

RE 11
134

**TOWN OF BOXBOROUGH
PLANNING BOARD**

**PLANNING BOARD DECISION 97-01
OPEN SPACE COMMERCIAL DEVELOPMENT SPECIAL PERMIT**

Owners/Applicant: Towermarc Boxborough Limited Partnership
 Managing Venturer of the EqMarc Joint Venture
 260 Franklin Street
 Boston, MA 02110

Property Location: Off Swanson Road
 Assessor Map 3 & 4, Group 1, Parcels: 168.1, 168.8, 169, 171,
 171.2, 171.9, 171.13, 173, 188.14 & 188.5

Zoning District: Office Park

Acreage: 274 acres in Town of Boxborough & 46 Acres in Town of Harvard

Overlay Districts: Aquifer Protection and W-District

Application Request: Special Permit under Section 4700 Open Space Commercial Development to construct an 18 hole golf course with a clubhouse/restaurant in Boxborough with a portion of the golf course (46 acres) in Harvard; and to construct 900,000 square feet of office, R&D, and other commercial uses on 274 acres in Boxborough.

After causing notice of time and place of the public hearing and of the subject matter thereof to be published, posted and mailed to the applicant, abutters and parties of interest as required by law, the hearing was called to order at 8:00 p.m. on December 16, 1996, in the Town Hall Meeting Room. The hearing was continued to December 30, 1996 and January 22, 1997. Planning Board Members Richard Scarlet, Anthony D'Agostino, John Markiewicz and Christopher Trainor were present throughout the proceedings. Present for the applicant were Scott Ross and David Provost of Towermarc Corporation, Bill Roache, VHB Inc., Robert Ian Woodland, VHB Inc., Joel Sklar, Esquire of Goulston & Storrs, John Thomas and John Bensley of Beals and Thomas.

Deed References 18462-476, 18548-16, 15659-431
 19615-290, 26782-41, 18945-120, 63461-542, 601
 & 19981-299

The following exhibits were submitted prior to the close of the public hearing:

- Exhibit A: Legal Notice of Public Hearing advertised 11/27/96 & 12/5/96.
- Exhibit B: Application for Open Space Commercial Development submitted by Towermarc Corporation.
- Exhibit C: Conceptual Master Plan dated 10/21/96
- Exhibit D: Certified list of abutters from Boxborough and Harvard
- Exhibit E: Planning Board referral form
- Exhibit F: Response from Conservation Commission dated 11/25/96.
- Exhibit G: Towermarc Conceptual Site Plan dated 10/21/96.
- Exhibit H: Existing Conditions Base Map dated 12/4/96
- Exhibit I: Planning Base Map dated 12/4/96
- Exhibit J: Referral from the Board of Health dated 12/18/96.
- Exhibit K: Letter to Planning Board from Towermarc re: revisions to OSCD Special Permit Application dated December 24, 1996.
- Exhibit L: Revisions to Pages 9-12 of the OSCD Special Permit Application dated 12/30/96.
- Exhibit M: Requested Dimensional Modification for Towermarc Business Park OSCD.
- Exhibit N: Memo to Boxborough Planning Board from D. Scott Ross dated 1/22/97 re: Public Benefits provided by the open space/golf course land.
- Exhibit O: Revised Section IV of the OSCD Special Permit Application Proposed Phasing of the Development dated 1/22/97

After reviewing the exhibits and record of proceedings, the Planning Board finds and concludes the following:

1.0 Findings:

- 1.1 The proposal is consistent with the purpose and intent of the Open Space Commercial Development (OSCD) By-Law. Development under the OSCD By-Law allows for the preservation of 154 acres of land which may be used as a golf course. The proposed clustering of buildings promotes more sensitive siting of buildings and better overall site planning. Clustering the buildings also allows for common parking, driveways and drainage works, facilitating the construction and maintenance of streets, utilities and public services in a more economical and efficient manner.
- 1.2 The proposed building areas are located in harmony with the natural features of the site. The development minimizes the need for excessive site work by placing the building areas on the already disturbed areas of the site that were cleared during previous gravel removal operations. The proposed golf course is integrated into the topography of the site. The golf course plantings and building landscaping will enhance the appearance of the site.
- 1.3 Adequate access is provided to the open space recreation land via Beaver Brook Road. In addition, a parking area will be provided for the golf course and clubhouse.

1.4 The overall design and site plan of the OSCD is superior to that of a development designed under traditional zoning and warrants consideration for modification of existing requirements. A development under conventional zoning would result in more impervious surfaces; would consume a much larger area of land; and would generate more traffic. Open space, if any, would not be accessible to the public.

1.5 The 154 acres to be preserved as open space is of a size, shape and dimension suitable for open space and recreation purposes.

1.6 The proposal complies with applicable Subdivision Rules and Regulations. The preliminary plan for the Beaver Brook Road realignment has been approved by the Planning Board.

1.7 The proposed plan is consistent with the development plan in the MOU (Memorandum of Understanding), signed between the Boxborough Planning Board, the Harvard Planning Board and Towermarc Corporation, dated September 21, 1992, which settled the Beaver Brook Park litigation. The golf course provides a buffer between the commercial land in Boxborough and the residential land in Harvard; and clusters the development on the southern portion of the site.

1.8 The applicant has adequately demonstrated that 900,000 square feet of commercial development could be constructed on the site without extraordinary engineering measures provided that the applicant obtains approval from other Boards and Commissions. The Draft Environmental Impact Report (DEIR) shows 900,000 square foot office, R&D development on the original parcel of land. Since the DEIR, an additional 82.7 acres of land have been acquired. The development proposal is less than what could be constructed under the current 1 F.A.R. zoning requirement.

1.9 Section 4740 enables the Planning Board to grant modifications to the dimensional requirements of the Zoning By-Law in an OSCD, provided that the plan complies with Sections 4741-4743.

The Planning Board finds that the lots shown on the Conceptual Master Plan have frontage on Beaver Brook Road, a subdivision road, as required by Section 4741.

Section 4742 requires that the open space be permanently protected. Towermarc will impose a restrictive covenant, enforceable by the Town of Boxborough, on Lots 4, 5 & 17B which comprise the Open Space Area (154 acres) in accordance with the conditions of this decision.

As required by Section 4743, a minimum of 50% of the tract of land shown on the development plan is preserved as open space. The Master Plan allocates 56% of the site as open space. The Master Plan also has a 50 foot vegetated buffer around the perimeter of the development.

1.10 The Conceptual Master Plan shows possible location and size of buildings but not the exact layout of the buildings and parking areas. The applicant intends to file individual site plans for each of the building lots within the development once the tenants and uses are established.

1.11 The open space/golf course land will provide public benefits to the residents of Boxborough. The EqMarc Joint Venture has agreed to provide the following:

- a. A public pedestrian easement from Beaver Brook Road to the town owned Pettingel land;
- b. In the event that the golf course receives all necessary approvals and is constructed, the golf course will be available for play by Boxborough residents on a daily fee basis for a period of at least five (5) years following the opening of the course;
- c. As long as the golf course is available as a daily fee course, Boxborough residents will be entitled to a 5% discount on the established daily greens fee rate on an individual basis;
- d. If the golf course is converted to a private course, the Planning Board will be notified and Boxborough residents will have 30-day period from the date of such notice to submit applications for private memberships prior to the date such memberships are offered to non-residents of the Town;
- e. While the open space/recreation land is not in operation as a golf course, the residents of Boxborough will have reasonable access to areas of the property designated by the owner for passive recreational uses such as hiking, jogging, and cross country skiing.

1.12 The project meets the criteria of Section 5300 regarding the issuance of special permits:

- a. Social and community needs will be met by the proposal. The project will preserve a significant parcel of land for open space and recreation. The applicant has also committed to provide additional public access to the property as detailed in Finding 11, above.
- b. The applicant has addressed traffic flow and safety in the EIR and Notification of Project Change (NPC). The application includes the specific traffic mitigation measures that the EqMarc Joint Venture has agreed to perform and the schedule for completing traffic improvements.
- c. Public utilities, storage and disposal of sewage, refuse or other wastes, and surface water drainage have been adequately addressed at this stage of the development. Further details will be reviewed during the Site Plan stage of development. Electric, telephone and gas service will be provided from existing connections on Swanson Road. Potable water will be provided on site from a bedrock well. Additional wells will be used for

golf course irrigation. The site will be serviced by a wastewater treatment plant which will require state and local approvals. The drainage system has been designed in accordance with the Subdivision Rules and Regulations. In addition, a number of Best Management Practices (BMPs) will be used to remove pollutants from stormwater runoff. Therefore, proposed utilities and private services are adequate to service the proposed development.

d. The Board must consider the density of population, intensity of use, neighborhood character and social structures when reviewing a special permit. The proposed 900,000 square feet of development is less than the density allowed under the zoning requirements. The open space/recreation land provides an important land use buffer between Boxborough and Harvard. The golf course and office park will enhance the character of the neighborhood.

e. The proposal minimizes impacts to the natural environment. The project has been designed with minimal impact to the wetlands and buffer zone. The clustering of buildings allows for reduced site work and clearing, and reduced paving due to shared parking and access drives.

f. The proposal is designed in accordance with all applicable state, federal and local health requirements; and will not adversely impact the health of residents in the community.

g. The proposal will generate tax revenues. The golf course and office development will also provide local employment opportunities.

1.13 The Board finds that the project is, by its nature, a Master Planned, mixed-use development that will be constructed in phases over a long period of time, including periods during which active planning and development of the Commercial Development may not be pursued, and finds that there is good cause for permitting the special permit granted hereby to remain in full force and effect for a period of more than two (2) years, but not exceeding the Commercial Development Period as defined in Condition 2.9.

1.14 The Board finds that the recording of the Restrictive Covenant limiting the use of the open/recreation area to open space, recreational, conservation and/or agricultural uses will provide a permanent amenity to the Town of Boxborough and the general public and will, standing alone, satisfy all applicable standards and conditions of the by-law necessary for the issuance of this special permit and for the applicant's rights hereunder to fully and irrevocably vest, subject only to the requirements set forth in Condition 2.9, below.

1.15 The Board finds that the imposition of the Restrictive Covenant would be inequitable, result in a substantial reduction in value of the project site for development purposes and constitute a substantial hardship to the applicant and future owners of such property if, after the Restrictive Covenant is in force, the OSC Development special permit is deemed to have lapsed after a two year period. The Board further recognizes

that the applicant would not proceed with the project without assurances from this Board that the special permit will lapse after recording of the Restrictive Covenant only as set forth in Condition 2.9, below.

1.16 The Board finds that substantial use of this special permit will have commenced, for all purposes, including with respect to all phases of the project construction upon occurrence of the following:

- a. Recording of this special permit with the South Middlesex County District Registry of Deeds (the "Registry") as required pursuant to M.G.L. c. 40A, Section 11; and
- b. Either:

(1) Issuance of a building permit for the proposed golf course, provided that: (i) construction of the golf course is thereafter commenced within six (6) months after issuance of such building permit and such construction is pursued in good faith continuously to completion so far as is reasonably practicable under the circumstances; and (ii) the Restrictive Covenant is recorded with the Registry upon completion of the golf course and issuance of a certificate of occupancy therefor;

or

(2) Recording of the Restrictive Covenant with the Registry with respect to the Open/Recreation area or any Partial Restriction area defined in Condition 2.10, below.

THEREFORE, at a meeting held on January 29, 1997, the Planning Board voted to GRANT the special permit for an Open Space Commercial Development in accordance with the Modified Dimensional Schedule entered as Exhibit M and attached hereto as "Attachment A" under the following conditions:

2.0 Conditions:

2.1 The applicant may construct up to 900,000 square feet of development as allowed under the May 1996 Zoning Bylaw for the Office Park District within the "Commercial Development Area" as shown on Planning Base Map (Exhibit I). If the Town votes to amend the Use Schedule, the applicant may choose to waive the grandfathering provisions and develop under the new Use Schedule.

2.2 A minimum of 154 acres of land shall be preserved as Open Space/Recreation Area unless the applicant chooses to initiate a Partial Development as defined in Condition 2.10. No more than 35,000 square feet of building shall be constructed in the "Open Space/Recreation Area" Lots 4, 5 and 17B as shown on the Planning Base Map (Exhibit I). Such buildings shall be ancillary to the recreational activity.

2.3 Future Site Plans for any building in this Open Space Commercial Development shall comply with all applicable conditions and/or requirements of this decision and the

Open Space Commercial Development By-Law. All buildings shall be located within the “Commercial Development Area.”

2.4 All Site Plans and requests for building permits for lots in this OSC Development shall comply with the table shown in Exhibit M and attached hereto as “Attachment A.”

2.5 If constructed, the golf course shall remain a “daily fee” course open to the public for a minimum of five (5) years from the date of the golf course opening. After the expiration of the five-year period, the golf course may be converted to a private golf course. However, if the course is converted to a private course, all public rights of access as defined in Condition 2.7 shall remain in full force.

2.6 EqMarc Joint Venture and the Planning Board shall jointly determine where a public pedestrian easement will be located providing access from Beaver Brook Road to the town-owned Pettingel Park. Easement language shall be reviewed and approved by the Planning Board before recording. Once approved, the easement shall be filed in the Middlesex South District Registry of Deeds by the owner. A copy of the recorded easement shall be submitted to the Planning Board prior to the issuance of any building permits.

2.7 When the restricted land is not in operation as a golf course, the residents of the Town of Boxborough shall have some reasonable access to areas of the property designated by the owner for passive recreational uses such as hiking, jogging, and cross country skiing (such as along cart paths etc.). Motorized vehicular access, and other uses which in the sole discretion of the golf course management may be considered potentially damaging to persons or property, shall be prohibited. The owners shall not be expected to provide public access to buildings or playing areas. A plan and rules and regulations for such access shall be filed with and approved by the Planning Board. Such approval will not be unreasonably denied.

2.8 EqMarc Joint Venture shall provide a written agreement to the Planning Board stating that: a) as long as the golf course is maintained as a “daily fee” course, Boxborough residents shall be entitled to a 5% discount on the daily fee rate on an individual basis; and b) if the owner converts the golf course to a private course, the owner shall notify the Planning Board and Boxborough residents shall have a 30-day period from the date of such notice to submit applications for private memberships prior to the date such memberships are offered to nonresidents of the Town.

2.9 Notwithstanding anything contained in this decision to the contrary, if construction of the full 900,000 square feet of the commercial development shall not have commenced and been completed on or before the expiration of the Commercial Development Period, the following provisions shall govern:

(a) With respect to any buildings and related improvements within the commercial development construction of which has been completed (“Completed Buildings”) or for which a building or foundation permit (either such permit being referred to herein as a “Building Permit”) has been issued by the Boxborough Building Inspector (collectively,

the "Permitted Buildings") on or before the expiration of the Commercial Development Period, rights under this Special Permit shall be deemed to have fully and irrevocably vested and this Special Permit shall continue in full force and effect with respect thereto provided that construction of each of such permitted buildings shall be commenced within six (6) months after issuance of the building permit and/or such construction shall be pursued in good faith continuously to completion so far as is reasonably practicable under the circumstances; and

(b) With respect to any proposed buildings within the Commercial Development that are not Completed Buildings or Permitted Buildings at the time of expiration of the Commercial Development Period, this Special Permit shall lapse and be of no further force or effect.

(c) The "Commercial Development Period" shall be the period commencing on the date of recording of the Restrictive Covenant with the Registry and ending at 5:00 p.m. on the fifteenth (15th) anniversary of such date. The Commercial Development Period shall be extended by one day for each day that any necessary permit or approval for all or any portion of the commercial development is the subject of a pending appeal or litigation.

With respect to any portion of the Commercial Development that is not a Permitted or Completed building at the time of expiration of the Commercial Development Period, the Commercial Development Period may be extended by and at the option of the Planning Board.

2.10 Before any commercial development may begin, Towermarc shall be required to record the Restrictive Covenant as approved by the Planning Board with respect to all or any portion of the Open/Recreation Area when the following have occurred:

a. If and when all of the following shall occur with respect to the proposed golf course (the "Golf Course Conditions") the Restrictive Covenant shall be recorded with respect to the entire Open/Recreation Area:

- (i) Issuance and recording of a special permit from the Boxborough Zoning Board of Appeals to allow a golf course use on the Open/Recreation Area;
- (ii) Issuance and recording (if necessary) of all required federal, state and local permits for the development of a golf course on the open/recreation area and the adjoining land owned by Towermarc in the Town of Harvard, including, without limitation, a golf course special permit from the Harvard Planning Board, a final subdivision plan endorsed by the Boxborough Planning Board, an Order or Orders of Conditions from the Harvard and Boxborough Conservation Commissions, and any other local permits and approvals required to be obtained from either the Town of Harvard or the Town of Boxborough; and
- (iii) Completion of construction of and issuance of a final certificate of occupancy for a golf course on the Open/Recreation Area;

or

b. If, prior to occurrence of the golf course conditions, a building permit shall be issued for any permanent commercial building within the commercial development under this Special Permit and construction of such building shall be commenced within six (6) months after issuance of said permit ("Pre-Golf Course Building(s)"), then the Restrictive Covenant shall be recorded with respect to portion(s) of the Open/Recreation Area determined as follows:

Prior to commencement of construction of a Pre-Golf Course Building, a Restrictive Covenant, as approved by the Planning Board, shall be recorded restricting a percentage of the Open/Recreation Area (the "Partial Restriction Area") at least equal to the ratio that the gross floor area of the Pre-Golf Course building bears to the total gross floor area of the Commercial Development (i.e., 900,000 square feet). However, in no event shall a Partial Restriction Area or any addition thereto be smaller than an area equal to 20% of the total Open/Recreation Area. The location of the Partial Restriction Area(s) within the Open/Recreation Area shall be subject to approval by the Board in each instance.

Upon occurrence of the Golf Course Conditions, a superseding Restrictive Covenant as defined in Condition 2.10 a. shall be required.

2.11 This decision shall be recorded in the Middlesex South District Registry of Deeds and proof of recording shall be required prior to the issuance of any building permit in the development.

The authority granted to the applicant by this permit is limited as follows:

OTHER PERMITS OR APPROVALS: This decision only applies to the request for Open Space Commercial Special Permit. Other permits or approvals required by the Boxborough Zoning By-Law or other governmental boards, agencies or bodies shall not be assumed or implied by this decision.

AMENDMENT OF PERMIT: The Board hereby reserves its powers to modify or amend the terms and conditions of this permit upon its own motion with consent from the owner, or on the application of the owner. The Board further reserves its powers to amend this permit without a new public hearing provided that the Board finds that such amendment is not significant to the public interest and that such amendment is not inconsistent with the purpose and intent of the By-Law or with the terms of this permit.

APPEALS: Any person aggrieved by this decision may appeal pursuant to the Massachusetts General Laws, within 20 days after the filing of this Decision with the Boxborough Town Clerk.

WITNESS our hands 29th day of January, 1997.

THE BOXBOROUGH PLANNING BOARD:

Bruce Taylor, Chairman

Bruce Taylor

Richard Scarlet, Clerk

Anthony D'Agostino, Member

John Markiewicz, Member

Christopher Trainor

Christopher Trainor, Member

I, Virginia B. Richardson, Town Clerk of the Town of Boxborough, hereby certify that this is a true copy of the decision of the Planning Board filed with me this 31st day of January, 1997.

TO WHOM IT MAY CONCERN:

I, hereby certify that the 20-day appeal period on this decision has expired, and no appeals have been filed with this office.

Virginia B. Richardson
Virginia B. Richardson

October 17, 1997
Date

Copy sent to:

Petitioner - Certified Mail #

Inspector of Buildings

Board of Health

Conservation Commission

Board of Appeals

Fire Chief

Notice of Decision sent to:

Town of Acton

Town of Littleton

Town of Harvard

Town of Stow

Board of Selectmen

Director of Public Works

TOWERMARC BUSINESS PARK OPEN SPACE COMMERCIAL DEVELOPMENT

ZONING REQUIREMENT	PERMITTED	REQUESTED MODIFICATION
BUILDING LOT AREA	160,000 S.F.	80,000 S.F. ¹
LOT FRONTAGE	200 FEET	100 FEET
FRONT YARD SETBACK	50 FEET	25 FEET ²
SIDE, REAR YARD SETBACK	50 FEET	25 FEET ³
BUILDING STORIES	3 STORIES	4 STORIES
BUILDING HEIGHT	45 FEET	60 FEET
LOT COVERAGE BY BUILDINGS, STRUCTURES AND IMPERVIOUS SURFACES	30%	70% ⁴
FLOOR AREA RATIO	0.1	0.75

1. THE AGGREGATE SQUARE FOOTAGE OF THE LOTS THAT ARE LESS THAN 160,000 S.F. SHALL NOT EXCEED 20% OF THE TOTAL NET ACREAGE OF THE BUILDABLE AREA WITHIN THE COMMERCIAL DEVELOPMENT OF THE OSC DEVELOPMENT.
2. 25 FEET PLUS ONE FOOT FOR EACH FOOT THAT THE BUILDING HEIGHT EXCEEDS 25 FEET.
3. SIDE AND REAR YARD SETBACK AREAS MAY BE USED FOR PARKING, DRIVEWAYS, LANDSCAPING AND OTHER SITE FEATURES OTHER THAN BUILDINGS.
4. IN NO EVENT WILL THE AGGREGATE IMPERVIOUS AREA OF ALL LOTS WITHIN THE OSC DEVELOPMENT EXCEED THE GREATER OF:
 - A. THE IMPERVIOUS COVERAGE PERCENTAGE OF THE UNDERLYING ZONING DISTRICT OR;
 - B. 20%

TOWN OF BOXBOROUGH



OFFICE OF THE TOWN CLERK

March 9, 2000

I, Virginia B. Richardson, Clerk of the Town of Boxborough, hereby do certify that twenty (20) days have elapsed since the Planning Board filed their decision on a FINDING OF "GOOD CAUSE"/ AMENDED CERTIFICATE OF ACTION, Decision #97-01 Open Space Commercial Development (OSCD) Special Permit with me on November 17, 1999 in the name of Towermarc Boxborough Limited Partnership, Managing Venturer of the EqMarc Joint Venture, and no appeals have been received in the office of the Town Clerk.

Virginia B. Richardson
VIRGINIA B. RICHARDSON
Town Clerk of Boxborough

TOWN OF BOXBOROUGH



PLANNING BOARD

29 Middle Road
Boxborough, MA 01719

Virginia B. Richardson, Town Clerk
Boxborough, MA 01719

November 15, 1999

RE: FINDING OF "GOOD CAUSE" /AMENDED CERTIFICATE OF ACTION
Planning Board Decision #97-01 Open Space Commercial Development (OSCD) Special Permit; and Towermarc Business Park Definitive Plan - Beaver Brook Road Completion Extension.

At a duly called and properly posted meeting held on November 9, 1999, the Planning Board made the following finding:

Good cause exists for Towermarc's inability to commence substantial use of the Open Space Commercial Development Special Permit (Planning Board Decision #97-01). The applicant was unable to commence construction due to an appeal of the Conservation Commission's Order of Conditions (DEP file #113-286) for the proposed subdivision road. The development approved under the OSCD special permit is dependent upon the proposed subdivision road. The Order of Conditions appeal has been in the adjudicatory process in DEP and therefore, the applicant has been unable to begin the construction allowed by the OSCD special permit.

Therefore, the Planning Board voted to GRANT an extension of the OSCD Special Permit (Planning Board Decision #97-02) for two years, until January 29, 2001. More specifically, the time period for substantial use of the OSCD Special Permit under condition 1.16 thereof is hereby extended to January 29, 2001. In addition, the "Commercial Development Period" under condition 2.9 (c.) shall be extended for two years: and;

The Planning Board voted to GRANT an extension of time for completing the subdivision road until November 30, 2001 so that condition #2. Of the Certificate of Action filed with the Town Clerk on March 18, 1998, for the Towermarc Business Park Definitive Plan is hereby amended to read: "The proposed road shall be constructed by November 30, 2001. The Planning Board may extend this time upon written request of the applicant."

Voting in favor: Jennie Rawski, Chairman; Karen Metheny, Clerk; John Markiewicz, Member; and Anthony D'Agostino, Member.

Received by:

Virginia B. Richardson
Virginia B. Richardson, Town Clerk

November 17, 1999

Date filed

cc:

Towermarc Corporation
Beals and Thomas Inc.

Virginia B. Richardson
A true copy, etc.
Virginia B. Richardson
TOWN CLERK OF BOXBOROUGH