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**Town of Scituate
Planning Board
Findings and Decision**

Flexible Open Space Development Special Permit for Tilden Estates, 77 Elm St.

Applicant: Tilden Woods, LLC
Address: P.O. Box 160, Cohasset, MA 02025
Owner: Ellen Fearing, Trustee, William L. Tilden 1998 Trust and Executrix,
Estate of Evangeline T. Tilden
Address: 201 Riverwalk, North Hutchinson, FL 34949
Request: Approval of special permit for Flexible Open Space Development
under Scituate Zoning Bylaw Section 550
Location: 77 Elm St.
Zoning District: R-2 and Water Resource Protection District
Public Hearings: March 10, April 14, April 28 and May 12, 2011
Planning Board
members hearing
Special Permit
application : William Limbacher, Daniel Monger, Eric Mercer, Robert Vogel and
Richard Taylor
Decision: APPROVED with conditions by unanimous vote

Background:

The property is a 16.5 acre wooded parcel improved with a single family home. It is a portion of land shown on Assessor's Maps as parcels 44-2-13 and 44-2-14. It contains 15 acres of upland and is located in a well-established neighborhood of single family homes on lots generally ranging from 15,000 to 35,000 sq. ft., with some larger properties. Access is from Elm St.

In July, 2008, the Planning Board approved a Preliminary Plan for 15 lots on a larger (20 acre) parcel including this site. At that time they directed the developer to reduce pavement, create a buffer to existing homes, and use Low Impact Development techniques for stormwater management in subsequent proposals.

In the Flexible Open Space Development proposal for 16.5 acres that is the subject of this application, 4.9 acres nearest the Tan Brook would be preserved as open space, with 15 lots for single family homes created on the remaining land. The proposed road would be 755' in length with pavement of 20' wide. A drainage swale along the north side of Lots 12, 13, 14 and 15 would be used to infiltrate stormwater, with a detention basin south of Lots 6 and 7 to treat and detain stormwater in order to protect water quality, avoid flooding on adjacent property and prevent direct discharge to wetlands.

The applicant submitted a Stormwater Report by Gregory J. Tansey, P.E. and a list of waivers from Section 6.3 of the Subdivision Rules and Regulations with the application. This report was reviewed by the Town's consulting engineers, Amory Engineers, P.C., who submitted detailed

comments to the Planning Board. In response to these comments, the applicant provided an Amended Stormwater Report which, after further review by the consulting engineer, was found to address his recommendations.

The Planning Board also received a Traffic Impact report prepared by Greenman-Pedersen, Inc. (GPI), which was reviewed by the Town's traffic consulting engineer, John T. Gillon, P.E. Mr. Gillon's report supported the findings of GPI that the development would have minimal impacts on traffic in the area. A fire flow test performed by John Hoadley and Sons, Inc., and witnessed by JB Engineering, Inc. recommended upgrading the Town's water mains in Elm St. from 6" to 8" from Beech Tree Farm to the entrance to the development to meet the minimum flow requirements.

The R-2 zoning district where the property is located requires 20,000 sq. ft. of upland lot area for each dwelling unit. Section 550 of the Zoning Bylaw, Flexible Open Space Development, allows the Planning Board to issue a special permit to approve lots which do not meet some dimensional requirements of the underlying zoning when they find the development to be superior to a conventional subdivision, based on the design standards of Section 550.5. The development must also conform to Section 550.6, Minimum Requirements. The maximum number of lots is established by the Planning Board's approval of a Conventional Density Sketch Plan which complies with the Town of Scituate Zoning Bylaw and Subdivision Rules and Regulations.

Procedural Summary:

An application for a Flexible Open Space Development Special Permit was filed with the Town Clerk on February 9, 2011. A Public Hearing on the Special Permit was duly advertised and notices sent to all abutters in accordance with MGL Chapter 40A. Planning Board member Dr. Nico Afanasenko was not present for the first public hearing and did not vote on the application. The Public Hearing was opened on March 10, and continued to April 14, April 28 and May 12, 2011, when the hearing was closed and the Special Permit was approved with conditions.

After the public hearing on March 10, the plans were significantly revised by removing approximately 4 acres of the property from the parcel subject to the application. The property removed consisted mainly of wetland adjacent to the Tan Brook. The applicant stated his intention to donate this 4 acre parcel to the Town of Scituate.

Hearing Summary:

When the public hearing was opened on March 10, 2011, Planning Board Chairman Mr. William Limbacher explained the process for the hearing. Mr. Mark Winchester represented Tilden Woods, LLC as principal and was also represented by his design engineer, Mr. Gregory Tansey of Ross Engineering. Mr. Patrick Brennan of Amory Engineers, P.C., consulting engineer for the Town and Ms. Laura Harbottle, Town Planner were also present.

Mr. Winchester gave an overview of the development and a brief description of the drainage on the property. Ms. Harbottle summarized the process and standards for applications for Flexible Open Space Development special permits of Scituate Zoning Bylaw Section 550, Flexible Open Space Development. She advised the Planning Board that they must determine that this type of development is superior to a conventional development. Mr. Patrick Brennan, Amory Engineers, summarized the stormwater issues addressed in his report.

Mr. Jeff Rosen, Chairman of the Water Resource Committee, said the Committee would like to see the Tan Brook shown on the plan. The Board asked Mr. Brennan if he thought there were LID techniques that could be used as an alternative to the detention basin. Mr. Brennan responded that due to the small lots in Flexible Open Space developments it is difficult to effectively use LID techniques. The Board added that they would like to see a public benefit identified such as a pedestrian link to Hughey or Pennfield Roads, and asked if there was consideration for a sidewalk on Elm Street.

At the April 14 public hearing, the Planning Board approved the Conventional Density Sketch Plan by Ross Engineering Co., Inc. dated March 14, 2011. Mr. Winchester explained the revised plans he had submitted to the Board. The changes included locating the detention basin on its own lot, removing the Tan Brook parcel and reducing the size of one lot to allow enough upland in the open space. Two easements were added to access the open space, between Lots 2 & 3 and between Lots 7 & 8. Pressure testing was completed and the applicant will be putting in a full water system looping it up and back down the road. They will be adding 300' of upgraded water main to Elm St. and a new fire hydrant. Ms. Harbottle said that there was a final letter from Amory Engineers saying all the issues raised by the consulting engineer had been resolved.

Mr. Daniel Monger said he would like to see a detailed landscape plan. He said he is concerned with the buffer between the current neighbors and he would like to see a no cut zone or another solution. Mr. Winchester said he could add plantings along the drainage swale such as arborvitae or pines for screening.

At the April 28 public hearing, Mr. Winchester told the Board he brought the engineers and neighbors out to the site to identify trees to save. Some neighbors on Elm St. agreed to six \$100.00 arborvitae on each lot and he will plant them where the abutter would like them. Mr. Limbacher said he and Mr. Taylor went out to the site with one of the principals. They agreed that some of the trees marked to be saved may have to come down. There was further discussion of the proposed Landscape Plan and delineation of the access to the open space.

At the May 12 public hearing, Mr. Winchester summarized his work on the conditions with Town Planner Laura Harbottle. The public hearings on the Flexible Open Space Development Special Permit and Definitive Plan were closed. The Planning Board voted to make the Findings of Fact, and to waive requirements of the Subdivision Rules and Regulations as requested by the applicant. The Planning Board voted to grant the Flexible Open Space Special Permit for Tilden Estates based on the Findings of Fact and subject to the Conditions as discussed.

Public Input:

At the March 10 public hearing, the following public comment was received:

Mr. Donald Smart, 27 Hughey Rd., asked how long it takes for the detention basin to drain. Mr. Winchester replied that it would release the water in 36 hours or 72 hours for a 100-year storm.

Mr. Michael Scott, 51 Elm St., was concerned with traffic flow and pedestrian use on Elm St. There are no sidewalks. He did not see any public access to the open space. His interpretation of the bylaw is that only 30% of the open space can be wetlands and the project shows 60% as wetlands. Mr. Winchester replied that page 2 of the plan has the open space calculations and they meet all the requirements of the open space. Mr. Scott said he disputed the calculations.

Mr. Joe Wood, 45 Oakhurst Rd., asked about the size of the detention basin. Mr. Winchester responded it is 32,000 sq. ft.

Mr. Peter Paliulis, 10 Pennfield Rd., said that during this process there was a suggestion made to consider 12 homes rather than 15 homes. He asked if that had been resolved. Mr. Limbacher replied that it has been resolved because the Board approved the preliminary plan that had 15 lots.

At the April 14 public hearing, additional public comment was received as follows:

Mr. Ed Darian, 63 Elm St. said there were a large number of trees behind the lots on Elm St. and he would like to see them saved. He wanted to know if the construction of the swale would

damage the root system to the abutting trees. Mr. Winchester said if there is a tree close enough that they think would be damaged it would have to be removed. He said they would come back with a plan for buffer plantings as the Board requested.

Mr. Darian asked Mr. Winchester if the swale could be moved in from the property line leaving a buffer of trees behind it. Mr. Winchester replied that the location of the swale is to keep the development's stormwater on their side. Mr. Darian asked when the homeowner's association would take over liability and responsibilities for the roads and drainage. Mr. Winchester said the developer typically stays involved for three years.

Mr. Joe Wood, 45 Oakhurst Road, asked where the open space access would be from Elm St. and if open space trails would be maintained. Mr. Winchester replied access would be on the proposed road. Between Lots 2 & 3 there will be one walking easement and another between Lots 7 & 8.

Mr. Michael Scott, 51 Elm Street, asked the Board if a Town Meeting action was necessary for the town to take 9 acres of woodland. Mr. Limbacher replied no. Mr. Monger explained donating the land is a requirement for a Flexible Open Space Development. Mr. Scott said the town gets almost 10 acres of unbuildable land that they will be responsible for and liable if anyone gets hurt on the property but he doesn't see any public benefit for that. He continued saying it is common to have a 20-25' no cut zone in this type of development between the development and existing neighborhoods. Mr. Winchester said he does not have a problem marking some trees but there was already a considerable no cut area on the east, west and south sides where the open space is. Mr. Limbacher suggested Mr. Winchester coordinate a walkthrough with available Board members and any abutter who might be interested.

Mr. Scott asked the Board to explain how the density was determined. Mr. Limbacher said the developer presented a conventional subdivision plan showing how many homes could be built without waivers under existing zoning, which is ½ acre. Mr. Vogel noted that in spite of the fact that this is a flexible open space plan all of the lots are ½ acre except for one that is just under.

Ms. Maria Scott, 51 Elm St., said she believed the developer would get an enormous benefit by building a Flexible Open Space Development, but there is no public benefit. She would like the Board to define the public use that fits the criteria. Mr. Vogel said the public benefit in this case is the preservation of land that will be left in its natural state and also protection of our water shed area.

At the April 28 public hearing, the following additional public comment was received:

Mr. Michael Scott, 51 Elm St., said he would advocate saving some trees that the developer has not committed to save. He said there are seven in total but he is most concerned about three. He showed the Board the location of the trees on the plan.

Findings of Fact:

Based on information submitted by the applicant and the testimony given during the Public Hearing, the Planning Board members sitting on the application voted unanimously to make the following Findings of Fact:

1. Tilden Woods, LLC filed an application for a Special Permit for a Flexible Open Space Development under Scituate Zoning Bylaw Section 550 on February 9, 2011. The property is a 716,783 sq. ft. parcel in the Residential A-2 and Water Resource Protection Zoning Districts.
2. The applicant submitted a Traffic Impact Assessment by Greenman-Pedersen, Inc., which showed the proposed project would result in minimal increases in traffic within their study

area. This report was reviewed by the Town's consulting traffic engineer, John T. Gillon P.E., which supported these conclusions. The consulting engineer's review recommended further review of stopping site distance. The applicant provided a plan showing removal of trees and vegetation at the entrance to improve stopping site distance.

3. The proposed stormwater management system has been reviewed by the Town's consulting engineer, Pat Brennan of Amory Engineers, P.C. whose comments indicate his concerns have been satisfactorily addressed.
4. The applicant has agreed to upgrade a portion of the water main in Elm St. from Beech Tree Farm to the entrance to the subdivision from 6" pipe to 8" pipe as indicated to be required by fire flow tests.
5. The applicant conducted a site visit on April 22, 2010 for the purpose of showing the Planning Board the trees along lots fronting on Elm St. adjacent to the subdivision which were under consideration to be preserved.
6. As required by Scituate Zoning Bylaw Section 550.4 D, Special Permit Approval, the Planning Board finds based on evidence and information provided by the applicant and reviewed by the board that the Flexible Open Space Development is superior to a conventional subdivision, and there are specific benefits to the town consistent with those in the Purpose section. The following benefits are provided:

Open Space Parcel A provides a buffer to the wetland associated with the Tan Brook of from 40' to more than 100' in width. This adds protective open space of approximately 50' width in some areas to the buffer which would typically be protected by the Conservation Commission. In protecting the town's water supply, this design also provides a significant public benefit.

In addition, the plan shows two locations for public access to the same open space parcel. These points of access may be connected to a walking trail through Open Space Parcel A, as shown on the Landscape Plan, at some point in the future.

7. Scituate Zoning Bylaw Section 550.5, Design Standards, Paragraph A, requires protection of important natural and historic features of the land and minimization of the size of developed areas. The property contains a wetland area which is adjacent to the Tan Brook, a tributary to the Town's surface drinking water supply, which is an important natural feature. Open Space Parcel A provides a buffer to this wetland of 40' to over 100' in width.

The proposed development will allow creation of Open Space Parcels A and B, which contain 208,917 sq. ft. and 6,118 sq. ft., respectively. This will minimize the size of developed areas.

This paragraph also requires protection of a minimum of 30% of the parcel as open space. Wetlands may be included as up to 30% of the open space. The development will provide 215,035 sq. ft. of open space or 30% of the area of the development. Of this amount, 150,524.4 sq. ft. or 70% is required to be upland. 150,527 sq. ft. of upland is provided. The plan thus meets the Design Standard of Scituate Zoning Bylaw Section 550.5 A.

8. Scituate Zoning Bylaw Section 550.5 Paragraph B requires that construction and laying out of developed areas respect the natural features of the parcel, applying six guidelines, as follows:
 - a. Guideline 1 encourages site disturbance beyond the paved area of the road to be minimized, and open space maximized. Guideline 2 recommends that open space include buffers to wetlands. These are met by the preservation of open space as indicated in Finding #7 above.

- b. Guideline 3 recommends preservation of adjacent trees along, or open space adjacent to, existing roads. A small parcel of open space (Parcel B) will be preserved adjacent to Elm St.
 - c. Guideline 4 recommends locating water and utilities under road pavement. Where possible, water lines were located under roadways and underground utilities will be used throughout.
 - d. Guideline 5 indicates use of Low Impact Development (LID) drainage techniques. LID drainage was provided in use of a drainage swale along the north side of Lots 12, 13, 14 and 15.
 - e. Guideline 6 states curb cuts should be minimized and conflicts with existing traffic should be avoided. One curb cut will be used for the development.
9. Scituate Zoning Bylaw Section 550.C requires provision satisfactory to the Planning Board for protection and maintenance of common land and common facilities. The open space in this development will be owned by the Town. A Homeowners' Association will own and maintain the drainage detention basin.
 10. Scituate Zoning Bylaw Section 550.6, Minimum Requirements, states that the maximum number of lots in a Flexible Open Space Development special permit must not exceed the number which could be created through conventional development of the site. A Conventional Density Sketch Plan for Tilden Estates dated March 14, 2011 showed that the parcel could be subdivided into fifteen lots in a manner which complies with the Zoning Bylaw and the standards of the Subdivision Rules and Regulations. This Conventional Density Sketch Plan was approved by the Planning Board on April 14, 2011. This number of buildable lots was shown on the Flexible Open Space Development Definitive Plan dated January 12, 2011 submitted with the application.
 11. Scituate Zoning Bylaw Sections 550.6 A., Lot Area and B., Frontage require the lot area and frontage for each lot in a Flexible Open Space Development to be sufficient to support the dwelling, its accessory structures, septic system and access. Based on information provided by the applicant's engineer, each lot is of sufficient size to support construction of a single family home, accessory structures and an individual septic system, and frontage appears adequate to provide access to each lot.
 12. Scituate Zoning Bylaw Section 550.6 C. requires 15' front, side and rear setbacks in a Flexible Open Space Development, with setbacks from the perimeter of the development equal to those of the underlying zoning (30' rear setbacks required in R-2.) Building envelopes shown on Sheet 3 show setbacks for Lots 1 – 7 and 11 – 15 which meet the requirements of 550.6 C. Lots 8 – 10 are larger, estate lots which should easily accommodate required setbacks although setbacks did not appear to be shown.
 13. Scituate Zoning Bylaw Section 550.6 D requires no more than one single- or two-family dwelling and accessory structures on each lot. No more homes can be built on any lot because Scituate Zoning Bylaw prohibits construction of more than one single- or two-family home on a residential lot (see Section 430.1.)
 14. Scituate Zoning Bylaw Section 550.6 E requires open space to be conveyed to the Town, a conservation trust, or protected through a deed restriction accepted by the Massachusetts Office of Energy and Environmental Affairs. The open space shown on the plan will be conveyed to the Town of Scituate.
 15. Scituate Zoning Bylaw Section 550.6 F requires restriction of further subdivision of the lots shown on the plan with a note so stating added to the plan. The special permit will include a condition that prior to the start of construction, a deed restriction shall be recorded stating

that no lot in the Flexible Open Space Development may be further subdivided into additional building lots, and a note shall be added to the plan to reference this condition.

16. Scituate Zoning Bylaw Section 550.6 G permits the Planning Board to specify roadway, drainage and utility design requirements deemed necessary to ensure adequate access, lessen congestion, provide proper drainage, protect public safety or provide for water, sewage, utilities or other municipal services. The applicant has agreed that a portion of the water main in Elm St. from Beech Tree Farm to the entrance to Tilden Estates must be upgraded to an 8" main to meet the standards of fire flow testing. The applicant has also agreed to provide easements for pedestrian access to the open space.
17. Based on these findings and information submitted by the applicant and reviewed by the Board, the Flexible Open Space Development is superior to a conventional subdivision because of the benefits to the town, including preservation of natural resources and views which contribute to the town's character. This development meets the requirements for a Flexible Open Space Development, Section 550 of the Zoning Bylaw.

Decision:

Based on the Findings of Fact, the Planning Board members sitting on the application voted unanimously to approve the Flexible Open Space Development Special Permit for Tilden Estates with the following conditions:

GENERAL

1. All construction shall be according to a plan by Ross Engineering titled Tilden Estates, A Definitive Flexible Open Space Development Plan, dated January 12, 2011, revised March 24, 2011, with any additional revisions needed to conform to these conditions.
2. Construction shall meet all requirements of the Fire Department, Building Department, Board of Health and Conservation Commission, the State Building Code, and all applicable federal, state and local laws and regulations.
3. The total number of residential dwelling units on the site shall not exceed fifteen (15.) There shall be no further subdivision of any lot shown on the plan for the purpose of construction of an additional dwelling.

EASEMENTS, PUBLIC ACCESS, PUBLIC OPEN SPACE, LANDSCAPE PLAN

4. The purpose and dimensions of all easements, as described below, shall be clearly shown on the Easement Plan. A note shall be added to Subdivision Plans I and II that states "This subdivision includes easements for public access, which are shown with easements for maintenance of infrastructure on the Easement Plan on Sheet 12."

Easements for public access from Elm St. to Open Space Parcel A

These shall consist of a pedestrian easement allowing public access from the subdivision road to Open Space Parcel A over Lot 3 of a minimum width of 5' (Access Easement A,) a pedestrian easement allowing public access along the sidewalk from Elm St. to Lot 8 of a minimum width of 5' (Access Easement B,) and a pedestrian easement of a minimum width of 5' allowing public access from the subdivision road to Open Space Parcel A over the detention basin lot and Lot 8.

*sidewalk in
Deed 7 Easements*

Easement for maintenance of detention basin

An easement shall be provided allowing a Homeowner's Association access to drainage and stormwater management systems which will be privately maintained to allow inspection, maintenance and repair, and allowing the town access in case of an emergency, and to test water quality if this is deemed in the public interest.

This shall include an easement for maintenance of the detention basin of a minimum width of 20' which shall allow vehicle and pedestrian access, from the subdivision road to the detention basin over Lot 8.

Easement to the Town of Scituate

The applicant shall grant to the Town of Scituate, a right and easement to construct, repair, replace, extend, operate, use and forever maintain all streets, water mains, and all surface and subsurface stormwater drains in, through or under the streets and easements as indicated on the plan. The above shall not be construed to relieve the applicant, and his successors in title, to the ownership of a portion of the land or any street within the subdivision, nor diminish in any way, his responsibility to complete all construction as required by the applicant's agreements with the Town and to thereafter maintain all streets and utilities in satisfactory condition until they are accepted by the Town.

5. A copy of the deed conveying Open Space Parcels A and B to the Town of Scituate for the care and custody of the Conservation Commission shall be conveyed to the Planning Board prior to the issuance of a building permit on any lot.

6. **Landscape Plan**

A Landscape Plan shall be included in the Definitive Plan prior to endorsement as a separate sheet. A copy of this Landscape Plan shall be provided to the Planning Board a minimum of ten days before endorsement of the plan. The Landscape Plan shall contain at a minimum the following:

- All easements described in Condition 4 above with their purpose, dimensions and improvements as noted below.
- A plan for a future trail within the open space, connecting to the access shown on the Easement Plan.
- Bounds extending 12" above grade, to delineate the open space along the boundaries of Lots 3, 4, 5, 6, 7, 8, 9 and 10 at the corners of lots and changes in the direction of the boundary line.
- Any entrance landscaping anticipated by the developer.
- Notes stating:
 - Public Access Easements

Access Easement A. The easement for public access over Lot 3 to Open Space Parcel A (Access Easement A) shall be surfaced with a minimum width of 5' of crushed stone or stone chips from the subdivision road to Open Space Parcel A. Split rail fence a minimum of 18" in height shall be installed along both sides of the easement for a distance of 50' from the subdivision road.

The entrance to Access Easement A shall be marked with a freestanding sign on the subdivision road. The sign shall be white with dark green lettering, constructed of a durable, weatherproof material, a minimum of 3 sq. ft. in area and 4' in height, shall contain the wording *Public Access to Town Open Space*, and shall be installed prior to the issuance of the first Certificate of Occupancy.

Access Easement B. The easement for public access over Lot 8 to Open Space Parcel A (Access Easement B) shall be surfaced with a minimum width of 5' of crushed stone or stone chips from the subdivision road to Open Space Parcel A. Split rail fence a minimum of 18" in height shall be installed along the west side of the easement from the subdivision road to Open Space Parcel A and on the east side for 16' from the subdivision road.

The entrance to Access Easement B shall be marked with a freestanding sign on the subdivision road. The sign shall be white with dark green lettering, constructed of a durable, weatherproof material, a minimum of 3 sq. ft. in area and 4' in height, shall contain the wording *Public Access to Town Open Space*, and shall be installed prior to the issuance of the first Certificate of Occupancy.

- At the time of construction of the drainage swale, the developer will provide up to six 5' tall arborvitae plants to each of the owners of Lots 44-2-12, 44-2-11, 44-2-10 and 44-2-8. The time of planting may be delayed at the option of the homeowner. All trees shown on the Landscape Plan along the boundary of Lots 44-2-7A, 44-2-6F and 44-2-6G shall be preserved unless determined to be diseased or dangerous by the Town Planner.

7. Lighting shall be installed as shown on the plan, if approved by the Board of Selectmen. Light fixtures within the subdivision shall not exceed 14' in height.

ROADS, DRAINAGE, WATER AND UTILITIES

8. Access to all lots intended for construction of new homes shall be over the proposed subdivision road. No further extensions or attachments of any other roadways or Common Driveways to the proposed subdivision road shall be permitted.
9. A NPDES permit must be obtained prior to the start of construction.
10. Prior to application for a building permit for any lot, the applicant shall install the water main in the development and upgrade the water main in Elm St. from 6" to 8" from the water easement in Beech Tree Farm to the entrance to Tilden Estates.
11. Prior to application for building permits, septic system grading will be reviewed with the Board of Health, to assure septic systems will not interfere with drainage either within the development or onto abutting properties.
12. The drainage system shall be maintained according to the applicant's O & M Plan for drainage facilities, which is attached to these conditions and included among the homeowners' responsibilities in the Homeowners' Association Agreement.
13. All water mains and appurtenances, including the required upgrade of the water main in Elm St., shall be installed according to the specifications of the DPW. The water main shall be owned by the town and located within an easement which shall allow the Town to have access for maintenance and repair.

14. All electrical, telephone, cable and similar utilities shall be located underground.

HOMEOWNERS' ASSOCIATION AND HOMEOWNERS' ASSOCIATION AGREEMENT

15. A Homeowners' Association Agreement shall require that from the time the developer has ceased maintenance, a Homeowner's Association shall maintain and repair all components of the stormwater management system, roadways (until such time as the road may be accepted by the Town,) the bus waiting area, landscaping in the road layout and bounds referred to in Condition 6 above. The Agreement shall also require the Association to maintain fencing, trail surfacing and signage for the public access easements.
16. The Agreement shall require the Association to maintain an account always containing a minimum of one year's costs for this maintenance. Proof of the available funds in this account shall be provided to the Planning Board annually on the first of the year.
17. The Homeowners' Association Agreement shall include a description of the open space parcels and state that they are owned by the Town with public access to Parcel A permitted through the development. This description shall include a reference to the recorded plan which shows the location and dimensions of the open space and access easements.
18. The developer shall notify contractors and builders that membership in a Homeowners' Association shall be disclosed to all prospective buyers, and copies of the Homeowner's Association Agreement provided to all purchasers of lots in the development.
19. The Agreement shall require the Homeowner's Association to notify the Planning Board of the name, address, phone no. and e-mail of the trustees within seven days of their election, and to provide an annual report of their maintenance activities to the Planning Board by January 1 of each year.
20. A copy of the Homeowners' Association Agreement shall be provided to the Planning Board prior to endorsement of the Definitive Plan.

CONSTRUCTION

21. Construction work shall not begin prior to 7 AM weekdays and 8 AM weekends, and shall cease no later than 5PM weekdays and weekends.
22. Prior to the start of construction, a check must be submitted to the Planning Board to cover the cost of inspections by the Town's consulting engineer.
23. A pre-construction conference shall be held with representatives from the applicants, their engineer, the site contractor(s), representative(s) of the DPW, the town's consulting engineer and the Town Planner. The construction inspections and notifications shall be established. A list of all contractor contacts, including names and telephone numbers, shall be provided to the DPW. At least one telephone contact shall be available 24 hours per day in the event of an emergency.
24. All earth moving operations shall only occur while erosion and sedimentation control measures, approved by the Town Planner, after consultation with the Conservation Agent, are in place. Such control measures shall remain in place until the DPW determines, after consultation with the Town Planner that the danger of erosion or sedimentation no longer exists.
25. No Certificate of Occupancy shall be issued until the Building Commissioner, after consultation with the Town Planner, is satisfied that access, construction of the proposed subdivision road with the exception of the top course, installation of necessary utilities including the water main, water main improvements in Elm St., stormwater management

system and site stabilization are in full compliance with the approved plans and the Special Permit.

ADMINISTRATION

26. All time periods referenced in this document for completion of conditions shall be tolled in case any appeals are taken.
27. This Special Permit shall be void if it is not recorded at the Registry of Deeds within 45 days of expiration of the appeal period following approval of this Special Permit. The Applicant shall provide proof that the Special Permit was recorded to the Planning Board.
28. This Special Permit shall lapse within two years from the date of its issuance unless substantial use or construction has commenced prior to that time in accordance with MGL Chapter 40A, Section 9.

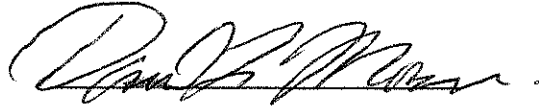
Project: Tilden Estates
Permit: Flexible Open Space Development special permit

Based on the Findings of Fact and the evidence and information provided by the applicant and obtained through the public hearings, the members of the Planning Board hearing this application voted unanimously to approve the Flexible Open Space Development special permit for Tilden Estates with the conditions noted above.

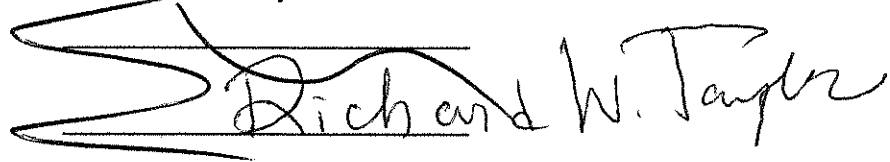
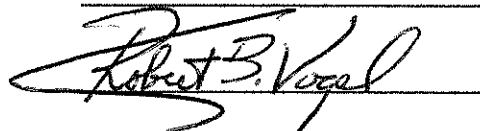
May 12, 2011

Date

SCITUATE PLANNING BOARD



William Lumbacher



This decision was filed with the Town Clerk on May 24, 2011
date

Appeal of this special permit may be made pursuant to M.G.L. Chapter 40A, Section 17, and shall be filed in a court of competent jurisdiction. Proof of that filing shall be provided to the Town Clerk within twenty (20) days of the date of the filing of the decision with the Town Clerk.

This special permit will not become effective until such time as an attested copy of this decision has been filed with the Plymouth County Registry of Deeds, after the expiration of the appeal period of twenty (20) days.