

February 8, 2024

Incorporated Village of Westhampton Beach held its Planning Board meeting on Thursday, February 8, 2024, at 5:00 p.m. in the Municipal Building, located at 165 Mill Road, Westhampton Beach, New York.

PRESENT: David Reilly, Chairman  
Ralph Neubauer  
Larry Jones  
Rocco Logozzo  
  
Ron Hill, Village Engineer  
  
Brad Hammond, Building & Zoning Administrator  
  
Anthony C. Pasca, Esq., Village Attorney  
  
Maeghan Mackie, Board Secretary

ABSENT: Donald Steinert  
Britton Bistran, Village Planner

**DECISIONS:**

1. THE GABLES OF WESTHAMPTON, LTD (FORMERLY WH EQUITY GROUP, LLC) 12,22,80 MONTAUK HWY & OLD RIVERHEAD ROAD

RESOLUTION OF THE PLANNING BOARD  
VILLAGE OF WESTHAMPTON BEACH  
DATED: February 8, 2024

IN RE:  
WH EQUITY GROUP, LLC  
(Formerly Patio Gardens III LLC)  
(Also known as The Gables of Westhampton)

**Westhampton Beach, New York 11978**  
**12 Montauk Highway, Westhampton Beach, New York 11978**  
**22 Montauk Highway, Westhampton Beach, New York 11978**  
**80 Montauk Highway, Westhampton Beach, New York 11978**  
**11 Old Riverhead Road, Westhampton Beach, New York 11978**  
**905-4-1-22.1, 905-4-1-23, 905-4-1-26.3, 905-4-1-30.1**

**I. The Application for Site Plan Approval**

WH Equity Group, LLC is the reputed owner of real property located at 12, 22 & 80 Montauk Highway and 11 Old Riverhead Road, Westhampton Beach, New York 11978, which is designated on the Suffolk County Tax Map as Nos.: 905-4-1-22.1, 23, 26.3 and 30.1. WH Equity Group, LLC, (hereinafter, the “applicant”), has submitted an application to the Planning Board of the Village of Westhampton Beach (hereinafter the “Board”), for site plan approval to construct 45 dwelling units in 17 buildings (6 townhouse groupings, 9 duplex with attached garages, 2 singles with attached garages) with a private community building, swimming pool, and with an on-site sewage treatment plant and associated site improvements, all collectively to serve as a multifamily planned development community.

The final version of the site plan for which applicant seeks final approval from the Planning Board is set forth in the following documents:

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1. Civil engineering plans as prepared by PW Grosser Consulting Engineer and Hydrogeologist, PC, created 10-11-21 and last revised on 12-4-23 (except where noted), consisting of several sheets labeled as follows:
  - “Cover Sheet” (C-101),
  - “Legends & Site Information” (C-102),
  - “Overall Site Plan” (C-103),
  - “Overall Grading & Drainage Plan” (C-104),
  - “Partial Grading & Drainage Plan” (C-105),
  - “Partial Grading & Drainage Plan” (C-106),
  - “Drainage Calculations & Structure Schedule” (C-107),
  - “Stormwater Pollution Prevention Plan” (C-108) last revised 1-9-24,
  - “Stormwater Pollution Prevention Details” (C-109),
  - “Landscape Plan” (C-110),
  - “Typical Building Landscape Plans & Details” (C-111),
  - “Offsite Improvements Plan” (C-112),
  - “Offsite Improvements Notes & Details” (C-113),
  - “Site Details” (C-114),
  - “Site Details” (C-115),
  - “Partial Lighting Plan” (C-116),
  - “Partial Lighting Plan” (C-117),
  - “Lighting Details” (C-118),
  - “Water Service Overall Plan” (C-119),
  - “Water Service Partial Plan A” (C-120),
  - “Water Service Partial Plan B” (C-121).
2. Architectural plans as prepared by BLD Architecture dated 4-3-23 and labeled #1 through #79.
3. Property survey created November 27, 2007 and last revised 5-4-2011 with structures demolished as per the demolition permit #P220055 and subsequent Certificate of Compliance dated 4-28-22
4. Phasing plans as prepared by PW Grosser Consulting Engineer and Hydrogeologist, PC, created 10-11-21 and last revised on 1-9-24, consisting of several sheets labeled as follows:
  - “Phase 1A Plan” (PH-101),
  - “Phase 1B Plan” (PH-102),

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- “Phase 2 Plan” (PH-103),
- “Phase 3 Plan” (PH-104).

The foregoing plans shall collectively be referred to herein as the “Final Plans” unless a specific plan is expressly referenced.

## **II. Review by Planning Board and Other Agencies**

The application for site plan approval was properly noticed and advertised for a public hearing, which originally opened on January 27, 2022. The Board thereafter reviewed the application, the site plan, the supporting materials, and multiple revisions to the site plan and supporting materials, at multiple public hearing dates.

The Village’s engineer and planner also reviewed the application and subdivision and provided multiple comments thereon throughout the course of the review process.

The issue of potential traffic impacts was identified early in the review process, and the applicant proposed several mitigation measures to minimize any potential impacts from the project, including the following measures:

- no access would be taken from Old Riverhead Road;
- a right-in, right-out access would be provided from Montauk Highway, with no left turns allowed (either from eastbound Montauk Highway traffic into the site, or into eastbound Montauk Highway traffic, from the site);
- the applicant would undertake off-site improvements to the Depot Road/Montauk Highway intersection; and
- the project would incorporate access onto Depot Road through the improved intersection.

A traffic study was undertaken and issued by WHB Engineering, Surveying Landscape Architecture and Geology, PC dated February 24, 2022. The result of the study was that the project would have minimal traffic impacts and that with the infrastructure and mitigation in place that the level of service at nearby intersections would not be poorly impacted by the development.

The application underwent a coordinated review under the State Environmental Quality Review Act (SEQRA), with the Planning Board acting as lead agency. The Planning Board issued a “conditional negative declaration” of significance and adopted a SEQRA Determination on September 8, 2022.

The application obtained approval of the Suffolk County Department of Health Services (SCDHS), for the temporary sanitary system on December 8, 2023, and the Board has received confirmation that full SCDHS approval for the treatment plant is forthcoming. The temporary sanitary system will only support the full use and construction of eight units and the common use building (“Clubhouse”), i.e., those facilities that have been included in “Phase I.A” of the project. Due to a discrepancy in the units designated within Phase I.A. and the SCDHS temporary permit, applicant will be

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required to amend the SCDHS temporary permit prior to issuance of a building permit for the Phase I.A. work, to ensure that the plans match. The applicant has further been advised that, other than a “foundation only” building permit for future phases, no building permits may issue for additional units not included in Phase I.A until the final SCDHS approval has been submitted to the Village.

The application was referred to the Village’s Architectural Review Board, which, by letter dated May 24, 2023, provided comments on the design and materials of the residential buildings and the Clubhouse.

The application was referred to the Suffolk County Planning Commission (SCPC), pursuant to General Municipal Law § 239-m. By letter dated June 16, 2023, the SCPC considered the application to be a matter of local determination, with no further conditions or comments.

The Planning Board issued a preliminary site plan approval and referral to the Village Board of Trustees for a Special Exception permit on October 27, 2022, noting a recommendation that the Trustees consider a reduction of yield to 41 units.

On February 2, 2023, the Village Board of Trustees issued a Resolution of Approval for the Special Exception, approving the full yield of 45 units based on the additional benefit of affordable units, which, under a 45-unit plan, will include a total of 7 units. The Trustees requested a redistribution of the 45 units throughout the site and the applicant accommodated that request, as reflected in the modified plans submitted to the Trustees and the Final Plans submitted to this Board.

The application was referred to the Town of Southampton pursuant to NYS GML 239-NN, and no comments were received in response to the referral.

The application was referred to the Suffolk County Department of Public Works for road opening and work within the right-of-way of Old Riverhead Road (CR 31) and Montauk Highway (CR80). SCDPW has indicated its willingness to proceed with these plans, and its formal approval will be required before the issuance of a building permit for Phase I.A of the project.

On August 11, 2023, the applicant submitted a real estate appraisal of the properties as prepared by Andrew Stype Realty, Inc. dated August 9, 2023. The Board discussed the appropriateness of this appraisal, the applicant’s request for on-site credit (resulting from the common recreational facilities and trails), and discussed the calculation and value of the requisite park fee, which, under the Stype appraisal, would translate to a final park fee of \$498,750.00 dollars, subject to a payment installment plan.

The applicant has also requested that the required development improvements – including site work, drainage, sanitary systems, the Clubhouse and common facilities, road/parking improvements, lighting and utilities, plantings, etc. – be bonded for completion so that building permits and certificates of occupancy can be issued for individual residential units before the final completion of all development-wide improvements. The applicants submitted a proposed Performance Bond Estimate, which was

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reviewed by the Village Engineer, who initially requested a modification thereto. Thereafter, the applicants submitted a final Performance Bond Estimate dated January 25, 2024, prepared by Bryan Grogan, PE, which incorporated the changes requested by the Village Engineer, and totaled \$2,224,781.75.

**III. Findings and Conclusions**

A. As of the Board’s February 8, 2024 meeting, the Site Plan Application is complete and contains all of the site plan elements set forth in the Village Code. The procedures required for site plan review have been fulfilled as applicable to this application. The public hearing is hereby closed.

B. **Recreation Area and Fee:** Pursuant to §§ 197-80.3.S and 197-63.Q of the Village Code, the Board finds as follows:

1. The Board finds that a proper case exists for the provision of recreational areas and/or the payment of a fee in lieu thereof (“park fee”). A detailed study was undertaken in connection with another Depot Road development that confirmed the need for recreational facilities within the small Village, which is known for its beaches, parks, and public grounds. The addition of 38 non-affordable units shall create an added burden on the Village’s facilities so as to require the mitigation of additional recreational areas and/or the payment of a park fee.

2. Pursuant to §§ 197-80.3.S and 197-63.Q of the Village Code, the park fee shall be based on the statutory formula of the appraised value of land (per square foot) times 2,178 square feet of reserved area for each of the forty five new residential lots, minus the seven affordable units – i.e., 38 units total times 2,178 = 82,764 sf total, subject to credit given for on-site facilities up to 50% of that value.12.05

3. The Board finds that the Stype appraisal provides a credible estimation of fair market value of the residential land area, in the amount of \$4,200,000.00 for the full 348,480 sf, or \$12.05 per square foot. The total park fee, prior to any credits, calculates to \$997,500.00 (\$12.05/sf x 82,764 sf).

4. The proposed, on-site recreational areas are suitable for the development and sufficient to entitle the applicant to reduce the park fee by 50%, the maximum allowed under § 197-80.3.S(3).

5. The final park fee is hereby established to be **\$498,750.00**.

6. Pursuant to § 197-63.Q(3), the Board hereby exercises its authority to establish a schedule for the payment of the park fee by approving the applicant’s request to pay the park fees in proportion to the number of units within each development phase. Specifically, the park fee of \$498,750 shall be pro-rated with respect to the 38 non-affordable units (i.e., each unit shall be attributed a park fee proportion of 1/38<sup>th</sup> of the total fee), and the total park fee shall then be paid

in phases that correlate to the phased development of the project, as follows: prior to the issuance of full building permits (i.e., other than foundation-only permits) for the individual residential units within any phase, the applicant shall be required to pay the full proportion of the park fee attributable to the number of non-affordable units within that phase. By way of example, before issuance of the building permits for the construction of the eight non-affordable units in Phase I.A, the applicant shall be required to pay, in full, the proportionate park fee attributable to those eight units, or \$105,000 (i.e., 8/38<sup>th</sup> of the total park fee). Nothing herein shall prevent the applicant from developing more than one phase at one time, provided that the park fee attributable to all phases under construction has been paid in full prior to issuance of the building permits for the units in those phases.

C. **Performance Bond:** Although the Zoning Code does not specifically address bonding for purposes of multi-family developments, the Code has bonding provisions within the analogous subdivision provisions of §§150-13 – 150-15 of the Village Code, and therefore the Board has exercised its authority to waive completion of all site-wide improvements, subject to compliance with the bonding requirements set forth herein. The Board approves the amount as set forth in the Performance Bond Estimate in the total amount of \$2,224,781.75. Said bond shall remain in effect for the duration of construction of the common improvements. The procedures for the filing and release of said bond shall be governed by the conditions set forth below.

D. The Planning Board finds that, subject to the conditions set forth in Section IV below, the proposed site plan, as reflected in the Final Plans, satisfies the requirements of the Village Code with respect to design, drainage, parking, lighting, landscaping, affordable housing, and other requirements of the Code.

E. The Planning Board approves, subject to the conditions set forth in section IV below, the modification of the site plan as depicted on the Final Plans (i.e., Civil engineering plans as prepared by PW Grosser Consulting Engineer and Hydrogeologist, PC, created 10-11-21 and last revised on 12-4-23 Architectural plans as prepared by BLD Architecture dated 4-3-23 and labeled #1 through #79, the property survey, and the Phasing plans as prepared by PW Grosser Consulting Engineer and Hydrogeologist, PC, created 10-11-21), which are hereinafter referred to collectively as the “Approved Plans”.

#### **IV. Conditions**

1. **Declarant and Its Successors:** The conditions set forth herein shall be binding on applicant and any successor owners of the subject property. Nothing herein shall be construed as precluding Declarant from transferring ownership of the full site or of individual units therein to multiple owners (such as in the event a condominium or cooperative plan is pursued), but all such successor

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owners of any property within the site (including any unit owners, condominium association, cooperative board, or homeowners association) shall remain responsible for compliance with these conditions.

**2. Fees:** To the extent it has not done so, applicant shall pay all applicable and outstanding fees required by the Village Code and this resolution, including: any unpaid application and review fees, and the \$498,750 park fee (which may be paid in installments as set forth in this resolution).

**3. Suffolk County Department of Health Services Approval:** Applicant shall obtain approval from the Suffolk County Department of Health Services (SCDHS) for the Final Plans. No building permits may issue for the Phase I.A development until the Applicant has submitted temporary SCDHS approval for plans matching those submitted to the Village as part of Phase I.A. No building permits may issue for any other phases of development (other than a “foundation only” permit), until SCDHS has issued a final approval for the treatment plant and approved the Final Plans.

**4. SCDPW Approval:** No building permits may be issued for the project until the applicant has obtained SCDPW approval for the proposed improvements requiring such approval.

**5. Site Plan Improvements, Construction, Phasing and Permits/COs:** The following conditions shall apply to construction of site improvements and units:

- a. Applicant shall be required to complete the installation and construction of all required improvements depicted on the Approved Plans, and any additions, alterations or changes to the Approved Plans shall require further Site Plan approval by the Planning Board.
- b. All construction of common improvements and individual units shall be completed in accordance with any approved SWPPP, and shall be coordinated with the Village Building Inspector and Village Engineer to ensure that they are able to inspect the improvements at the proper stages of installation.
- c. Pursuant to Chapter 110 of the Village Code (Noise), regulated construction activities shall be allowed to occur only between the hours of 7:00 AM and 6:00 PM weekdays and 8 AM and 5 PM on Saturdays and Sundays, except during the months of July and August, when none of the activities shall be permitted on Sundays. No vehicular traffic to or from the site shall occur earlier than one-half hour before the AM construction starting time or later than one-half hour after the PM construction ending time.
- d. Prior to issuance of any building permits for the project, the perimeter of the site shall be completely and securely fenced with a project limiting fence.
- e. No new site demolition and clearing shall take place unless and until all silt fences, hay bales and other erosion control devices are installed and inspected by the Village Engineer and in line with the conditions of the SWPPP.

- f. Prior to construction, appropriate flags or markings and/or the project limiting fence shall be installed to identify and protect the trees and perimeter landscaping that will be retained before site disturbance and clearing is commenced. The five tagged “lop trees” along Old Riverhead Road must be protected and remain for perpetuity.
- g. At all times, all construction activity, storage of materials, stockpiles and equipment shall be contained within the project limiting fence.
- h. No construction-related equipment or vehicles (including employee vehicles, delivery vehicles, catering vehicles, etc.) shall be allowed to park, stand or idle on Old Riverhead Road (CR 31), Montauk Highway, Depot Road, or any Village streets, except as may be strictly necessary to complete improvements therein. All construction-related equipment, parking, standing or idling shall be on-site, entirely within the project limiting fence. All construction-related equipment or vehicles must utilize the construction access points as delineated within the approved plan, specifically on Montauk Highway (CR80) only.
- i. All required improvements shall be completed prior to the discharge of Applicant’s obligations hereunder and shall be bonded in accordance with the provisions below for the filing of a performance bond.
- j. The improvements may be completed in phases, as set forth in the Phasing Plans included with the Approved Plans. With respect to all phases, no building permits (other than a foundation-only permit) may issue for units within such phases unless and until the applicable SCDHS approval has been received for such phases and the park fee relating to such phases has been paid in full.
- k. Nothing shall prevent the applicant from commencing work on more than one phase at a time, but no Certificate of Occupancy may be issued for any units within a particular phase until all work has been completed within such phase, and until the project limiting fence has been moved to secure the completed phase from the areas remaining under construction. Notwithstanding the foregoing, for Phases I.A, I.B, and II, applicant shall not install the final layer of asphalt but shall nonetheless ensure that the base layers are striped and safe for ordinary use, and the final layer of asphalt and final striping shall be completed by the end of Phase III, prior to issuance of any Certificate of Occupancy for Phase III units.
- l. Completion of all improvements within a particular phase shall be evidenced by an updated, “as built” survey showing the conditions within the applicable phased construction area, and a final as built survey shall be required prior to issuance of the final certificates of occupancy for Phase III.



- m. Any debris, droppings, sediment, dirt or dust emanating from the project site or from vehicles entering or exiting the project site onto the public right-of-way shall be promptly cleaned and removed. Any damage to Old Riverhead Road (CR 31), Montauk Highway, Depot Road, or Village property caused by construction-related equipment or vehicles shall be repaired forthwith according to the instructions of the Village Building Inspector and any required approvals from SCDPW. The Building Inspector shall not issue any requested Certificates of Occupancy if he determines that repairs remain needed for Old Riverhead Road (CR 31), Montauk Highway, Depot Road, or Village property.
- n. Notwithstanding anything else herein to the contrary, the requirements set forth in Chapter 40 of the Village Code relating to affordable units shall supersede any phasing, building permit, or certificate of occupancy provisions herein, including the provisions of Section 40-5(3) & (4) of the Code, which allow the Building Inspector to issue certificates of occupancy for only 50% of the market rate units before the affordable housing lottery is held, at which point all affordable units must be issued certificates of occupancy before the remaining market-rate units shall be eligible for certificates of occupancy.

**6. Performance Bond:** The applicant shall be required to file a performance bond to ensure the construction of all of the site improvements required under the Approved Plans, as set forth in the Performance Bond Estimate dated January 25, 2024. The bond shall be prepared in a form suitable to the Village Attorney and the acceptance of the performance bond and security shall be subject to a resolution of the Board of Trustees approving the performance bond and security. No building permits may be issued for the site prior to the delivery of the bond together with any security to the Village of Westhampton Beach. The bond shall remain in force until (i) a resolution of completion of the required improvements has been issued by the Planning Board, upon certification by the Village Building Inspector and Village Engineer that the required improvements have been completed to the proscribed specifications, (ii) the applicant has filed a maintenance bond as hereafter required, (iii) the applicant has complied with all affordable housing requirements set forth herein and in the Village Code, and (iv) the Trustees have approved the release of the performance bond.

**7. Maintenance Bond:** The final release of the performance bond shall be subject to the applicant providing the Village with a maintenance bond, the amount of which shall be equal to one third (33.33%) of the Performance Bond Estimate, unless the Planning Board shall have approved a lesser amount by resolution. The form of said maintenance bond is subject to the approval of the Village Attorneys and acceptance by the Village Board of Trustees. The maintenance bond shall remain in effect for a period of one year after the release of the performance bond.

**8. Affordable Housing:** The seven (7) units labeled “Affordable” on the Approved Plans, i.e., units numbered 204, 304, 404, 504, 601, 604, and 605, shall be designated, in perpetuity, as “Affordable Units” and shall be subject to all regulations affecting Affordable Units under Chapter 40 of the Village Code (or any successor code provisions and amendments governing affordable housing units). Applicant shall be required to record an affordability easement and all legal documentation needed to establish the seven Affordable Units as such in perpetuity, in such form as the Village Attorneys and the Village’s affordable housing administrators deem necessary, depending on applicant’s choice to designate the development as rental units or owner-occupied units (e.g., condominium or cooperative).

**9. Utilities:** All future local electric power, telephone, cable television and/or internet lines for the subject site and any of its units shall be placed underground. The initial installation of utilities within the site shall be coordinated with the utility companies (including SCWA, National Grid, PSEG, Altice and/or Verizon) to ensure that such installation is completed prior to completion of the final paving of the driveways and parking areas.

**10. Landscaping:** Applicant shall be responsible to install and maintain, in perpetuity, the landscaping as set forth in the landscaping plans included in the Approved Plans, except as may be approved by any amendment to such plans by the Planning Board. An underground irrigation system shall be installed and maintained in working order to water all landscaped areas of the site.

**11. Restrictions on Units:**

- a. **Garages/Parking Areas:** Any garages and driveways attached to individual units shall remain open and unobstructed so as to ensure that they retain sufficient space for the parking of vehicles. Garages may not be converted to habitable space.
- b. **Basements/Attics:** No living units or habitable space shall be permitted in any attic, basement, or cellar area. Such areas shall only be used for utilities and storage.
- c. **Bedrooms:** Only two bedrooms shall be permitted in each unit. No other living space, whether designated as a living room, den, library, or similar label, shall be converted into or used as a bedroom, and no additional interior partitioning walls or doors may be added to the units to create any bedroom that has not been approved by the Planning Board.
- d. **Washer/Dryer:** Each unit must be constructed and maintained with access to a washer and dryer.
- e. **HVAC Equipment:** Any and all exterior air conditioning and heating units shall be located to the rear of each unit and shall be screened from view of any public right of way. Any change in the location of the exterior air conditioning units shall be subject to further review by this Board as to location and screening.

- f. **Refuse:** Any outside storage of refuse by the residents of individual units shall be in rodent-proof containers screened from view of any public right of way.
- g. **Mail:** Each building containing residential units must have a mailbox facility located in a convenient area for occupant retrieval as well as postal delivery.

**12. Recreation Areas:** All common recreational facilities, including the Clubhouse and trails, shall remain available in perpetuity for the exclusive use of all residents and their non-paying guests. These areas may not be leased or licensed to non-residents or put to commercial use.

**13. Tax Lot Merger:** Prior to issuance of any Certificates of Occupancy, applicant shall merge all of the individual tax lots forming the subject property. This condition shall not be construed as precluding the filing of a condominium map delineating individual unit areas, provided that all common areas remain merged.

**14. Lighting:** Any and all exterior lighting shall be maintained as shown on the Lighting Plans and Lighting Details as included in the Approved Plans plan, shall be directed on site, non-intrusive, shall not be exposed to the sky, and shall be full cut-off and "Dark Sky" compliant. Spot lights shall be prohibited. Any change in the specifications of the lighting, including a change in type, size, numbers, wattage or location shall be subject to further review and approval of the Planning Board.

**15. Declaration of Covenants and Restrictions:**

- a. The applicant, at its own expense, shall prepare a "Declaration of Covenants and Restrictions " (hereinafter, "Declaration") that affects all of the property subject to this resolution and that sets forth the restrictions in Conditions 1 through 14 above.
- a. The applicants shall submit the Declaration to the Planning Board for review and approval of the form and substance of the Declaration by the Planning Board and the Planning Board's attorneys.
- b. The applicant shall simultaneously submit to the Planning Board (a) a title certification by a title company licensed to do business in the State of New York identifying the owner(s) in fee of the entirety of the subject property and identifying the names of all parties that must consent to the execution and recording in the Suffolk County Clerk's Office of a declaration of covenants and restrictions setting forth the conditions required by this determination, and (b) signed and duly acknowledged consents from all the parties that must so consent.
- c. Following approval of the form and substance of the Declaration by the Planning Board and its attorneys, the applicant shall, at its own expense, execute and record the Declaration as a conveyance affecting the property, in the Office of the Suffolk County Clerk and provide the Planning Board with proof of such recording.

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- d. The filing of this Declaration shall be deemed to supersede any prior Declarations that are inconsistent with the new Declaration.
- e. The filing of proof of recording shall be a condition precedent to the issuance of any Certificate of Occupancy.

**16.** The approval set forth here shall expire unless a building permit has been issued for the construction and construction is completed, as certified by a validly issued Certificate of Occupancy, within two (2) years of the date hereof. The Board shall have the right to extend the time period set forth in this paragraph as proscribed in Section 197-63.T of the Code.

Dated: February 8, 2024

Village of Westhampton Beach  
Planning Board

Motion was made by Mr. Neubauer to adopt the determination of **The Gables of Westhampton, Ltd., (formerly WH Equity Group, LLC.) 12, 22, 80 Montauk Highway & Old Riverhead Road** as written; seconded by Mr. Logozzo and unanimously carried 4 ayes, 0 nays, 1 absent.

2. ROGER'S AVENUE ASSOCIATES- ROGER'S AVENUE SCTM#905-3-1-7.1-7.7

DECISION OF THE PLANNING BOARD  
VILLAGE OF WESTHAMPTON BEACH  
DATED: February 8, 2024

IN RE:  
Rogers Associates, LLC.

**Westhampton Beach, New York 11978**  
**1 Twin Fork Lane, Westhampton Beach, New York 11978**  
**2 Twin Fork Lane, Westhampton Beach, New York 11978**  
**4 Twin Fork Lane, Westhampton Beach, New York 11978**  
**5 Twin Fork Lane, Westhampton Beach, New York 11978**  
**7 Twin Fork Lane, Westhampton Beach, New York 11978**  
**Twin Fork Lane, Westhampton Beach, New York 11978**  
**Suffolk County Tax Map Numbers**  
**905-3-1-7.1, 905-3-1-7.2, 905-3-1-7.3, 905-3-1-7.4,**  
**905-3-1-7.5, 905-3-1-7.6 and 905-3-1-7.7**

### **III. The Application for Site Plan Approval**

Rogers Associates, LLC., 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 Rogers Associates, LLC., (hereinafter, the "applicant"), originally submitted an application to the Planning Board of the Village of Westhampton Beach (hereinafter the "Board"), for site plan approval to construct 52 dwelling units in 13 buildings (11 townhouse groupings, 2 two-family dwellings) with a private community center, pool and tennis court, with an on-site sewage treatment plant in two development phases, collectively to serve as a multifamily development community. During the application review process, the applicant reduced the density to 37 dwelling units (in 15 buildings), which is the number of units sought in the final application.

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The final version of the site plan for which applicant seeks final site plan approval is set forth in the plans prepared by P.W. Grosser Consulting Engineer and Hydrogeologist, P.C., (PWGC), created 02-21-19 and last revised on 12-23-21 (except as noted), consisting of several sheets labeled as follows:

- “General Site Plan Notes” (C-001),
- “Proposed Site Plan” (C-100),
- “Proposed Drainage and Grading Plan” (C-200),
- “Proposed Drainage Calculations” (C-201),
- “Proposed Sanitary Plan” (C-300),
- “Proposed Landscape Plan” (C-400),
- “Proposed Lighting Plan” (C-500),
- “Proposed Erosion and Sediment Control Plan” (C-600),
- “Proposed Erosion and Sediment Control Details” (C-601),
- “Proposed Trees Removal Plan” (TR-001),
- “Proposed Traffic Plan” (C-700),
- “Proposed Details” (C-800) (last revised 06-08-21) and
- “Proposed Details” (C-801) (last revised 06-08-21).

These plans shall collectively be referred to herein as the “Proposed Site Plan.”

5. Architectural plans as prepared by Jerry Rumplick, AIA dated 1-30-17 and labeled Community Building A1, A2, New Townhome Development 2 Unit Building A.01, A1.1, A1.2, A2.1, A2.2 and New Townhome Development 3 Unit Building A.01, A1.1, A1.2, A2.1, A2.2.
6. Property survey created March 15, 2019.
7. Septic plans as prepared by PW Grosser Consulting Engineer and Hydrogeologist, PC, created 1-3-20 and last revised on 7-18-23, consisting of several sheets labeled as follows:
  - “Cover Sheet” (C-101),
  - “General Notes” (C-102),
  - “Legend & Test Hole Data” (C-103),
  - “Overall Site Plan” (C-104),
  - “System Profile Lat A” (C-105),
  - “System Profile Lat B & C” (C-106),
  - “STP Hydraulic Profile” (C-107),
  - “Details” (C-108).

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The foregoing plans shall collectively be referred to herein as the “Final Plans” unless a specific plan is expressly referenced.

#### **IV. Review by Planning Board and Other Agencies**

The application for site plan approval was properly noticed and advertised for a public hearing, which originally opened on September 26, 2019. The Board thereafter reviewed the application, the site plan, the supporting materials, and multiple revisions to the site plan and supporting materials, at multiple public hearing dates.

The Village’s engineer and planner also reviewed the application and subdivision and provided multiple comments thereon throughout the course of the review process.

The application underwent a coordinated review under the State Environmental Quality Review Act (SEQRA), with the Planning Board acting as lead agency. The Planning Board issued a “positive declaration” of significance, conducted a public scoping session, held a hearing on the Draft Environmental Impact Statement and Supplemental Environmental Impact Statement, and prepared and adopted a Final Environmental Impact Statement, and adopted a SEQRA Findings Statement on November 10, 2021.

The applicant obtained approval of the Suffolk County Department of Health Services on December 28, 2023.

The application was referred to the Village’s Architectural Review Board and an advisory report was issued on October 21, 2022.

The application was referred to the Suffolk County Planning Commission (SCPC), pursuant to General Municipal Law § 239-m. By letter dated March 10, 2022, the SCPC considered the application to be a matter of local determination and offered comments that were integrated into this determination.

The Planning Board issued a preliminary site plan approval for the application which was, at that time, 52 units, and the Board simultaneously referred the application to the Village Board of Trustees for a Special Exception permit on February 10, 2022. On June 2, 2023, the Village Board of Trustees issued a Resolution of Approval for the Special Exception, subject to a reduced yield of 48 units. The Trustees requested several conditions including the creation of a Traffic Fund, improved landscape screening and conformance with the Village Code pertaining to affordable housing units.

Subsequent to the Special Exception approval, the applicant voluntarily reduced the proposed density to a total of only 37 units, which is the maximum amount permitted without triggering the requirement for affordable units. Accordingly, no affordable units are proposed in the Final Plans.

The application was referred to the Town of Southampton pursuant to NYS GML 239-NN, and no comments were received in response to the referral.

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The applicant submitted a real estate appraisal of the properties as prepared by Patricia Parsons dated February 24, 2023. The Board discussed the appropriateness of this appraisal, the applicant's request for on-site credit (resulting from the common recreational facilities and trails) and discussed the calculation and value of the requisite park fee, which, under the Parson's appraisal, would translate to a final park fee of \$425,091.15 dollars. Although a year has elapsed since the Parson's appraisal, the Board considered additional information submitted by the applicant and finds the Parson's valuation remains valid.

The applicant has also requested that the required development improvements – including site work, drainage, sanitary systems, the Community Building and common facilities, road/parking improvements, lighting and utilities, plantings, etc. – be bonded for completion so that building permits and certificates of occupancy can be issued for individual residential units before the final completion of all development-wide improvements. The applicants submitted a proposed Performance Bond Estimate, which was reviewed by the Village Engineer, who initially requested a modification thereto. Thereafter, the applicants submitted a final Performance Bond Estimate dated January 29, 2024, prepared by Bryan Grogan, PE, which incorporated the changes requested by the Village Engineer, and totaled \$2,130,000.

### **III. Findings and Conclusions**

A. As of the Board's February 8, 2024 meeting, the Site Plan Application is complete and contains all of the site plan elements set forth in the Village Code. The procedures required for site plan review have been fulfilled as applicable to this application. The public hearing is hereby closed.

B. **Recreation Area and Fee:** Pursuant to §§ 197-80.3.S and 197-63.Q of the Village Code, the Board finds as follows:

1. The Board finds that a proper case exists for the provision of recreational areas and/or the payment of a fee in lieu thereof ("park fee"). A detailed study was undertaken in connection with a nearby development that confirmed the need for recreational facilities within the small Village, which is known for its beaches, parks, and public grounds. The addition of 37 residential units shall create an added burden on the Village's facilities so as to require the mitigation of additional recreational areas and/or the payment of a park fee.

2. Pursuant to §§ 197-80.3.S and 197-63.Q of the Village Code, the park fee shall be based on the statutory formula of the appraised value of land (per square foot) times 2,178 square feet of reserved area for each of the thirty seven new residential lots– i.e., 37 units total times 2,178 = 80,586 sf total, subject to credit given for on-site facilities up to 50% of that value.

3. The Board finds that the Parson's appraisal provides a credible estimation of fair market value of the residential land area, in the amount of \$4,300,000 for the full 407,522 sf, or

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\$10.55 per square foot. The total park fee, prior to any credits, calculates to \$850,182.30 (\$10.55/sf x 80,586 sf).

4. The proposed, on-site recreational areas are suitable for the development and sufficient to entitle the applicant to reduce the park fee by 50%, the maximum allowed under § 197-80.3.S(3).

5. The final park fee is hereby established to be **\$425,091.00**.

6. Pursuant to § 197-63.Q(3), the Board hereby exercises its authority to pay the park fee in proportion to the number of units under construction. Specifically, the park fee of \$425,091.00 shall be pro-rated with respect to the 37 units (i.e., each unit shall be attributed a park fee proportion of 1/37<sup>th</sup> of the total fee), and the total park fee shall then be paid in installments that correlate to the progressive development of the project, as follows: prior to the issuance of full building permits (i.e., other than foundation-only permits) for the individual residential units within any building, the applicant shall be required to pay the full proportion of the park fee attributable to the number of such units sought within such building permit. By way of example, should the applicant seek a building permit to construct the first 8 units, before issuance of said building permit, the applicant shall be required to pay, in full, the proportionate park fee attributable to those eight units, or \$91,911.57.00 (i.e., 8/37<sup>th</sup> of the total park fee). Nothing herein shall prevent the applicant from building more or less units at the same time, provided that the park fee attributable to all units under construction has been paid in full prior to issuance of the building permits for those units.

C. **Performance Bond:** Although the Zoning Code does not specifically address bonding for purposes of multi-family developments, the Code has bonding provisions within the analogous subdivision provisions of §§150-13 – 150-15 of the Village Code, and therefore the Board has exercised its authority to waive completion of all site-wide improvements, subject to compliance with the bonding requirements set forth herein. The Board approves the amount as set forth in the Performance Bond Estimate in the total amount of \$2,130,000.00. Said bond shall remain in effect for the duration of construction of the common improvements. The procedures for the filing and release of said bond shall be governed by the conditions set forth below.

D. The Planning Board finds that, subject to the conditions set forth in Section IV below, the proposed site plan, as reflected in the Final Plans, satisfies the requirements of the Village Code with respect to design, drainage, parking, lighting, landscaping, affordable housing, and other requirements of the Code.

E. The Planning Board approves, subject to the conditions set forth in section IV below, the modification of the site plan as depicted on the Final Plans (i.e., Civil engineering plans as prepared by



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PW Grosser Consulting Engineer and Hydrogeologist, PC, last revised on 12-23-21 Architectural plans as prepared by Jerry Rumplick, AIA dated 1-30-23 , the property survey, and the septic plans as prepared by PW Grosser Consulting Engineer and Hydrogeologist, PC, created 7-18-23), which are hereinafter referred to collectively as the “Approved Plans”.

**IV. Conditions**

**17. Declarant and Its Successors:** The conditions set forth herein shall be binding on applicant and any successor owners of the subject property. Nothing herein shall be construed as precluding Declarant from transferring ownership of the full site or of individual units therein to multiple owners (such as in the event a condominium or cooperative plan is pursued), but all such successor owners of any property within the site (including any unit owners, condominium association, cooperative board, or homeowners association) shall remain responsible for compliance with these conditions.

**18. Fees:** To the extent it has not done so, applicant shall pay all applicable and outstanding fees required by the Village Code and this resolution, including: any unpaid application and review fees, and the \$425,091 park fee (which may be paid in installments as set forth in this resolution).

**19. Suffolk County Department of Health Services Approval:** Applicant has obtained approval from the Suffolk County Department of Health Services (SCDHS) for the Final Plans.

**20. WHB DPW Approval:** No building permits may be issued for the project until the applicant has obtained WHB DPW approval for the proposed improvements requiring such approval.

**21. Site Plan Improvements, Construction, Phasing and Permits/COs:** The following conditions shall apply to construction of site improvements and units:

- a. Applicant shall be required to complete the installation and construction of all required improvements depicted on the Approved Plans, and any additions, alterations or changes to the Approved Plans shall require further Site Plan approval by the Planning Board.
- b. All construction of common improvements and individual units shall be completed in accordance with any approved SWPPP, and shall be coordinated with the Village Building Inspector and Village Engineer to ensure that they are able to inspect the improvements at the proper stages of installation.
- c. Pursuant to Chapter 110 of the Village Code (Noise), regulated construction activities shall be allowed to occur only between the hours of 7:00 AM and 6:00 PM weekdays and 8 AM and 5 PM on Saturdays and Sundays, except during the months of July and August, when none of the activities shall be permitted on Sundays. No vehicular traffic to or from the site shall occur earlier than one-half hour before the AM construction starting time or later than one-half hour after the PM construction ending time.

- d. Prior to issuance of any building permits for the project, the perimeter of the site shall be completely and securely fenced with a project limiting fence.
- e. No new site demolition and clearing shall take place unless and until all silt fences, hay bales and other erosion control devices are installed and inspected by the Village Engineer and in line with the conditions of the SWPPP.
- f. Prior to construction, appropriate flags or markings and/or the project limiting fence shall be installed to identify and protect the trees and perimeter landscaping that will be retained before site disturbance and clearing commences.
- g. At all times, all construction activity, storage of materials, stockpiles and equipment shall be contained within the project limiting fence.
- h. No construction-related equipment or vehicles (including employee vehicles, delivery vehicles, catering vehicles, etc.) shall be allowed to park, stand or idle on Roger's Avenue, or any Village streets, except as may be strictly necessary to complete improvements therein. All construction-related equipment, parking, standing or idling shall be on-site, entirely within the project limiting fence. All construction-related equipment or vehicles must utilize the construction access points as delineated within the approved plan.
- i. All required improvements shall be completed prior to the discharge of Applicant's obligations hereunder and shall be bonded in accordance with the provisions below for the filing of a performance bond.
- j. Completion of all improvements shall be evidenced by an updated, "as built" survey prior to issuance of the final certificates of occupancy.
- k. Any debris, droppings, sediment, dirt or dust emanating from the project site or from vehicles entering or exiting the project site onto the public right-of-way shall be promptly cleaned and removed. Any damage to Roger's Avenue or Village property caused by construction-related equipment or vehicles shall be repaired forthwith according to the instructions of the Village Building Inspector and Department of Public Works. The Building Inspector shall not issue any requested Certificates of Occupancy if he determines that repairs remain needed for Roger's Avenue or Village property.

**22. Performance Bond:** The applicant shall be required to file a performance bond to ensure the construction of all of the site improvements required under the Approved Plans, as set forth in the Performance Bond Estimate dated January 29, 2024. The bond shall be prepared in a form suitable to the Village Attorney and the acceptance of the performance bond and security shall be subject to a resolution of the Board of Trustees approving the performance bond and security. No building permits may be

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issued for the site prior to the delivery of the bond together with any security to the Village of Westhampton Beach. The bond shall remain in force until (i) a resolution of completion of the required improvements has been issued by the Planning Board, upon certification by the Village Building Inspector and Village Engineer that the required improvements have been completed to the proscribed specifications, (ii) the applicant has filed a maintenance bond as hereafter required, and (iii) the Trustees have approved the release of the performance bond.

**23. Maintenance Bond:** The final release of the performance bond shall be subject to the applicant providing the Village with a maintenance bond, the amount of which shall be equal to one third (33.33%) of the Performance Bond Estimate, unless the Planning Board shall have approved a lesser amount by resolution. The form of said maintenance bond is subject to the approval of the Village Attorneys and acceptance by the Village Board of Trustees. The maintenance bond shall remain in effect for a period of one year after the release of the performance bond.

**24. Utilities:** All future local electric power, telephone, cable television and/or internet lines for the subject site and any of its units shall be placed underground. The initial installation of utilities within the site shall be coordinated with the utility companies (including SCWA, National Grid, PSEG, Altice and/or Verizon) to ensure that such installation is completed prior to completion of the final paving of the driveways and parking areas.

**25. Landscaping:** Applicant shall be responsible to install and maintain, in perpetuity, the landscaping as set forth in the landscaping plans included in the Approved Plans, except as may be approved by any amendment to such plans by the Planning Board. An underground irrigation system shall be installed and maintained in working order to water all landscaped areas of the site.

**26. Restrictions on Units:**

- a. **Garages/Parking Areas:** Any garages and driveways attached to individual units shall remain open and unobstructed so as to ensure that they retain sufficient space for the parking of vehicles. Garages may not be converted to habitable space.
- b. **Basements/Attics:** No living units or habitable space shall be permitted in any attic, basement, or cellar area. Such areas shall only be used for utilities and storage.
- c. **Bedrooms:** Only two bedrooms shall be permitted in each unit. No other living space, whether designated as a living room, den, library, or similar label, shall be converted into or used as a bedroom, and no additional interior partitioning walls or doors may be added to the units to create any bedroom that has not been approved by the Planning Board.
- d. **Washer/Dryer:** Each unit must be constructed and maintained with access to a washer and dryer.

- e. **HVAC Equipment:** Any and all exterior air conditioning and heating units shall be located to the rear of each unit and shall be screened from view of any public right of way. Any change in the location of the exterior air conditioning units shall be subject to further review by this Board as to location and screening.
- f. **Refuse:** Any outside storage of refuse by the residents of individual units shall be in rodent-proof containers screened from view of any public right of way.
- g. **Mail:** Each building containing residential units must have a mailbox facility located in a convenient area for occupant retrieval as well as postal delivery.

**27. Recreation Areas:** All common recreational facilities, including the Community Building, shall remain available in perpetuity for the exclusive use of all residents and their non-paying guests. These areas may not be leased or licensed to non-residents or put to commercial use.

**28. Tax Lot Merger:** Prior to issuance of any Certificates of Occupancy, applicant shall merge all of the individual tax lots forming the subject property. This condition shall not be construed as precluding the filing of a condominium map delineating individual unit areas, provided that all common areas remain merged.

**29. Lighting:** Any and all exterior lighting shall be maintained as shown on the Lighting Plans and Lighting Details as included in the Approved Plans plan, shall be directed on site, non-intrusive, shall not be exposed to the sky, and shall be full cut-off and "Dark Sky" compliant. Spot lights shall be prohibited. Any change in the specifications of the lighting, including a change in type, size, numbers, wattage or location shall be subject to further review and approval of the Planning Board.

**30. Declaration of Covenants and Restrictions:**

- a. The applicant, at its own expense, shall prepare a "Declaration of Covenants and Restrictions " (hereinafter, "Declaration") that affects all of the property subject to this resolution and that sets forth the restrictions in Conditions 1 through 13 above.
- f. The applicants shall submit the Declaration to the Planning Board for review and approval of the form and substance of the Declaration by the Planning Board and the Planning Board's attorneys.
- g. The applicant shall simultaneously submit to the Planning Board (a) a title certification by a title company licensed to do business in the State of New York identifying the owner(s) in fee of the entirety of the subject property and identifying the names of all parties that must consent to the execution and recording in the Suffolk County Clerk's Office of a declaration of covenants and restrictions setting forth the conditions required by this determination, and (b) signed and duly acknowledged consents from all the parties that must so consent.

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- h. Following approval of the form and substance of the Declaration by the Planning Board and its attorneys, the applicant shall, at its own expense, execute and record the Declaration as a conveyance affecting the property, in the Office of the Suffolk County Clerk and provide the Planning Board with proof of such recording.
- i. The filing of this Declaration shall be deemed to supersede any prior Declarations that are inconsistent with the new Declaration.
- j. The filing of proof of recording shall be a condition precedent to the issuance of any Certificate of Occupancy.

**31.** The approval set forth here shall expire unless a building permit has been issued for the construction and construction is completed, as certified by a validly issued Certificate of Occupancy, within two (2) years of the date hereof. The Board shall have the right to extend the time period set forth in this paragraph as proscribed in Section 197-63.T of the Code.

Dated: February 8, 2024

Village of Westhampton Beach  
Planning Board

Motion was made by Mr. Neubauer to adopt the determination of **Rogers Associates, LLC., 1, 2, 4, 5, and 7 Twin Fork Lane (905-3-1-7.1, 7.2, 7.3, 7.4, 7.5, 7.6, and 7.7)** as written; seconded by Mr. Logzzo and unanimously carried 4 ayes, 0 nays, 1 absent.

**PUBLIC HEARING AGENDA:**  
**SITE PLAN REVIEW:**

**FILL APPLICATION REVIEW:**

1. IRA MITZNER 127 JESSUP LANE SCTM#905-10-5-42

**WORK SESSION AGENDA:**

**SUBDIVISION REVIEW: NONE**

**TRUSTEE REFERRAL: NONE**

**SITE PLAN REVIEW: NONE**

**MINUTES:**

Motion was made by Mr. Neubauer to adopt the minutes of **JANUARY 25, 2024** as written; seconded by Mr. Jones and unanimously carried 4 ayes, 0 nays, 1 absent.

**HOLDOVERS (last Board review):**

1. 85 & 105 MONTAUK LLC- 85 &105 MONTAUK HWY SCTM#905-5-1-12, 53.1 &52.2(pending response 2/8/2024)
2. FIRST DUNES DEVELOPMENT 496 LLC- 496 DUNE ROAD SCTM#905-16-1-19 (4/13/2023)
3. ROBERT SCHOENTHAL- 22 BAYFIELD LANE SCTM#905-10-6-2
4. WESTHAMPTON INN, LLC 43 MAIN STREET SCTM#905-11-1-15 (6/8/2023)
4. RICHARD OLIVO-72 SOUTH ROAD SCTM#905-8-1-27 (6/22/2023)
5. WESTHAMPTON PROPERTY MANAGEMENT LLC-141 MONTAUK HWY SCTM#905-5-2-6.1 (7/13/2023)
6. SUNSET WEST LLC, 87 SUNSET AVENUE SCTM#905-12-1-49.1(9/28/2023)
7. 55-59 OLD RIVERHEAD ROAD LLC-55&59 OLD RIVERHEAD ROAD SCTM#905-4-1-7, 9.2, 9.3(10/12/2023)
8. 161 MONTAUK HIGHWAY LLC, 161 Montauk Highway SCTM#905-5-2-12.1(10/12/2023)

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9. BEACHWOOD WESTHAMPTON, LLC WESTERN TERMINUS OF HAPPY  
LANE SCTM#905-4- 1-14.29 (1/9/2024)

10. BEAVER LAKE DEVELOPMENT, CORP 36 SUNSET AVENUE SCTM#905-12-  
4-25 (1/25/2024)

**FUTURE MEETINGS:**

1. **THURSDAY, MARCH 14, 2024, THURSDAY, MARCH 28, 2024**