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TOWN OF BOXBOROUGH



PLANNING BOARD

29 Middle Road
Boxborough, MA 01719
(978) 263-1116

MARGINAL REFERENCE REQUESTED

BOOK 31344 PAGE 233

PLANNING BOARD DECISION #01-01 Amendment to OSCD Special Permit – Planning Board Decision #97-01 issued to Towermarc Boxborough Limited Partnership

Owner/Applicant: Cisco Development Partners – NEDC, LLC for itself and as agent for Societe Generale Financial Corporation

Engineer: Beals and Thomas Inc.
Reservoir Corporate Center
144 Turnpike Road (Route 9)
Southborough, Massachusetts 01772-2104

Property Location: 350 Acres of Land Located off of Swanson Road and Littleton County Road in Boxborough and Harvard, MA Maps: 3 and 4, Group 1, Parcels 173.16, 173.17A, 173.1, 173.2, 200.3, 200.4, 193.2, 200.1 & 200.2.

Zoning District: Office Park

Overlay Districts: Aquifer Protection, W-District, and Lands Bordering W-District.

Applicant Request: Request under Section 4700 of the Open Space Commercial Development ("OSCD") provisions of the Bylaw to amend Special Permit Decision No. 97-01 as follows:

1. Amend the name of the Owner/Applicant from Towermarc Boxborough Limited Partnership to Cisco Development Partners – NEDC-LLC, for itself and as agent for Société Générale Financial Corporation.
2. Confirm that after donating the Recreational Field to the Town in accordance with the TIF Agreement, the 9.97 acres will continue to be considered part of the Site for all zoning purposes, including without limitation, calculation of floor area ratio, lot coverage and all other dimensional requirements under the Bylaw, as well as for the calculation of Open Space in the OSCD.
3.
 - a. Increase the Phase I Open Space from 154 acres to 214.2 acres;
 - b. Modify the Phase I Open Space so that no open space areas are located within the approved building lots;
 - c. Construct an additional 500,000 square feet of commercial development, with associated landscaping and parking facilities on the Site (collectively, the "Phase II Development"). The Phase II Development Plan is shown on a conceptual plan entitled: "Development Plan" dated

Swanson Rd + Littleton Cty Rd, Box

- August 3, 2001 prepared by BTI, a copy of which was included in with the application to the Board. The 500,000 square feet of commercial development will replace the Phase I Golf Course;
- d. Approve the same modifications to the dimensional and parking requirements of the Bylaw as previously approved for Phase I, including the amendments to the parking stall size (9'X18') and reduction in parking ratio to 3.3 spaces/1,000 square feet.
 4. Expand the Original Tract by 74± acres, including the approximate 46 acres of Harvard land as "restricted open space."
 5. Establish when substantial use of the OSCD for Phase II will occur.

Date: December 3, 2001

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 August 28, 2001, in the Grange Room of the Town Hall, and continued at 7:30 p.m. on September 25, 2001. The hearing was closed on September 25, 2001. Board members: Jennie Rawski, Chairman; Karen Metheny, Member; Owen Neville, Member; and Michael Ashmore, Clerk were present throughout the proceedings. Present for the applicant were D. Scott Ross, Director of East Coast Operations for Cisterra Partners; John Bensley, Beals and Thomas, Inc.; and Robert Nagi, Traffic Engineer, VHB.

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

Exhibit A: Application to Amend OSCD Special Permit #97-01 booklet prepared by Beals and Thomas Inc. received August 3, 2001.

Exhibit B: Revised Materials for Special Permit #97-01 OSCD Amendment NEDC Site 2 dated August 20, 2001 prepared by Beals and Thomas Inc.

Exhibit C: Notice of Project Change EOEA #6761 June 2001 Cisco Systems, Boxborough, Massachusetts.

Exhibit D: Certificate from Town Clerk Pursuant to MGLA Chapter 40, Section 9 Special Permit Amendment Application received by the Town Clerk on August 6, 2001.

Exhibit E: Legal Notice of Public Hearing published in the Acton Beacon on August 9, 2001 and August 16, 2001.

Exhibit F: Form L Referral. Plans submitted to all boards for comment.

Exhibit G: Letter from Westcott Site Services dated August 24, 2001.

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

BACKGROUND

By Special Permit Decision No. 97-01 dated January 29, 1997 ("Decision No. 97-01"), the Planning Board granted the former owner of the Property, EqMarc Joint Venture ("EqMarc"), permission to establish an Open Space Commercial Development ("OSCD") pursuant to Section 4700 of the Boxborough Zoning Bylaw (the "Bylaw") on approximately 274 acres of land located off of Swanson Road in Boxborough, Massachusetts (the "Original Tract"). The approximate 46 acres in Harvard was

originally proposed as part of the golf course development. Decision No. 97-01 allowed construction of up to 900,000 square feet of commercial development on the Original Tract over a 15-year period (the "Phase I Development"), and required that approximately 154 acres be preserved as open space/recreation area. The Special Permit also granted relief from certain dimensional requirements of the Bylaw, as more particularly described in the chart attached to Decision No. 97-01.

In October of 1999, Cisco Development Partners – NEDC, LLC ("CDP") entered into a Purchase and Sale Agreement with EqMarc to acquire the Original Tract, as well as (i) a contiguous 28±-acre parcel located in the town of Boxborough and zoned Office Park (the "Boxborough Parcel"); (ii) slivers of land contiguous with the Boxborough Parcel located in the Town of Harvard (0.177 acres); and (iii) another 46±-acre parcel located in the town of Harvard shown on Harvard Assessor's Map No. 19 as Parcels 10 and 12 and zoned Agricultural – Residential (the "Harvard Parcel"). The Original Tract, the Boxborough Parcel and the Harvard Parcel (Lot 19/10 & 12) are collectively referred to in this Decision as the "Site", and are all shown on the "Ownership/Property Plan" included as part of the Application submitted to the Board.

In July of 2000, Société Générale Financial Corporation ("SGFC") acquired title to the Original Tract and the Harvard Parcel, and immediately thereafter leased it to CDP pursuant to a synthetic lease financing arrangement. On the same date, CDP acquired title to the Boxborough Parcel and to the contiguous slivers of land located in Harvard. CDP acquired the Site as the location for developing a New England corporate campus for Cisco Systems, Inc. and its affiliates ("Cisco"). SGFC appointed CDP as its agent for the purpose of applying for permits and constructing the improvements on the Site. Beals and Thomas, Inc. ("BTI") was retained to evaluate the Site with respect to Cisco's functional and aesthetic objectives. BTI created a site plan reflecting Cisco's preference for a campus style development with shared facilities on the Original Tract, and the Planning Board approved the site plan for the Phase I Development by Decision Number 00-01 dated April 25, 2000 (the "Site Plan Approval Decision"). Construction of the Phase I Development is underway.

As required under Decision No. 97-01, SGFC permanently restricted 154 acres of land in connection with the Phase I Development (hereinafter referred to as the "Phase I Open Space") by recording (i) a 49-Acre Conservation Restriction, recorded with Middlesex South Registry of Deeds in Book 31793, Page 448, (ii) a 60-Acre Conservation Restriction, recorded with said Deeds in Book 31793, Page 464, and (iii) a Restrictive Covenant on the remaining 45± acres, recorded with said Deeds in Book 32180, Page 260. As required under the Site Plan Approval Decision, approximately ten acres of land that are subject to the 49-Acre Conservation Restriction described above are being developed as a recreational field and accessory driveway and parking area for use by Town residents (collectively, the "Recreational Field"). Pursuant to a Tax Increment Financing Agreement between SGFC and the Town of Boxborough dated June 26, 2000, a copy of which was included with the Application (the "TIF Agreement"), SGFC agreed to donate the Recreational Field to the Town upon issuance of all Town approvals necessary for such land to continue to be considered part of the Site for zoning purposes, and expiration of all appeal periods on such approvals without any appeal having been filed.

1.0 Findings:

- 1.1 The total square footage of commercial development is limited to the amount of development that could otherwise be constructed "in full conformance with all zoning, subdivision, and other applicable state and local regulations, and without extraordinary engineering measures." The application demonstrates that, based on a conceptual office park program conforming

with all applicable zoning, subdivision and other state and local regulations, approximately 1,465,000 square feet of commercial/office space could be constructed as-of-right on the Site, which is in excess of the 1,400,000 square feet proposed for the Site. The Planning Board has received an opinion from Town Counsel verifying that the residentially zoned land in Harvard can be used to meet the OSCD Requirements in Boxborough.

1.2 As provided in Section 4760 of the Bylaw, the Planning Board may issue this Special Permit if the requirements of Sections 4761-4766 are satisfied. The Planning Board finds that the Phase II Development satisfies the requirements of those sections as follows:

- a. As required under Section 4761 of the Bylaw, the Phase II Development conforms with the purpose and intent of the OSCD Bylaw. The proposed clustering of buildings near the southern end of the Site promotes more sensitive siting of buildings and better overall site planning, and leaves an extensive area which can be dedicated to open space and recreational use. 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. The Applicant has indicated that the landscaping for the Phase II Development will be consistent with that approved by the Planning Board for the Phase I Development, which will preserve the rural character and appearance of Boxborough's traditional New England landscape.
- b. As required under Section 4762 of the Bylaw, the proposed buildings for the Phase II Development will be designed in harmony with the natural features of the Site. The proposed buildings are located on areas of the Site which were historically used for gravel removal operations, leaving other less disturbed areas of the Site available for open space and recreational use. The Development Plan included with the Application preserves the topography, views, vistas, significant trees, wetlands, brooks, water bodies, trails and cart paths located on the Site. Wildlife habitat will be protected by turtle tunnels and turtle barriers constructed in connection with the Phase I Development, as well as by the Conservation Restrictions which serve to protect turtle nesting habitat.
- c. As required under Section 4763 of the Bylaw, adequate access will be provided to the common open space via the subdivision road and via the looped nature trail system currently being constructed on the Site in connection with the Phase I Development. As shown on the Conceptual Open Space Plan, the proposed Phase II Open Space consists of the entire 46± acre Harvard Parcel, plus an additional 15.83± acres located in Boxborough shown on the Conceptual Open Space Plan as "Open Space Restriction Area D." The proposed Phase II Open Space is contiguous with, and accessible from, that portion of the Phase I Open Space shown as "Open Space Restriction Area B" on the Conceptual Open Space Plan.

- d. As required under Section 4764 of the Bylaw, the overall design and site plan of the OSCD must be superior to that of a conventional subdivision, and must warrant special consideration for modification of existing standards. A development under conventional zoning would result in more impervious surfaces and would consume a much larger area of land. Open space, if any, would not be accessible to the public. Furthermore, a conventional subdivision for the Phase II Development would be inconsistent with the Phase I Development currently under construction on the Site.
- e. As required under Section 4765 of the Bylaw and as shown on the Conceptual Open Space Plan, prepared by BTI and dated August 17, 2001, which was included with the Application, the Phase II Open Space is of a size, shape and dimension suitable for park, recreation, conservation or agricultural purposes. Although Lot 16 (3.31 acres) and Lot 17A (23.78 acres) were not proposed as restricted Open Space by the Applicant, the inclusion of these additional lands as open space/recreation (collectively, the "Vesenska land") will further the goals of the OSCD Special Permit, and will be consistent with the Boxborough/Harvard/Towermarc Memorandum of Understanding (MOU).
- f. As required under Section 4766 of the Bylaw, the Development Plan complies with the Planning Board's Rules and Regulations Governing the Subdivision of Land.

1.3 The Planning Board finds that the Phase II Development will satisfy the provisions of Sections 4741-4743 of the Bylaw. With respect to Section 4741, as shown on the Development Plan, all buildable lots within the Phase II Development will have frontage on Beaver Brook Road, an approved subdivision road, which is currently under construction on the Site. With respect to Section 4742 of the Bylaw, SGFC has already permanently restricted more than 50% of the land included within the Original Tract in connection with Phase I Development. Increasing the amount of restricted open space/recreation area on the Site by an additional 60.2 acres, results in 63% of the Site being permanently protected as open space, well in excess of the 50% open space required under Section 4743 of the Bylaw. Designating the Vesenska land as Open Space will further increase the percentage of restricted open space/recreation land to approximately 71%. Access to the Phase II Open Space will be via that portion of the Phase I Open Space shown as "Open Space Restriction Area B" on the Conceptual Open Space Plan. Consistent with Section 4743 of the Bylaw, a 50-foot vegetated buffer will be provided around the perimeter of the Site, as shown on the Development Plan.

1.4 In accordance with Section 5340 of the Bylaw, the Planning Board finds that the structures and uses proposed in connection with the Phase II Development would not have adverse effects which outweigh its benefits on either the town or the neighborhood, in view of the particular characteristics of the Site, and of the proposal in relation to that Site. In making such determination, the Planning Board considered each of the items set forth in Sections 5341-5347 of the Bylaw as set forth below:

- a. Section 5341 of the Bylaw requires consideration of social and community needs which are served by the proposal. In addition to all of the other public benefits provided to the Town in connection with the Phase I Development, the social and community needs which are anticipated to be served by the proposed Phase II Development include:

- An additional 87.29 acres (60.2 acres proposed open space/recreation and 27.09 acres conditioned open space/recreation) will be permanently restricted as open space/recreation area.
- Additional fiscal benefits will be provided to the Town and its residents in connection with the Phase II Development, including a substantial addition to the commercial tax base and increases in potential employment opportunities.

b. Section 5342 requires consideration of traffic flow and safety. The Traffic Impact Assessment included with the Application adequately addresses the impacts on traffic flow and safety in the area. Access to the Site will be provided via previously approved connections to Swanson Road and Littleton County Road as part of the Phase I Development. Beaver Brook Road, a subdivision roadway traveling through the Site, will provide access to the subdivision parcels within the Site. The traffic analysis was reviewed by the Planning Board and McMahon Associates for the Cisco Expansion Notice of Project Change (NPC). Issues identified by the Planning Board and McMahon Associates will be addressed in the Supplemental EIR. Additional traffic mitigation measures supplementing the off-site roadway improvements currently under construction in connection with the Phase I Development will be undertaken by the Applicant, including implementation of a Transportation Demand Management Plan covering the development on the Site. In addition, site generated traffic will be monitored as required in the conditions of approval.

c. Section 5343 of the Bylaw requires consideration of the adequacy of utilities and other public or private services. The materials included with the Application adequately address the issues related to utilities, storage and disposal of sewage, refuse and other wastes, and surface drainage at this stage of the 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. The Site will be serviced by a wastewater treatment plant which will require state and local approvals. The drainage system will be designed in accordance with the Subdivision Rules and Regulations. The proposed drainage system will include facilities to limit the peak rates of run-off, recharge groundwater, and provide treatment to stormwater. The drainage system employs Best Management Practices (BMPs) to remove pollutants from stormwater run-off prior to discharge. BMPs include vegetated swales, shallow marsh areas, sediment forbays, catch basins with sumps, and off line water quality inlets. In addition, a new gas line is being installed along Swanson Road to service the proposed campus. Therefore, proposed utilities and private services will be adequate to service the proposed development.

d. Section 5344 of the Bylaw requires consideration of density of population, intensity of use, neighborhood character and social structures. The proposed additional 500,000 square feet of development is less than the density allowed under the Bylaw. The open space/recreation area provides an important land use buffer between the commercial development in Boxborough and the residentially zoned land in Harvard. The Site open space will be an amenity to the neighborhood.

e. Section 5345 of the Bylaw requires consideration of impacts of the Phase II Development on the natural environment. Because the proposed location of the buildings included in the Phase II Development is on the areas of the Site previously used for gravel mining operations, impacts of the commercial development on the natural environment of the Site are minimized. Construction of the buildings included within the Phase II Development will not involve alteration of any areas within the W-District (as defined in Section 4200 of the Bylaw), nor will it involve direct impacts to Bordering Vegetative Wetlands, as defined in the Massachusetts Wetlands Protection Act and the Town of

Boxborough Wetlands Bylaw. Although some of the stormwater retention requirements may be addressed in wetlands buffer zone areas, they will be designed adjacent to wetlands in a manner that will diversify and enhance wildlife habitat, as was done in connection with the Phase I Development. The Applicant has provided that all other aspects of the Phase II Development will be designed with minimal impact to the wetlands and buffer zone.

f. Section 5346 requires consideration of the impacts of the Phase II Development on health. The Phase II Development is being designed and engineered in accordance with all applicable local, state and federal health related regulations, and will not therefore adversely impact the health of the community.

g. Section 5347 requires consideration of the potential fiscal impact of the Phase II Development on the Town. The Phase II Development will be located entirely within the Office Park District and is therefore an appropriate use of the Site. An expansive open space/recreation network enhanced with nature trails is anticipated to increase the value of the both commercial and residential land in the Town. Construction of the Phase II Development will create the potential for new employment opportunities both during construction and when fully operational, and will provide substantial additional tax revenues to the Town.

1.5 A Notice of Project Change (NPC) to construct an additional 500,000 square feet of commercial development and to eliminate the previously approved golf course was filed with MEPA on June 1, 2001. On July 23, 2001, the Secretary issued a decision that a Supplemental Environmental Impact Report (SEIR) is required. The SEIR has been received by the Planning Board.

1.6 In order to manage the roadway and to regulate through traffic, the applicant has agreed to make Beaver Brook Road a private roadway and will not seek the Town of Boxborough's acceptance of the roadway as a public way.

At a meeting held on December 3, 2001, the Planning Board voted to amend Decision No. 97-01 as set forth below and to grant the requested amendment to the OSCD special permit as follows:

2.0 Relief Granted.

2.1 The Board voted to amend Decision No. 97-01 by changing the name of the Owner/Applicant to Cisco Development Partners – NEDC, LLC, for itself, and as agent for Société Générale Financial Corporation.

2.2 The Board voted to confirm that after donating the Recreational Field to the Town of Boxborough in accordance with the terms of the TIF Agreement, that the land area comprising the Recreational Field will continue to be considered part of the Site for all zoning purposes, including without limitation, calculation of floor area ratio, lot coverage and all other dimensional requirements under the Bylaw, as well as for the calculation of open space. The Board determined that this relief was a necessary pre-requisite to donating the Recreational Field to the Town of Boxborough in accordance with the TIF Agreement.

2.3 The Board voted to grant permission to the Applicant to (i) increase the restricted open space on the Site from 154 acres to 214.2 acres; (ii) modify the Phase I Open Space slightly so that no areas of land

which are subject to the Restrictive Covenant referred to in the Background Section above will be located within approved building lots; (iii) construct an additional 500,000 square feet of commercial development on the Site in the approximate locations shown on the Development Plan dated August 3, 2001 included with the Application, for a total commercial development of 1,400,000 square feet of space on the Site; and (iv) design and construct the Phase II Development with the same modifications of the dimensional and parking requirements of the Bylaw applicable within an Office Park District as were previously approved for the Phase I Development. The Modified Dimensional Schedule for the Phase II Development is set forth in Attachment A to this decision. With respect to parking, the Board voted to approve (i) reducing the parking stall dimensions from 10 feet by 20 feet to 9 feet by 18 feet with a 24-foot-wide aisle lane; and (ii) reducing the parking ratio for construction from 4 parking spaces per 1,000 square feet of floor area to a minimum of 3.3 spaces per 1,000 square feet, provided that 4 spaces per 1,000 square feet will be available for future construction, if needed. The Board has determined that granting this relief will enable the Applicant to maintain consistency between the Phase I and Phase II Developments.

2.4 The Board voted to grant permission to the Applicant to expand the Original Tract so as to include the Boxborough Parcel and the Harvard Parcel. The OSCD provisions of the Bylaw specifically provide that they are applicable to "any tract of land containing 10 or more acres in the Office Park, Industrial – Commercial or Business Districts" and may include contiguous, residentially zoned land, provided that no part of the commercial development is located on the residentially zoned portion of the tract and that such residentially zoned land is permanently protected as open space. Although the term "tract" is not defined in the Bylaw, the Board found that the term "tract" as used in Sections 4700-4766 of the Bylaw may include the following:

(a) contiguous land (which shall include land separated by the subdivision roadway), owned by different individuals or entities, provided that there is a logical nexus between the land owners seeking to create the OSCD. The nexus between SGFC and CDP is the fact that (i) SGFC has granted CDP a leasehold interest in, and an option to purchase, the Original Tract and the Harvard Parcel, (ii) SGFC has appointed CDP as its agent to obtain permits and construct the improvements thereon, (iii) CDP holds a fee interest in the contiguous Boxborough Parcel, and (iv) CDP and SGFC have decided, as part of this application, to develop the Original Tract, the Harvard Parcel and the Boxborough Parcel as part of a common development tract.

(b) contiguous, residentially zoned land, even if located in a neighboring town such as the Town of Harvard, provided that no part of the commercial development is located on such residentially zoned land and provided that such land is permanently protected as open space, in accordance with the provisions of Section 4720 of the Bylaw.

(c) contiguous land which (i) was initially part of the Original Tract, (ii) was permanently restricted as open space or for other recreational, agricultural or forest management purposes, and (iii) has been (or will be) donated to the Town of Boxborough subject to such restrictions.

2.5 In Decision No. 97-01, the Planning Board recognized that the Phase I Development was to be built out in phases over an extended period of time, and that due to lack of market demand or financial resources, there might be times during which no active planning or development would occur on the Site. In order to avoid the possibility that the Special Permit would lapse, the Planning Board defined certain actions which, once taken, would satisfy the "substantial use" requirement of M.G.L. Chapter 40A, Section 9 and Section 5390E of the Bylaw. With respect to the Phase I Development, those

actions included recording Decision No. 97-01 and a restrictive covenant for certain portions of the Phase I Open Space. The Planning Board specifically found in Decision No. 97-01 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 [the] special permit and for the applicant's rights hereunder to fully and irrevocably vest...." The Planning Board also found in Decision No. 97-01 that "the imposition of the [r]estrictive [c]ovenant 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 such dedication, the rights under Decision No. 97-01 were "deemed to have lapsed after a two year period." Therefore, the Planning Board provided for a 15-year period (defined as the "Commercial Development Period") in which to complete the buildings associated with the Phase I Development. The Commercial Development Period commenced on the date that the restrictive covenant was recorded with the Registry and terminated on the 15th anniversary of such date.

Since it is anticipated that the Phase II Development will also be built out in phases over an extended period of time, similar development issues and constraints equally effect the Phase II Development. Therefore, the Planning Board voted to grant the relief set forth below.

(a) That substantial use of this Special Permit will have commenced, for all purposes, including with respect to all phases of the Phase II Development, upon occurrence of the following:

- (i) Recording of this Special Permit with the Middlesex South Registry of Deeds (the "Registry"), as required pursuant to M.G.L. Chapter 40A, Section 11; and
- (ii) Recording with the Registry of the restrictive covenant with respect to the 60.2 acres of land and the 27.09 acres (Vesenska land) constituting the Phase II Open Space.

(b) That once substantial use of this Special Permit has commenced, the Applicant's rights thereunder will fully and irrevocably vest, and this Special Permit will not lapse until the expiration of the extended Commercial Development Period, as defined in paragraph (d) below.

(c) That in no event shall the Applicant be required to record the restrictive covenant for the Phase II Open Space unless and until the following shall have occurred:

- (i) Issuance of all final permits and approvals required for the Phase II Development and all appeal periods thereon having expired with no appeals having been filed; and
- (ii) Issuance of a building permit for and commencement of construction of any permanent commercial building within the Phase II Development.

(d) That with respect to the Phase II Development, the Commercial Development Period shall be the period commencing on the date of recording of the Restrictive Covenant for the Phase II Open Space

with the Registry of Deeds 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 Phase II Development is the subject of a pending appeal or litigation.

(e) If construction of the additional 500,000 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:

- (i) With respect to any buildings and related improvements within the Phase II 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
- (ii) With respect to any proposed Phase II buildings 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.
- (iii) With respect to any portion of the Phase II 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.

3.0 CONDITIONS. The relief granted in this Decision is made subject to satisfaction of the following conditions:

- 3.1 The Applicant may construct up to 500,000 additional square feet of development on the Site, all as allowed under the August 2001 Zoning By-Law for the Office Park District. 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.
- 3.2 An additional 60.2 acres of land (including the approximate 46 acres of land in Harvard) shall be permanently preserved as Open Space/Recreation Area if the Applicant constructs the Phase II Development.
- 3.3 In addition to the 60.2 acres of Open Space/Recreation proposed to be protected by the Applicant, Lot 16 (3.31 acres), and Lot 17 A (23.78 acres), the Vesenka land, shall be designated as Open Space/Recreation. This land may be used for active recreation with consent from the Applicant.

- 3.4 The Applicant shall screen roof building mechanicals from view consistent with the roof screens as provided in the Phase I buildings.
- 3.5 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 OSCD By-Law. All buildings shall be located within the approximate area indicated on the Development Plan.
- 3.6 All site plans and requests for building permits for buildings included in the Phase II Development shall comply with the dimensions set forth in Attachment A to this Decision.
- 3.7 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 that in the sole discretion of the Applicant may be considered potentially damaging to persons or property, shall be prohibited. The Applicant shall not be expected to provide public access to buildings or other areas of the Site that have not been restricted as open space/recreation area. A plan and rules and regulations for public access to areas of the Site that have been so restricted shall be filed with and approved by the Planning Board. Such approval will not be unreasonably denied.
- 3.8 Before construction of any commercial building within the Phase II Development may begin, the Applicant shall be required to record the Restrictive Covenant as approved by the Planning Board with respect to the Phase II Open Space.
- 3.9 This decision shall be recorded with the Middlesex South District Registry of Deeds and proof of recording shall be required prior to the issuance of any building permit in the Phase II Development.
- 3.10 Before construction of any commercial building within the Phase II Development may begin, the Applicant shall be required to record a deed restriction limiting the office/R&D development on the site at 1.4 million square feet.
- 3.11 Beaver Brook Road shall be maintained as a private road.
- 3.12 The parking for the site plan may be designed at not less than 3.3/1,000 square feet, provided that all site plan zoning conformance calculations are made using 4/1,000 square feet. The Planning Board reserves the right to require additional traffic and parking analysis for any change of use or change of occupancy from Cisco Systems Inc.
- 3.13 In order to protect the residents of Boxborough from the possibility of unexpected additional traffic generation from the proposed development at amounts significantly greater than those projected in the project traffic study, the Planning Board imposes the following condition on this approval:
- (a) Continued Traffic Monitoring. When the Development on the site exceeds 900,000 square feet of occupied space, the Applicant shall begin to monitor the traffic entering and exiting the development at its Swanson Road entrance on an annual basis. Such monitoring shall be coordinated with the Planning Board and

continue on an annual basis until three years after the completion of site development under this permit. If the number of vehicles entering and exiting the Swanson Road entrance to the development exceeds 1700 during the peak hour on a regular basis, then the Applicant shall conduct a Level of Service (LOS) analysis at the Route 111 intersections with Swanson Road, and the I-495 northbound and southbound ramps.

- (b) Traffic Performance Requirement. If the LOS analysis conducted pursuant to subsection (a) shows that the turning movements entering and exiting Swanson Road at the Route 111 intersection are not operating at an overall LOS of "E" or better, then the Applicant shall either:
 - (i) implement measures, such as but not necessarily limited to, Transportation Demand Management (TDM) techniques, as will reduce the number of peak hour trips from the development at its Swanson Road entrance to 1700 or less on a regular basis; or
 - (ii) design, engineer, and make funds available for the physical and/or operational improvements to the intersection of Swanson Road and Route 111, as will assure that the turning movements entering and exiting Swanson Road at the Route 111 intersection are operating at an overall LOS of "E" or better, and coordinate any improvements with the intersections of Route 111 at the I-495 northbound and southbound ramps.
- (c) The Applicant shall monitor the delays on existing site drives along Swanson Road once per year for the period from the initial occupancy of any Phase II building until three years after the completion of the site development under this permit. The Applicant agrees to coordinate such monitoring with the Planning Board and work with the Board to determine if, due to impacts caused by the proposed development, the waiting times to enter onto Swanson Road or turn into the existing site drives are excessive based on ITE or other accepted traffic engineering standards, and to determine if additional road improvements, including police officer control at any of the Swanson Road site drives, may be necessary. Such improvements shall be paid for by the Applicant.

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

OTHER PERMITS OR APPROVALS: Other permits or approvals required by the Boxborough Zoning By-Law or other governmental boards, agencies or bodies for the Phase II Development 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 Applicant, or on the application of the Applicant. 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 hand this 3rd day of December, 2001.

BOXBOROUGH PLANNING BOARD:

Jennie Rawski
Jennie Rawski, Chair

Karen B. Metheny
Karen Metheny, Member

Michael Ashmore
Michael Ashmore, Clerk

Owen J. Neville
Owen Neville, Member

Virginia B. Richardson
Virginia B. Richardson, Town Clerk

December 4, 2001
Date Received

Copy sent to:
Petitioner - Certified Mail #
Board of Selectmen
Inspector of Buildings
Board of Health
Conservation Commission
Board of Appeals
DPW
Fire Chief
Police Chief

Notice of Decision sent to:
Town of Acton
Town of Stow
Town of Littleton
Town of Harvard
Abutters

ATTACHMENT A

MODIFIED DIMENSIONAL SCHEDULE

CISCO DEVELOPMENT PARTNERS – NEDC SITE 2 PHASE II OPEN SPACE COMMERCIAL DEVELOPMENT TABLE		
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. Lot coverage may be 70%, so long as total lot coverage for the Site does not exceed 30%.		

TOWN OF BOXBOROUGH



OFFICE OF THE TOWN CLERK

January 15, 2003

I, Virginia B. Richardson, Clerk of the Town of Boxborough, hereby do certify that a copy of the decision of the Planning Board of the Town of Boxborough related to the application by Cisco Development Partners – NEDC, LLC, (OSCD Special Permit #01-01, an amendment to Planning Board Decision #97-01) was received and filed in this office on December 4, 2001, that a notice of appeal to the Land Court together with a copy of the complaint was received and filed on December 21, 2001, and that such appeal was dismissed on January 13, 2003.

A true copy, attest:

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

