apartment Front Elevations	Reduce or eliminate the vertical elements that accentuating features of the mid-rise buildings.	3	Visual Impacts (a,b,c)
	Change building colors scheme to include a variety of natural muted tones to reduce apparent mass.	3	Visual Impacts (a,b,c)
	Relocate third level apartments at front of multifamily building to terrace level at rear.	3	Visual Impacts (a,c)
	Further lower and break up massing of roof on multifamily building.	3	Visual Impacts (a,b)
Apartment Rear/Rail Trail Elevations	Change building colors scheme to include a variety of natural muted tones to reduce apparent mass (similar to above).	3	Visual Impacts (d)
Town House Elevations	Vary color of buildings and individual planes.	3	Visual Impacts (a,b,c)
Town House Massing	Provide townhome clusters of varying sizes (four homes per cluster and six homes per cluster) to create more visual interest to more closely match single family home character.	3	Visual Impacts (a,b,c)

Building Systems			
	Mitigation	Concern	
Electrical	Use LED Lighting.	4	Environmental Impact (b,c)
	Meet the requirements of the Massachusetts Stretch Energy Code as adopted by Weston.	4	Environmental Impact (b,c)
	Use Energy Star Rated Appliances.	4	Environmental Impact (b,c)
	Provide individual electric meters.	4	Environmental Impact (b)
	Use occupancy and vacancy sensors for lighting in internal public areas.	4	Environmental Impact (b)
HVAC	Apartment condensers to be located on roof tops with parapet and 400' from property line. Townhouse condensers to be buffered by berm.	1 0	Public Health (b)
Plumbing	Use Low Flow fixtures including low consumption water closets.	4	Environmental Impact (a,c)
		6	Infrastructure (a,b)
	Install individual water sub-meters.	4	Environmental Impact (c)
	Use on-demand water heating.	4	Environmental Impact (b)
		6	Infrastructure (b)

Construction			
	Mitigation	Concern	
Method	Use panelized construction in midrise buildings.	4	Environmental Impact (c)
		9	Construction Impacts (a,b)
Oversight	Licensed Site Professional to monitor all site work and soil removal. Any remediation includes Town peer review.	4	Environmental Impact (a,g)
		10	Public Health (f)
Timetable	Commence construction as soon as practicable and build the entire community as quickly as practicable in one continuous process.	9	Construction Impacts (a)

Density			
	Mitigation	Concern	
Bedroom Count	Reduce bedroom count by about 20 bedrooms, increasing 1 bedroom units and decreasing 2 bedrooms and with no change to 3 bedrooms	1	Traffic (a)
		2	Density (b,c,f)
		3	Visual Impacts (a,b,c,d)
		6	Infrastructure (a)
Unit Size	Reduce the apartment sizes in order to reduce the massing of the buildings.	2	Density (b,g)
		3	Visual Impacts (a,b,c,d)

Historic Buildings			
	Mitigation	Concern	
Barn	Disassemble and relocate to Land Sake site.	5	Existing Structures (e)
Eleanor Raymond West Wing	Relocate and re-use to present along Boston Post Road.	5	Existing Structures (c)
		3	Visual Impacts (c)
Farnsworth House	Relocate and reuse to present along Boston Post Road	5	Existing Structures (b)
		3	Visual Impacts (c)
Greek Revival	Use this structure as its leasing office in its current location.	5	Existing Structures (a)

Landscape			
	Mitigation	Concern	
Elliston Buffer Planting	Provide new plantings following guidelines in Appendix V.	3	Visual Impacts (a)
	Preserve existing buffer as new plantings and site work allows following guidelines in Appendix V.	3	Visual Impacts (a)
Internal Planting	Vary planting arrangement to be less regimented and create a clustered planting.	3	Visual Impacts (a,b)
Irrigation	Irrigation water to be provided by well. No town water used as irrigation.	6	Infrastructure (a,b,c)

Maintenance	Limit use of fertilizers and pesticides consistent with Mass DEP standards.	4	Environmental Impact (a,f,g)
		10	Public Health (e)
Features	Provide privacy fence if berm is not sufficient for shielding from car lights between entry drive and 745 Boston Post Road	3	Visual Impacts (b)

Operations			
	Mitigation	Concern	
Common Office Space	Provide common office space as tenant amenity.	1	Traffic (a,b,c)
Bike Share	Provide resident bike share and parking (for residents).	1	Traffic (a,b,c)
		7	Neighborhood Nuisances (b)
Enforcement	Inspect each home at least once per year to ensure occupancy rules are followed.	2	Density (d)
Leasing Agreement	Include a restriction in lease agreements that specifies dens and lofts may not be used as resident bedrooms.	2	Density (c)
Parking Charge	Discourage excessive number of cars per unit by charging residents for additional parking space(s).	1	Traffic (a,b,c)
		7	Neighborhood Nuisances (b)
Shuttle Service	Provide a weekday commuter shuttle for residents or contribute to a Town operated or contracted shuttle service for an initial two-year term followed by an annual review with Town.	1	Traffic (a,b,c)
		7	Neighborhood Nuisances (b)
Bike Storage	Provide resident bicycle storage and maintenance area.	1	Traffic (a,b)
		7	Neighborhood Nuisances (b)
Recycling	Recycle using single stream process.	4	Environmental Impact (c)
	Submit recycling vendor protocols to Weston Sustainable Committee for review and recommendations.	4	Environmental Impact (c)

Site Design			
	Mitigation	Concern	
Access	Create separate entrance and egress drives, and configure the egress drive with two lanes, one each for left exit and right exit.	1	Traffic (b,c,d)
	Ensure sufficient fencing to prevent using Elliston Road as pedestrian access.	7	Neighborhood Nuisances (a)
	Provide school bus and shuttle pick up area(s)	1	Traffic (g)
	Provide bus/shuttle shelter	1	Traffic (a)
	Ensure main entrance is dimensionally sufficient for emergency access.	1	Traffic (f)
	Building sign to be consistent with Highland Meadows signage, specifically, downward illumination directed at the sign with no internal lighting and no uplighting.	3	Visual Impacts (c)
10		Public Health (d)	
Amenity Location	Relocate pool and common house to rear of property between apartment buildings.	10	Public Health (c)
	Reuse Greek Revival as leasing offices.	5	Existing Structures (a)
Exterior Lighting	Use shielded and cut off fixtures.	10	Public Health (d)
	No spotlights on development perimeter.	10	Public Health (d)
Limit of Development	Do not develop on Northwest Upland.	3	Visual Impacts (d)
		4	Environmental Impact (e)
	Place a deed or use restriction or other to preserve the roughly 48 acres as forest and trails open to the public.	6	Infrastructure (g)
	Professional to evaluate habitat (found no additional permits required).	4	Environmental Impact (f)
Parking	Identify parking reserves for future additional parking if needed.	2	Density (h)
		7	Neighborhood Nuisances (b)
	Parking and circulation to be constructed following ITE standards.	12	On-Site Infrastructure (c)
Site Elevation	Reduce the site elevation of the built area by an average of ten feet (5-15' depending on existing topography).	3	Visual Impacts (a,b,c,d)
		10	Public Health (b,c,d)
	Incorporate berm between town houses and abutters to serve as perimeter buffer.	3	Visual Impacts (a,c)
		10	Public Health (b,d)
Town House Siting	Vary orientation to portray neighborhood community.	3	Visual Impacts (a,b,c)
Utilities	Install all utilities underground.	3	Visual Impacts (a,b,c,d)

Recreational Amenities	Provide pedestrian and bike connection to Rail Trail.	6	Infrastructure (f)
	Place a deed or use restriction, or subdivide and deed property to the town, to preserve the roughly 48 acres as forest and trails open to the public. (Similar to above.)	4	Environmental Impact (d,e)
	Maintain trail connection on east side of property and provide access to trail on west side of property.	6	Infrastructure (f,g)
Final Grading	Introduce vertical variation of grades as much as practicable to increase visual interest.	3	Visual Impacts (a,b,c)

Wastewater			
	Mitigation	Concern	
Absorption Fields	PB understands ZBA will hear initial opinion on size & safety from peer reviewer (below clarifies that Mass DEP is solely responsible for approval).	12	On-Site Infrastructure (a)
Generator	Provide surrounding fence or enclosure to buffer sound.	10	Public Health (b)
		12	On-Site Infrastructure (a,b)
Treatment Facility	Building to be screened and designed to reduce visibility from Route 20.	3	Visual Impacts (c)

Off Site Infrastructure			
	Mitigation	Concern	
Water	Remove the secondary water service under Elliston Road from the plans if acceptable to DPW.	6	Infrastructure (c)
Boston Post Road Sidewalk	Repair sidewalks along the property's frontage and make a financial contribution to the updating of sidewalks from the site to BPR bypass.	6	Infrastructure (e)
		11	Community Contribution (b)
Elliston Road Emergency Access	Remove the secondary emergency access on Elliston Road from the plans if approved by fire department.	6	Infrastructure (d)

Other Mitigations Through Regulation or Oversight			
		Concern	
Special Town Enforced	Condition units to remain rental and qualifying for inclusion on SHI.	8	Housing Inventory (a,b)
	Collect traffic data on Love Lane and prepare recommendations to Weston officials on methods to reduce/eliminate cut-through traffic.	1	Traffic (b)
	Applicant contribution to Merriam Fund.	11	Community Contributions (a)
	Applicant contribution to Rail Trail improvements.	11	Community Contributions (c)
DPW	Review and approve water connection and distribution.	6	Infrastructure (a,b)
Conservation Commission	Review and approve full stormwater plans, including all concerns regarding runoff to wetlands and Cherry Brook.	4	Environmental Impact (a,f,g)
DHCD (40B)	Enforce and monitor adherence to 40B accessibility, marketing, rental rates, tenancy, and other requirements.	8	Housing Inventory (a,c,d)
		12	On-Site Infrastructure (d)
	Enforce deed restriction requiring project remain affordable perpetuity.	8	Housing Inventory (a, d)
Mass DEP (Health)	Review wastewater system.	4	Environmental Impact (a,g)
		10	Public Health (a)
		12	On-Site Infrastructure (a,b)
	Comply with Massachusetts regulations on occupancy limits.	2	Density (b)
Mass DOT	Approval of access to Route 20.	1	Traffic (c,d,e)
	Applicant will consider contribution to future Road Safety Audit (for Highland & Old Conn. Path) to inform future improvements, if merited.	1	Traffic (c,d,e)
State Building Code	Building Permit with State required safety measures.	9	Construction Impacts (b)

To get a better picture of the full impact of the mitigations, here is a chart of the original concerns with the counts of mitigations that address each concern.

Concern		Number of Mitigations
1 Traffic		
1a	Additional traffic on an already congested Route 20	7
1b	751 BPR Residents using Love Lane to avoid a left turn onto BPR	8
1c	Exacerbating congested conditions for current residents to enter BPR	8
1d	Potentially unsafe turning movements from entrance and egress	3
1e	Impacts to safety of existing intersections	2
1f	Assuring access is sufficient and safe for fire and ambulance	1
1g	Assuring access is sufficient and safe for school buses and children	1
2 Density		
2a	Additional students in school system possibly requiring more facilities/staff	0
2b	Overcrowding of units, leading to greater than predicted occupants/impacts	3
2c	Dens or lofts will be converted to bedrooms allowing overcrowding	2
2d	Methods for enforcing occupancy limits	1
2e	Feasibility of reducing unit count	0
2f	Feasibility of reducing bedroom count	1
2g	Feasibility of reducing unit size	1
2h	The parking ratio at less than 2 cars per unit is insufficient	2
3 Visual Impacts		
3a	For residents at 3, 4 and 6 Elliston	17
3b	For residents at 741, 745 and 775 BPR	13
3c	From Boston Post Road	17
3d	From Rail Trail	6
4 Environmental Impact		
4a	From construction and operations to the wetlands	6
4b	Reduce energy usage	6
4c	Utilize green building measures (energy, water usage, building materials)	8
4d	Preserve northwest upland field (adjacent to the rail trail)	1
4e	Preserve north field adjacent to the rail trail	2
4f	Identify and protect any species of concern	3
4g	Minimize or eliminate impacts to Cherry Brook	4

5 Existing Structures		
5a	Preserve and reuse Greek Revival house (visible from Route 20)	2
5b	Preserve and reuse historic Farnsworth house	1
5c	Preserve and reuse the west wing of the Farnsworth house	1
5d	Preserve and reuse the east wing of the Farnsworth house	0
5e	Preserve and reuse the historic barn	1
6 Infrastructure		
6a	Ensure sufficient water pressure in an area where pressure is already low	5
6b	Ensure proper capacity in existing water system to service the development	4
6c	Relocate secondary water service fr Elliston Rd to avoid construction impacts	4
6d	Eliminate the emergency access from Elliston Road	1
6e	Provide new sidewalk fronting the property	1
6f	Maintain the connection of the existing trails to Rail Trail	2
6g	Maintain public access to the existing trails on the property	2
7 Neighborhood Nuisances		
7a	Prevent pedestrian (tenants) cut through on Elliston Road	1
7b	Prevent overflow parking on sideroads	6
8 Housing Inventory		
8a	Project must remain eligible for inclusion on the SHI in perpetuity	3
8b	Project must remain rental so that all units count in the SHI	1
8c	Project needs to be designed for ADA accessibility	1
8d	Affordable units need to remain affordable in perpetuity	2
9 Construction Impacts		
9a	Minimize construction duration and associated traffic, noise, dust, parking	2
9b	Safe access for large construction vehicles	3
10 Public Health		
10a	No contamination by wastewater system to Cherry Brook and wetlands	1
10b	Mitigate noise from generators and HVAC units	4
10c	Relocate amenities to minimize noise impact on neighbors	4
10d	Minimize glare and lights spillage from the property	5
10e	Avoid toxic materials in construction and operations	1
10f	Detect/contain/remove potential pollutants from previous farm operations	1
11 Community Contributions		
11a	Provide community contribution to the Merriam Fund (housing assistance)	1
11b	Provide community contribution for sidewalk to Town Center	1
11c	Provide community contribution to the Rail Trail	1

12 On-Site Infrastructure		
12a	Provide safe and sufficient wastewater capacity	3
12b	Minimize or eliminate wastewater treatment plant noise, smell, toxicity	2
12c	Design the site for safe vehicle, bicycle and pedestrian movements	1
12d	Provide ADA access throughout the site	1

A discussion of the top three areas of concern and their associated mitigations follows:

- 1. Visual Impacts:** the goals are to minimize view of new massing and activity and maximize privacy from the perspectives of all neighboring properties, the Rail Trail, and Route 20. Major mitigations include a reduction of site elevation, building heights, number of floors, number of bedrooms, perceived massing, and high windows; an increase in setbacks; the addition of buffering using mounds and plantings; the relocation of the pool area to the rear of the property; and shielded/cutoff fixtures (with no spotlights) around the exterior. New site sections that incorporate these improvements show successful mitigation of visual impacts from all three perspectives.
- 2. Traffic:** According to the applicant's traffic study, the development results in 3% increase in traffic (47/1700 VPH) during peak commute hours. While more traffic added to an already congested Route 20 likely makes for more inconvenience for Weston drivers, the PB doesn't believe that the development's added traffic rises to the level of unsafe or stands as a reason for denial, as established in 40B case law (see Appendix IV). As Route 20 is state-controlled, if the intersection is judged unsafe by MassDOT, the State would specify safety changes.

Traffic in Weston is certainly a major problem and it's poised to get worse – consider also that the applicant's study shows that traffic from Route 20 developments west of Weston would increase its traffic by 18% by 2026.

All that said, the applicant has agreed to reasonable mitigations efforts to reduce traffic from the site, especially commuter traffic. Besides a meaningful reduction in bedrooms, they include: build and operate common office space for tenants that encourages work-on-site or off-peak commutes, operate or support a Shuttle service to the Kendall Green commuter station, provide a bike-share service for Rail-Trail access to Kendall Green, and support for the funding of a side walk to Weston Town Center – these may each seem minor improvements but such changes in single-occupancy-vehicle (SOV) "modality" are the centerpiece of federal, state, regional, and Town plans to reduce congestion. Again, we expect MassDOT may consider intersection improvements, such as a merge lane or traffic light, if and as warranted.

3. Environmental: On waste/storm-water, the PB engineering consultant reviewed the site plan and had no major concerns. His specific feedback was that the sizing of facilities was generally accurate and provided ample leeway to accommodate design modifications. He recommended specific aesthetic treatments of stormwater structures such as planting and naturalizing any open basins. Of course, the ZBA will consider a full waste/storm-water review, will hear from their peer-reviewer, and the MassDEP must review and approve the waste treatment design. On Wetlands, the fact that the development lies within a 100' buffer triggers a full ConCom review, which is upcoming. On the concern around an endangered species habitat, the applicant's expert study revealed the site as an "area of concern" but with no protected species that would require further study or permitting. The proximity to Cherry Brook is a matter of interest of the City of Cambridge Water, which has been advised of the development and will share any concerns with Concom. Lastly, as the area served as a farm, there are questions about pollutants. Here, the applicant has performed an initial round of testing that found no reportable concerns and the applicant will, in its own best interest, perform ongoing tests during the site work. Testing on soils to be removed will be overseen by licensed professional. If remediation is required, that work is regulated by government (including EPA) standards.

There are three unaddressed concerns:

- 1. School Capacity:** Since, families are considered a protected class in Massachusetts, any changes to the project aimed at reducing children would be discriminatory. There are agreed changes in the number of bedrooms and unit size designed to address impacts such as traffic, parking and building size. The town is otherwise obligated to accommodate any schoolchildren from the development.
- 2. Number of Units (Density):** As enabling multi-family housing is the intent of the 40B law, the state discourages negotiations on reducing density and encourages ZBAs to try to mitigate concerns caused by more units – in fact, regulations specifically prohibit conditions focused on reducing density for density's sake. Therefore, when the developer reported that 180 units was required to maintain economic feasibility for the project, the PB focused our efforts on mitigating the impacts of 180 units.
- 3. Eleanor Raymond East Wing:** The developer determined that it was feasible to relocate only one of the Eleanor Raymond wings of the Farnsworth house. The Historic Commission concluded that the West wing would be the more valuable wing to save.

We believe that full set of mitigations and regulation approvals successfully address all concerns and result in a vastly improved project for the developer, the neighbors, and the Town.

C. The Applicant's Presentation of Mitigations to ZBA

We understand the applicant plans to deliver the results of these mitigations to ZBA on or around June 26 and present them at the July 8 hearing in the form of:

- An updated documentation and specification set: site, building, road, wastewater, stormwater, landscape, and exterior lighting design
- An updated visualization study
- An updated list of requested waivers (specific, not general)
- A list of updated development terms on other mitigations as follows:
 - 1) Discourage excessive number of cars per unit by charging residents for additional parking space(s)
 - 2) Collect traffic data on Love Lane and prepare recommendations to Weston officials on methods to reduce/eliminate cut-through traffic
 - 3) Provide a weekday commuter shuttle for residents or contribute to a Town operated or contracted shuttle service for an initial two-year term followed by an annual review with Town
 - 4) Provide resident bike share and parking
 - 5) Applicant will consider contribution to future Road Safety Audit (for Highland & Old Conn. Path) to inform future improvements, if merited
 - 6) Include a restriction in lease an agreement that specifies dens and lofts may not be used as resident bedrooms
 - 7) Inspect each home at least once per year to ensure occupancy rules are being followed
 - 8) Install individual electric meters and water sub-meters
 - 9) Meet the requirements of the Massachusetts Stretch Energy Code as adopted by Weston
 - 10) Recycle using single stream process and submit recycling vendor protocols to Weston Sustainable Committee for review and recommendation
 - 11) Use Energy Star Rated Appliances
 - 12) Use LED Lighting
 - 13) Use Shielded and cut off fixtures
 - 14) Use Low Flow Fixtures, including low consumption water closets
 - 15) Use occupancy/ vacancy sensors for lighting in internal public areas
 - 16) Use on demand water heating
 - 17) Use panelized construction in midrise buildings
 - 18) Disassemble and relocate to Land Sake site
 - 19) Place a deed or use restriction, or subdivide and deed property to the town, to preserve the roughly 48 acres as forest and trails open to the public
 - 20) Make a financial contribution to the updating of sidewalks from the site to BPR bypass
 - 21) Condition in permit that units to remain rental and qualifying for inclusion on SHI

- 22) Commence construction as soon as practicable and build the entire community as quickly as practicable in one continuous process
- 23) Provide a construction management plan, including on-site parking, construction vehicle access and trucking routes
- 24) Licensed Site Professional to monitor all site work and soil removal. Any remediation includes Town peer review
- 25) Limit use of fertilizers and pesticides consistent with Mass DEP standards.
- 26) Contribution to Merriam Fund
- 27) Contribution to rail trail improvements

On the resolution and timing of Financial contributions to Town, the applicant has expressed a willingness to contribute to several Town funds, namely the Merriam Fund, the Rail Trail, and Weston Sidewalks. In terms of final amounts, we recommend that the ZBA and developer first agree to all conditions and mitigations and then seek the final amounts that remain economically feasible for the applicant.

D. Recommended Steps for ZBA to Fulfill BOS Request

We believe the ZBA has the opportunity to complete the BOS request with steps along the following:

1. Review these comments prior to July 8 hearing (the PB is available to testify at hearing if helpful)
2. Make modified design documentation available for peer-review on June 26
3. On July 8 meeting, review modified design and peer-review reports
4. Develop opinions on any additional concerns, mitigations, and regulated approvals
5. Work with the developer to expeditiously resolve #4 and capture through additional conditions or regulatory approvals
6. After all conditions are established, agree with the developer on the final amount and distribution of financial contributions to Town
7. Consider a time-limited development agreement to create an opportunity for the Town and applicant to resolve any outstanding items.

Appendix I. Weston 40B Background

The 40B law was enacted in 1969 and reaffirmed in 2010 in a state-wide vote (MA and Weston supported by about a 3:2 margin.) The law requires towns to be 10% affordable in that, if quota is not reached, proposed 40B developments can by-pass all local regulations, including setbacks, density, and building heights.

Weston is not at 10%, so we are subject to so-called "hostile" developments – specifically, the Town can deny applications based on only health, safety, or over-profiting concerns. No other local concerns apply.

The Town's pipeline of 40B proposals totals about 600 rental units, which is in excess of the 275 rental units needed to reach our quota and permanent "safe harbor" against hostile developments. Additional developments are being discussed.

(FYI, per the 40B regulations, the Town would need about 2000 for-sale units to reach quota.)

Therefore, per the BOS, the Town seeks "safe harbor" to regain full control of 40B developments.

Appendix II. 751 Working Group

Based on the PEL review, the Town felt that the 751 40B proposal did not present any concerns for denial and determined the project would provide immediate "safe harbor" for the Town. As encouraged by the State and as with the Boston Property 40B proposal, a Town group was convened to collaborate with this "friendly" developer to identify and mitigate a full set of concerns related to the proposed project.

The group included Harvey Boshart (BOS), Al Aydelott (former Chairman, PB), Anthony Flynn (Chairman, PB), Imai Aiu (Town Planner), and the Mill Creek team as full time participants and Leon Gaumond (Town Manager) and Town counsel as advisers.

The work spanned about three months, 10 meetings, and 10 neighborhood sessions as well as preparation and follow-up for meetings and sessions. The group identified 60 concerns and negotiated 69 mitigations to those concerns.

Appendix III. 40B Traffic Safety Case Law

There are a number of cases where the Housing Appeals Committee (HAC) has established that bad traffic around the site, is not grounds for a safety-based denial of a 40B permit in a Town lacking safe harbor. Specifically, they have made the distinction between "inconvenience or delays" versus "safety" issues with added traffic. Conversely, in our read, an example of a valid traffic safety concern per HAC would be introducing an intersection with dangerous and unfixable site lines to a major roadway.

From *Lexington Woods, LLC Appellant v. Waltham Zoning Board of Appeals Appellee, 2005*:
"The Board cannot rely on the bad traffic situation in the vicinity of the site as a basis for denying the comprehensive permit."

Town counsel can, of course, provide further legal perspective and related decisions.

Appendix IV: Background on Negotiations with Applicant

The applicant committed significant resources and time and showed good faith in these negotiations. They were willing to consider all aspects of the project, were attentive and forthcoming with neighbors and Town representatives, and were earnest in addressing all concerns. If the request rendered the project uneconomic, the applicant was straightforward in declining for those reasons. These were holistic and tentative negotiations – meaning they considered all concerns and the agreement assumed no further requests that add to the project cost.

Appendix V. Planning Board Guidelines for Landscape Buffer

Landscaping should serve to create a buffer between houses and the streets for privacy and to retain the natural “woody” character of Weston. The larger the house, the greater the buffer that will be required. To best achieve this, the existing native trees, understory and bushes should be preserved as much as possible along the property’s frontage to a minimum of at least 50 feet. This means that a septic system or storm water drainage structure should be located on the lot where it will require the least removal of the existing landscape buffer and allow for new buffer to be planted. Outside of the immediate construction area trees can be lost due to regrading for a system and damage from heavy equipment compacting the roots. In cases of significant or specimen trees near the limit of work extra protection measures such as chain link fencing will be necessary.

It is a simple fact that newly planted trees and bushes will never replicate the natural looking “woody” habitat created by the large mature trees found along Weston’s roads. Preservation of existing trees and understory will maintain this appearance, especially legacy and old growth trees that help ground the Town in history. This means that septic systems, driveways and stormwater drainage structures should be located in such a way as to preserve existing vegetation, wherever possible.

In most cases new plantings will be required to either supplement existing screening or to mitigate new construction. New plantings should include variety of plant species (evergreen and deciduous) of varying heights (i.e. a mix of trees, shrubs and groundcover as well as a mix of calipers/sizes at planting) in order to create as naturalistic a feel as possible and to block views at pedestrian as well as 2nd story levels, especially once taller trees develop a higher canopy. Native and traditional plantings are highly encouraged (see appendix), although plantings along roadways should contain more native plant selections than ornamental. Understory plants include saplings and shrubs which grow well in low light conditions beneath larger trees. They are essential for a natural looking habitat. Plantings should be arranged in an organic natural layout. Straight rows of “soldier” trees and strict geometric arrangements are discouraged. Plant bed edges that are irregular and asymmetrical with no hard, cut edges, and

planted at grade as opposed to being raised are highly encouraged. Large expanses of mulched beds should be avoided along rights-of-way. Instead, beds containing ample shrubs and groundcover, such as ferns, Lily of the Valley, or Day Lilies are also encouraged as well as more native 'mulches' of pine needles and leaf litter, are encouraged.

Maintenance of native vegetation (naturally occurring species sometimes disparaged as weeds) is encouraged in rights-of-way as it protects the rural character of the Town. Periodic assessment and treatment of this material for damage, disease, and presence of invasives (Norway maple, buckthorn, burning bush, bittersweet, kudzu, etc.) is strongly encouraged. New buffer plantings should also be periodically assessed for crowding, and appropriate, selective removal of vegetation, as well as addition of understory plantings that are considerate of changing light levels should be considered in order to promote future, healthy growth. In no instance should shearing, topping, or broad applications of weed killers or chemical fertilizers be implemented. Large flat areas and expansive lawns should be minimized particularly where they necessitate clearing. Native plantings should be selected to flourish in the New England climate without regular irrigation beyond what is needed to establish the plantings. Use of municipal water for regular irrigation is discouraged.

(source: <https://www.weston.org/340/Guidelines-for-Homes-Under-Site-Plan-App#buffer>)