

**Village of Westhampton Beach
Board of Trustees Meeting
Thursday, June 2, 2022 at 5 p.m.**

PLEDGE OF ALLEGIANCE

PUBLIC HEARINGS:

Special Exception Application-Outdoor Dining, Eckert's Luncheonette - **HOLDOVER**

RESOLUTIONS :

1. Accept minutes of Board of Trustees Meetings
2. Accept Departmental Monthly Reports
3. Accept Resignation-ARB Member
4. Appoint ARB Member
5. Accept Bid Proposal-SCSD No. 24 Gabreski STP Upgrade-Contract E
6. Schedule Public Hearing Local Law Amendment
7. Schedule Public Hearing Local Law Amendment
8. Schedule Public Hearing Local Law Amendment
9. Schedule Public Hearing Local Law Creation
10. Schedule Public Hearing Local Law Amendment
11. Authorize Renewal 2022 Outdoor Tables, LT Burger, West
12. Appoint 2022 Seasonal Beach Personnel
13. Appoint 2022 Seasonal DPW Laborers
14. Appoint 2022 Seasonal Traffic Control Officers
15. Approve Warrant for May and June 2022
16. Authorize Use of Village Property-Beaver Lake Condominium
17. Authorize Special Event-Bike to Beach
18. Authorize Use of Village Property-Westhampton Free Library
19. Authorize Use of Village Property-Rogers Beach Wedding
20. Authorize Use of Village Property- Acton Academy Eastern Long Island
21. Authorize Use of Village Property-Greater WH Chamber of Commerce

22. Authorize Use of Village Property-Greater WH Chamber of Commerce
23. Authorize Vehicle Peddling Permit-Ice Cream
24. Authorize Vehicle Peddling Permit-Ice Cream
25. Authorize Study of Special Events and Tent Regulations
26. Authorize Payment of Tax Roll years 2017/18 and 2018/19 Certiorari Assessment Reduction
27. Authorize 2022 Renewal for Outdoor Sales and Displays Permit – Collect
28. Special Exception Application – Rogers Avenue Associates, LLC

PUBLIC COMMENT

ADJOURN

**Village of Westhampton Beach
Board of Trustees Meeting
Thursday, June 2, 2022 at 5 p.m.**

PLEDGE OF ALLEGIANCE

RESOLUTIONS:

1. Accept minutes of Board of Trustees Meeting

RESOLVED, that the minutes of the Board of Trustees Meeting of May 5, 2022 and Special Meeting of May 18, 2022 are hereby accepted.

2. Accept Departmental Monthly Reports

RESOLVED, that the Treasurer's reports for April 2022, Justice Court, Police Department's and Building Inspector's reports for May 2022, are hereby accepted.

3. Accept Resignation of Architectural Board Member

RESOLVED, that the Board of Trustees hereby accepts the resignation of Allegra Dioguardi as a member of the Architectural Review Board effective May 31, 2022.

4. Appoint ARB Member

RESOLVED, that the Board of Trustees hereby appoints Peggy-Ann Jayne as a member of the Architectural Review Board for a five-year term to begin June 1, 2022 and expire May 31, 2027.

5. Accept Bid Proposal- SCSD No. 24 Gabreski STP Upgrade Contract E

RESOLVED, that the bid proposal submitted by Eldor Contracting Corporation for the SCSD No. 24 Gabreski STP Upgrade Contract E, Electrical Construction in the amount of \$749,000.00 is hereby accepted.

6. Schedule Public Hearing Local Law Amendment-Permitted Encroachments

RESOLVED, that the Village Clerk-Treasurer is hereby directed to publish and post a Notice of Public Hearing to be held on Tuesday July 5, 2022 at 5:00 p.m. at the Village Hall to consider a local law to amend Chapter 197 Section 36.1 entitled "Zoning" Projections into Village Owned Right of Ways in the B-1 Business District of the Code of the Village of Westhampton Beach.

7. Schedule Public Hearing Local Law Amendment-Yacht Basin, Municipal

RESOLVED, that the Village Clerk-Treasurer is hereby directed to publish and post a Notice of Public Hearing to be held on Tuesday July 5, 2022 at 5:00 p.m. at the Village Hall to consider a local law to amend Chapter A201 entitled "Yacht Basin, Municipal" of the Code of the Village of Westhampton Beach.

8. Schedule Public Hearing Local Law Amendment-Stormwater Management

RESOLVED, that the Village Clerk-Treasurer is hereby directed to publish and post a Notice of Public Hearing to be held on Tuesday July 5, 2022 at 5:00 p.m. at the Village Hall to consider a local law to amend Chapter 149 entitled "Stormwater Management and Erosion and Sediment Control" of the Code of the Village of Westhampton Beach.

9. Schedule Public Hearing Local Law Creation-Sewers

RESOLVED, that the Village Clerk-Treasurer is hereby directed to publish and post a Notice of Public Hearing to be held on Tuesday July 5, 2022 at 5:00 p.m. at the Village Hall to consider a new local law Chapter 141 entitled "Sewers" of the Code of the Village of Westhampton Beach.

10. Schedule Public Hearing Local Law Amendment-Site Plan Procedure

RESOLVED, that the Village Clerk-Treasurer is hereby directed to publish and post a Notice of Public Hearing to be held on Tuesday July 5, 2022 at 5:00 p.m. at the Village Hall to consider a local law to amend Chapter 197-63 entitled "Zoning - Procedure for Public Sewer Connection" of the Code of the Village of Westhampton Beach.

11. Authorize Renewal 2022 Outdoor Tables, LT Burger, West

WHEREAS, LT Burger, West, 1115 Main Street has applied for an Outdoor Tables and Chairs permit pursuant to Section 196-2 of the Code of the Village of Westhampton Beach, to allow the placement of four (4) tables with attach benches on the front patio; and

WHEREAS, the applicant submitted a sketch plan of the location, and photographs of the design, of the proposed tables and chairs (hereinafter, the "Outdoor Tables and Chairs Plan"); and

WHEREAS, the application was referred to the Village Planning Board on July 20, 2021, and by memorandum dated August 19, 2021, stated that it has no objection to the application provided that certain conditions are met; and

WHEREAS, a public hearing was held on the application on October 7, 2021, pursuant to section 196-3(D) of the Village Code; and

WHEREAS, it appears from the sketch plan and Planning Board report that the application satisfies the conditions of section 196-2(B) of the Village Code; now therefore,

BE IT RESOLVED that the application for an Outdoor Tables and Chairs permit pursuant to Section 192-2 of the Village Code is granted to allow the placement of four (4) tables with attached benches in accordance with the Outdoor Tables and Chairs Plan, subject to the conditions set forth in section 192-2(B) of the Village Code and the following:

- a. No substantial deviation from the Outdoor Tables and Chairs Plan shall be allowed without further approval of the Board of Trustees;

- b. This permit shall be in effect until November 15, 2022 pursuant to section 196-2(B) (10) of the Village Code, unless previously revoked, and the applicant shall be required to follow the renewal provisions set forth in section 196-4 of the Village Code for future outdoor tables and chairs in subsequent seasons.

12. Appoint 2022 Seasonal Beach Personnel

RESOLVED, that James Orłowski is appointed as Senior Beach Attendant to be compensated at a rate of \$14.00 per hour effective May 13, 2022.

13. Appoint 2022 Seasonal DPW Laborers

RESOLVED, that Tyler Bukowski and Justin Prince are hereby appointed as Seasonal Laborers at a rate of \$16.00 in the Department of Public Works to work as assigned by the Public Works Superintendent effective May 16, 2022 to be funded from G/L account A5110.103 Seasonal Part Time.

14. Appoint 2022 Seasonal Traffic Control Officers

RESOLVED, that Cooper Weissbard is hereby appointed as a Seasonal Traffic Control Officer at a rate of \$15.00 in the Police Department to work as assigned by the Chief of Police effective June 1, 2022 to be funded from G/L account A3120.109 Seasonal Traffic Control Officers.

15. Approve Warrant for May and June 2022

RESOLVED, that the warrant for May 31, 2022 in the amount of \$156,700.24 and the Warrant for June 2022 in the amount of \$248,110.34 for the General Fund and \$823,586.17 for the Capital Fund is hereby approved.

16. Authorize Use of Village Property-Beaver Lake Condominium

RESOLVED, that the Beaver Lake Condominium is hereby authorized to use the Trustee meeting room on Saturday, June 11, 2022 from 11:00 a.m. to 12:00 p.m. to hold their annual election meeting.

17. Authorize Special Event-Bike to the Beach

RESOLVED, that the Westhampton Beach Elementary School is hereby authorized to hold a special event bike to the beach on Thursday June 16, 2022 from 9:30 a.m. to 3:00 p.m. as per route approved by the Police Department.

18. Authorize Use of Village Property-Westhampton Free Library

RESOLVED, that the Westhampton Free Library is hereby authorized to use an area on the Rogers Beach deck at the discretion of the beach manager for a read aloud by a member of the library staff from 11:00 am to 1:00 pm from July 2, 2022 to September 3, 2022. This permit is approved with the following conditions: no amplification and children must be accompanied by an adult.

19. Authorize Use of Village Property-Rogers Beach

RESOLVED, that Amri Falkhreddie, business owner and resident of 164 Mill Road is hereby authorized to use the Rogers Beach pavilion on Wednesday August 24, 2022 from 5:00 p.m. to 8:00 p.m. for approximately 30 guests to attend a wedding ceremony, parking subject to availability and must obtain village issued parking passes.

20. Authorize Use of Village Property-Village Green

RESOLVED, that Andrea Libutti from Acton Academy Eastern Long Island Association is hereby authorized to use Glover's Park on Saturday June 18, 2022 from 7:00 am to 3:00 pm which includes set-up and break-down for an Acton Children's Business Fair with no amplification.

21. Authorize Use of Village Property-Greater Westhampton Chamber of Commerce

RESOLVED, that the Board of Trustees hereby authorizes the Greater Westhampton Chamber of Commerce to use the Village sidewalks on Saturday October 1, 2022 from 10:00 am to 5:00 pm for the annual sidewalk sales sponsored by the Chamber of Commerce; 1 panel of sidewalks must remain clear for pedestrians.

22. Authorize Use of Village Property-Greater Westhampton Chamber of Commerce

RESOLVED, that the Greater Westhampton Chamber of Commerce is hereby authorized to use Main Street from Library Avenue to Moniebogue Lane on Saturday October 1, 2022 from 10:00 a.m. to 5:00 p.m. with set-up at 8:00 am and break-down from 5:00 for the Greater Westhampton Beach Annual Oktober Festival with the following conditions:

- a. Beer Gardens must be fenced in completely.
- b. Inspection of food trucks for acceptable generators as required by Village Board at entry point to be determined.
- c. Approved signage to be as stipulated in the Village Sign Guidelines for the event.

23. Authorize Vehicle Peddling Permit – Ice Cream

WHEREAS, Ilyas Livaydin has applied for a vehicle Peddling Permit to sell ice cream throughout the Village pursuant to §128-3 of the Village Code; and

WHEREAS, the Police department has reviewed and investigated the applicant and found no criminal history pursuant to §128-4 and all requested documentation has been supplied; now therefore be it

RESOLVED, that the Board of Trustees hereby authorizes a vehicle Peddling Permit to Ilyas Livaydin effective June 1, 2022 and expiring on December 31, 2022 as all other conditions in Chapter 128-10 and 128-11 of the Village Code have been met.

24. Authorize Vehicle Peddling Permit – Ice Cream

WHEREAS, Etem Yilmaz has applied for a vehicle Peddling Permit to sell ice cream throughout the Village pursuant to §128-3 of the Village Code; and

WHEREAS, the Police department has reviewed and investigated the applicant and found no criminal history pursuant to §128-4 and all requested documentation has been supplied; now therefore be it

RESOLVED, that the Board of Trustees hereby authorizes a vehicle Peddling Permit to Etem Yilmaz effective June 1, 2022 and expiring on December 31, 2022 as all other conditions in Chapter 128-10 and 128-11 of the Village Code have been met.

25. Authorize Study of Special Events and Tent Regulation

WHEREAS, temporary or movable tents are regulated by the Village of Westhampton Beach in Chapter 167 (Tents) of the Village Code; and

WHEREAS, a permit from the mayor is required to install, use or maintain a tent under Chapter 167; and

WHEREAS, currently Section 167-5 of the Village Code limits three tent permits per calendar year for the same property; and

WHEREAS, the Board of Trustees is contemplating the adoption of a proposed Chapter 83 to the Village Code to regulate and provide for special events; and

WHEREAS, the Board of Trustees intends to evaluate the regulation of tents as part of a proposed Chapter 83 of the Village Code; and

WHEREAS, part of the evaluation will be to determine whether there should be limits on the number of tent permits per calendar year as currently set forth in Section 167-5; and

WHEREAS, the Board of Trustees has determined that during its evaluation of a proposed Chapter 83 of the Village Code, the limitation on the number of tent permits contained in Section 167-5 should be suspended.

NOW, THEREFORE, BE IT RESOLVED that the Board of Trustees shall study and evaluate the regulation of tents as part of its consideration of a proposed Chapter 83 of the Village Code to regulate and provide for special events; and that, as part of this study, the limitation of three (3) tent permits per year for the same property as set forth in Section 167-5 of the Village Code is suspended until December 31, 2022, or such earlier date as determined by the Board of Trustees.

26. Authorize Payment of Tax Roll years 2017/18 AND 2018/19 Certiorari Assessment Reduction

RESOLVED, The Board of Trustees hereby authorize the payment of a 2017/18 through 2018/19 property tax reduction in the amount of \$6,976.38 to Koepfel Matone & Leistmann, L.L.C. for SCTM # 0905-16-2-26 for the Sandpiper as ordered by the NYS Supreme Court.

27. Authorize 2022 Renewal for Outdoor Sales and Displays Permit - Collect

WHEREAS, Leif Neubauer, tenant of the premises known as Collect, located at 83D Main Street, Westhampton Beach (SCTM 0905-11-2-10), has applied for a 2022 renewal permit for Outdoor Sales and Displays pursuant to Chapter 140 of the Code of the Village of Westhampton Beach, and

WHEREAS, there were no substantiated incidents or reports filed concerning said use; now therefore be it,

RESOLVED that the application for an Outdoor Sales and Displays permit for 2022 is granted subject to the following conditions set forth in section 140-2(A):

- a. Pursuant to the Planning Board's report, there can be no placement of signs or any items which reflect signage, and all items must be placed a minimum of 30" from the Village right of way.
- b. No substantial deviation from the Outdoor Display Plan shall be allowed without further approval of the Board of Trustees; and
- c. This permit shall be in effect to November 15, 2022, unless previously revoked, and the applicant shall be required to follow the renewal provisions set forth in section 140-2(B) of the Village Code for future outdoor displays beyond such expiration date.

28. Special Exception Application – Rogers Avenue Associates, LLC

RESOLVED, that the Board of Trustees hereby approves the Resolution of Conditional Approval of the Special Exception Permit for Rogers Associates, LLC as written and attached hereto.

PUBLIC COMMENT

ADJOURN

DATED: June 2, 2022

**Elizabeth Lindtvit
Village Clerk-Treasurer**

RESOLUTION OF CONDITIONAL APPROVAL OF
THE SPECIAL EXCEPTION PERMIT FOR
ROGERS ASSOCIATES, LLC

WHEREAS, Rogers Associates, LLC (hereinafter, "Applicant"), is the reputed owner of real property located at 1, 2, 4, 5 and 7 Twin Fork Lane, Westhampton Beach, New York 11978, which is designated on the Suffolk County Tax Map as Nos.: 905-3-1-7.1 through 7.7 ; and

WHEREAS, Applicant has submitted an application to the Board of Trustees for a special exception permit, to allow Applicant to construct 52 dwelling units in 13 buildings (11 townhouse groupings, two Two-Family dwellings) with a private community center, pool and tennis court, with an on-site sewage treatment plant, all to serve as a multifamily development community; and

WHEREAS, Applicant also requests that the Board of Trustees rescind a certain Scenic Easement that was recorded against the subject property, for the benefit of the Village, at a time when the Village reviewed and approved an industrial subdivision of the property (hereinafter, the "Scenic Easement")

WHEREAS, under Section 197-81.A of the Village Code, no special exception application for a multi-family residence can be granted without approval by the Planning Board of the site plan; and

WHEREAS, Applicant filed a site plan application with the Village Planning Board in connection with the project; and

WHEREAS, the site plan application underwent over two years of review by the Planning Board that included a coordinated environmental review under the State Environmental Quality Review Act (SEQRA); and

WHEREAS, during the SEQRA review, the Board of Trustees was an involved agency; and

WHEREAS, the SEQRA review resulted in the preparation of a Final Environmental Impact Statement (FEIS); and

WHEREAS, upon completion of the SEQRA review process, the applicant requested that the Planning Board approve the site plan on a preliminary basis only, to enable Applicant to proceed to the special exception portion of the application, knowing that Applicant would be required to return to the Planning Board to complete the final site plan review if and when the Board of Trustees approved the special exception; and

WHEREAS, the Planning Board adopted a preliminary site plan determination dated February 10, 2022, in which the Planning Board conditionally approved the site plan on a preliminary basis, but noted in its decision that the site plan was based on the assumed full yield of 52 units and that the project details could not be finalized until after the Board of Trustees

made a determination on the special permit and, specifically, as to two determinations that can only be made by the Board of Trustees: (1) whether to allow the requested density after consideration of all applicable requirements, and (2) whether to rescind the easements that were previously recorded against the property, in favor of the Village; and

WHEREAS, in its preliminary site plan determination, the Planning Board emphasized that its preliminary approval should not be construed as its endorsement of the applicant's proposed yield of 52 units; the Planning Board acknowledged that the determination of yield is entrusted to the Village Board of Trustees but noted that the Planning Board had received sufficient public comment and evidence that caused the Planning Board "to have serious reservation about the neighborhood impacts that may result from a maximum-yield development of 52 units"; and

WHEREAS, simultaneously with the adoption of the preliminary site plan determination, the Planning Board separately adopted a "Report and Recommendation" dated February 10, 2022, in which the Planning Board provided a recommendation relating to the special exception application; and

WHEREAS, in the Report and Recommendation, the Planning Board unanimously reported, among other things, that:

- (1) The Planning Board had heard from many residents of the neighborhood who expressed concerns about the project and who almost uniformly opposed the project due to its potential impacts on them.
- (2) Residents described the conditions on Rogers Avenue, which has become a "cut through" for traffic between Old Riverhead Road and Montauk Highway.
- (3) Residents expressed concerns about safety and traffic resulting from the addition of 52 units to the neighborhood.
- (4) Although the data obtained during the EIS review process was insufficient to justify a denial under SEQRA standards or the site plan standards, the Planning Board remained concerned about the density of the proposed development and the quality-of-life impacts that such density may have on the neighborhood.
- (5) The Planning Board noted that density is a special exception issue to be determined by this Board under Section 197-80.3.G of the Code, and that the project's density may impact several of the special permit criteria to be applied by the Board of Trustees, including §197-79. A, C, and D, and § 197-80.A(2) and A(6).
- (6) The Planning Board therefore recommended that the Board of Trustees weigh the potential impacts on the neighborhood carefully before arriving at an appropriate yield determination under Section 197-80.3.G of the Code; and

WHEREAS, pursuant to Village Code Section 197-76, the Board of Trustees, following a public hearing, has the power to approve, disapprove, or approve with conditions an application for a Special Exception permit for uses that are specifically provided for in Chapter 197; and

WHEREAS, the subject property is located in the Village' MF-20 Multifamily Residence zoning district which, under Section 197-11 of the Village Code, allows for multi-family residential projects as a special exception use; and

WHEREAS, the Board of Trustees held a public hearing on the application beginning at the Board's March 3, 2022 regular meeting and continuing to the Board's April 7, 2022 regular meeting, during which the Board heard public comments from the applicant's representatives and the public; now therefore be it

RESOLVED that the Board of Trustees, having deliberated on the application and the testimony presented at the public hearing and other public comments received from the public, and having considered the FEIS, hereby adopts the following Findings and Conclusions, and Conditions:

FINDINGS and CONCLUSIONS

1. SEQRA Findings Statement: Pursuant to 6 NYCRR 617.11, the Board has considered the relevant environmental impacts, facts and conclusions disclosed in the FEIS and has weighed and balanced relevant environmental impacts with social, economic and other considerations. The Board has provided a rationale for the Board's decision, as expressed in this determination. The Board hereby certifies that the requirements of this Part have been met and that, consistent with social, economic and other essential considerations from among the reasonable alternatives available, the action – including the mitigative measures and conditions imposed by this determination – is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigative measures that were identified as practicable.

2. Scenic Easement: The Board finds no basis to justify the rescission of the Scenic Easement as requested by Applicant. For purposes of this decision, the Board assumes that it has the power to rescind the Scenic Easement based on the reasoning of the Attorney General's Informal Opinion No. 84-42. Nonetheless, the Board declines to agree to the requested rescission of the Scenic Easement. Although the Scenic Easement was originally granted to the Village in connection with the subdivision of the property, and the subdivision is effectively being abandoned as a result of the multi-family development (which requires a re-merger of the six subdivision lots), the benefits of the Scenic Easement are still applicable to the multi-family development project through the creation of a natural buffer between the development and adjacent properties. The request for rescission is therefore **denied**. Nonetheless, the Board does find that Applicant's alternative relief – i.e., a request to be allowed to landscape the scenic easement area – is justifiable to the extent additional landscaping can augment the scenic

buffer and not detract from it. Thus, the alternative request to be allowed to landscape the scenic area is **conditionally approved**.

3. Unit Yield:

a. Under § 197-80.3.F of the Village Code, the maximum density of any multi-family development is as set forth in § 197-81B, which proscribes a limit of 6 units per acre for the MF-20 district. For this 9.355-acre parcel, the maximum yield under this formula would be 56 units. Applicant is proposing 52 units.

b. The maximum density is not determinative, however, because § 197-80.3.G of the Village Code, entitled “Yield,” requires the Board of Trustees to determine the “permitted yield of multi-family units” after “all applicable requirements” have been applied, “and not simply based on the maximum density as determined in Subsection F of this section.”

c. Consistent with the Planning Board’s recommendation, the Board of Trustees has considered some of the applicable requirements of the Village Code that impact yield and has concluded that the requested yield of 52 units cannot be found to be consistent with those requirements. For example, :

- i. §197-79.A of the Code requires that the Board find, before granting any special exception, that proposed special exception use “will not prevent the orderly and reasonable use of the adjacent properties or of properties in the surrounding area or impair the value thereof.” With a requested yield of 52 units, the Board cannot make this finding. There is ample evidence that a high-density development as proposed would adversely affect the orderly and reasonable use of the neighboring properties and impair their values.
- ii. §197-79. C of the Code requires “That the safety, health, welfare, comfort, convenience or the order of the Village will not be adversely affected by the proposed special exception use and its location.” Again, the Board cannot make this finding based on a requested yield of 52 units.
- iii. §197-79. D of the Code requires “That the special exception use will ... promote the general purposes and intent of this chapter.” As with the above, the Board cannot make this finding with a 52-unit yield.
- iv. § 197-80.A (2) further requires the Board to consider “The conservation of property values and the encouragement of the most appropriate uses of land.” The Board finds that, with a 52-unit yield, this consideration weighs against the application.
- v. § 197-80.A (6) requires the Board to consider “Whether the special exception use or the structures thereon will cause an overcrowding of land or undue concentration of population.” Again, at a 52-unit yield, this consideration weighs against the application.

d. The Board finds, however, that the elimination of one of the buildings (totaling four units) would mitigate the impacts of the development and enable the Board to make the required findings. Specifically, the Board finds that the southwestern building (comprised of 4 units), which as designed would encroach into the scenic easement area, should be removed. The net reduction would be the elimination of one of the buildings closest to the existing neighborhood to the south, plus the lowering of total yield to a maximum of 48 units. This would represent a reduction of 7.7% from the requested 52-unit density and a reduction of 14.3% compared to the maximum density under the code formula of 6 units per acre.

e. Therefore, after due consideration of the comments received from the community and from the Planning Board relating to the concerns over density, the Board finds that the permitted yield should be 48 units and that the southwestern (4 unit) building should be eliminated as a condition of the granting of the special exception permit.

4. Affordable Units: Under § 197-80.3.H of the Code, “For every market-rate unit proposed over four units per acre at least one affordable unit shall be reserved for income-eligible families as defined in § 197-1 of this chapter.” Additionally, § 40-5.F of the Code provides that “Affordable units shall be physically integrated into the design of the development in a manner satisfactory to the Planning Board during site plan review, and the bedroom mix of dwelling units associated with the development shall be distributed in the same proportion as all other dwelling units in the development, unless a different proportion is approved by the Planning Board as being better related to the housing needs.” The Planning Board noted in its determination that the preliminary review did not include consideration of the affordable unit component of the project and that Applicant would have to return to the Planning Board to finalize that review. The Board of Trustees finds, however, that the project as proposed would not appear to have met the affordable requirements. Accordingly, the Board will condition this approval on a requirement that Applicant demonstrate to the Planning Board that it meets all requirements of the Village Code pertaining to affordable units, and that, at a minimum, the following standards are achieved: (a) the affordable units shall be physically integrated into the design of the development in a manner satisfactory to the Planning Board during site plan review, (b) the bedroom mix of affordable units shall be distributed in the same proportion as market-rate units, (c) if Applicant chooses to include one-bedroom units in the development, the percentage of affordable one-bedroom units shall not exceed the percentage of market-rate one-bedroom units and the percentage of affordable three-bedroom units shall not be less than the percentage of market-rate three-bedroom units; and (d) the size of affordable units shall be substantially identical to the size of market-rate units of the same bedroom count.

5. Traffic Measures: Although the issue of traffic has been addressed by the Planning Board in the FEIS and found not to rise to the level of a significant adverse impact, the traffic impacts of a 52-unit or 46-unit development are not non-existent. Applicant has acknowledged the concerns of the neighborhood and expressed a

willingness to participate in measures designed to alleviate those concerns, but it noted that the particular solutions would be subject to Village control. Applicant has therefore offered, as a mitigative measure, to contribute \$25,000 to a fund to be managed by the Village for use to purchase and/or install traffic devices and improvements designed to reduce speeding on Rogers and Hazelwood Avenues. If, after two years from its creation there are funds remaining, those funds may be transferred to the Village's Permanent Improvement budget line for road maintenance projects. The Board finds this mitigation measure appropriate and will condition this determination on the fulfillment of that offer prior to the issuance of any building permit for the project.

6. Additional Mitigative Screening Measure: The Board finds that the impacts on the orderly and reasonable use of adjacent properties, and of property values, requires a more effective screening along the Rogers Avenue extension. While the Board feels that the final landscaping plan is subject to the Planning Board's discretion, the Board will condition any special exception permit on a more significant screening approach that would, at a minimum, increase the caliper of the trees along the Rogers Avenue Extension from 3 inches to 5 inches.

7. Conditional Approval: The Board has given consideration to the matters set forth in § 197-80 of the Village Code and finds that the proposal does not raise any concerns that are incapable of being mitigated through the conditions herein, and the Board finds that the requirements set forth in § 197-79 have been satisfied provided the project is amended to comply with the conditions herein. The Board therefore conditionally approves Applicant's request for a special permit to the extent of 48 dwelling units in 12 buildings (10 townhouse groupings, two Two-Family dwellings) with a private community center, pool and tennis court, with an on-site sewage treatment plant, all to serve as a multifamily development community, all subject to the "Conditions" numbered "1" through "6" as follows:

CONDITIONS

1. Scenic Easement: The application shall be modified to ensure compliance with the Scenic Easement. To the extent the plans show any structural encroachments into the Scenic Easement area, including but not limited to buildings, driveways, and sidewalks (but not including irrigation systems needed to maintain the plantings within the Scenic Easement area), said plans shall be modified prior to any re-submissions to the Village Boards to remove such encroachments from the plans. The plans shall also be modified to clearly depict and label the "Scenic Easement" areas. Notwithstanding the foregoing prohibition against structural encroachments, the landscaping within the Scenic Easement Areas may be modified to augment the Scenic Easement areas' ability to serve as a natural buffer and screening between the multifamily development and adjacent properties, subject to the approval by the Planning Board of a formal landscape plan covering the scenic easement areas. This allowance for augmented plantings shall not be construed as permission to violate the Scenic Easement or to convert the Scenic Easement areas into developed or actively used areas within the multifamily development.

2. Yield: The maximum yield permitted under this Special Permit shall be limited to 48 units, and the southwestern building (comprised of 4 units), which as designed would encroach into the scenic easement area, shall be removed from all future submissions.

3. Affordable Units: Prior to the approval of any site plan, Applicant shall be required to demonstrate to the Planning Board that it meets all requirements of the Village Code pertaining to affordable units. At a minimum, the following standards shall be achieved: (a) the affordable units shall be physically integrated into the design of the development in a manner satisfactory to the Planning Board during site plan review, (b) the bedroom mix of affordable units shall be distributed in the same proportion as market-rate units, (c) if Applicant chooses to include one-bedroom units in the development, the percentage of affordable one-bedroom units shall not exceed the percentage of market-rate one-bedroom units and the percentage of affordable three-bedroom units shall not be less than the percentage of market-rate three-bedroom units; and (d) the size of affordable units shall be substantially identical to the size of market-rate units of the same bedroom count. Subject to the Planning Board's review, the final declaration of covenants and restrictions required to be recorded by the Planning Board shall include all appropriate covenants to ensure compliance with the Village's laws and regulations applicable to affordable housing.

4. Traffic Fund: Prior to the issuance of any building permits, Applicant shall contribute \$25,000 to a fund to be managed by the Village for use to purchase and/or install traffic devices and improvements designed to reduce speeding on Rogers and Hazelwood Avenues. If, after two years from its creation, there are funds remaining, those funds may be transferred to the Village's Permanent Improvement budget line for road maintenance.

5. Improved Screening: The final landscape plan shall include a more effective screening approach that would, at a minimum, increase the caliper of the trees along the Rogers Avenue Extension from 3 inches to 5 inches.

6. Site Plan: The Special Exception Permit shall be subject to the completion of the site plan review process by the planning Board, and subject to all conditions as the Planning Board may reasonably deem appropriate. Provided the final plans are substantially in conformance with the existing plans, subject to the required modifications as described herein, Applicant shall not be required to obtain a modified Special Exception Permit. In the event further substantial modifications are made, as determined by the Building Inspector, Applicant shall be required to obtain a modified Special Exception Permit to reflect those changes.

Dated: June 2, 2022

Board of Trustees of the Village of Westhampton Beach