

TOWN OF WINCHESTER  
BOARD OF APPEALS

RECEIVED AND FILED

DECISION NO. 3421

JAN 21 PM 2:33

Name of Petitioner:

Winning Farm, LLC

TOWN CLERK

TOWN OF WINCHESTER

Application For:

Special Permit pursuant to Sections 6.3 and 8.5 of the Winchester Zoning By-Law (the "By-Law") and Special Permit/Site Plan Approval pursuant to Section 8.7 of the By-Law (hereinafter, the "Site Plan") to construct 88 units of Independent Elderly Housing, as defined in Section 9 of the By-Law, within the IEH Overlay Zoning District (the "Project") on approximately 12.5 acres of land off Thornberry Road (the "Premises") and located in the Special Conservancy-Institutional District ("SCI") and the Independent Elderly Housing ("IEH") Overlay District.

Date of Public Hearing:

January 25, 2006

Board Conducting Hearing and Rendering Decision:

Richard Sampson, Donna Jalbert Patalano, George Olson

Decision:

Special Permit Granted and Site Plan Approved, subject to limitations and conditions.

Vote of the Board:

Unanimous. Three (3) in favor of and zero (0) opposed to granting the Special Permit and approving the Site Plan.

Appendix:

The Winchester Board of Appeals (the "Board") has made a bound Appendix of relevant documents and submissions. Relevant materials from the Appendix are incorporated by reference into this Decision and the table of contents of the Appendix is attached hereto.



- e. During the construction period, Thornberry Road will be swept weekly or as determined by the Director of the Department of Public Works (the "DPW and the "DPW Director"). To suppress construction dust, calcium chloride and/or water shall be applied to the construction site and construction route as required to prevent nuisance conditions.
  - f. When construction is complete, the Petitioner shall repair any damage to public streets caused by construction vehicles.
  - g. The Petitioner will furnish and install temporary signs during the construction period as required by the Town of Winchester Board of Selectmen, serving as the Town's Traffic Commissioner ("Traffic Commissioner").
  - h. The Petitioner shall designate a Traffic Representative with authority to (i) assist in coordinating and enforcing all pre- and post-construction traffic conditions of this Decision and (ii) respond to questions and complaints directed to him or her by residents or officials of Winchester. Contact information for the Traffic Representative shall be filed with the Town Clerk and the Board within thirty (30) days of the effective date of this Decision.
6. The Petitioner shall cause all deliveries to the Premises to be made from 8:00 a.m. to 5:00 p.m. on Monday through Saturday. No deliveries shall be permitted on Sundays or legal holidays.
  7. All vehicles, including construction vehicles, proceeding to the Premises shall travel from Johnson Road to Berkshire Road to Thornberry Road and turn right onto Thornberry Road upon exiting the Premises. Petitioner shall install a 'Right Turn Only' sign at the exit of the Premises, of a form acceptable to the Traffic Commissioner.
  8. On days when Winchester Public Schools are in session, there will be no truck or large delivery vehicle traffic (including tractor trailers, vehicles larger than light

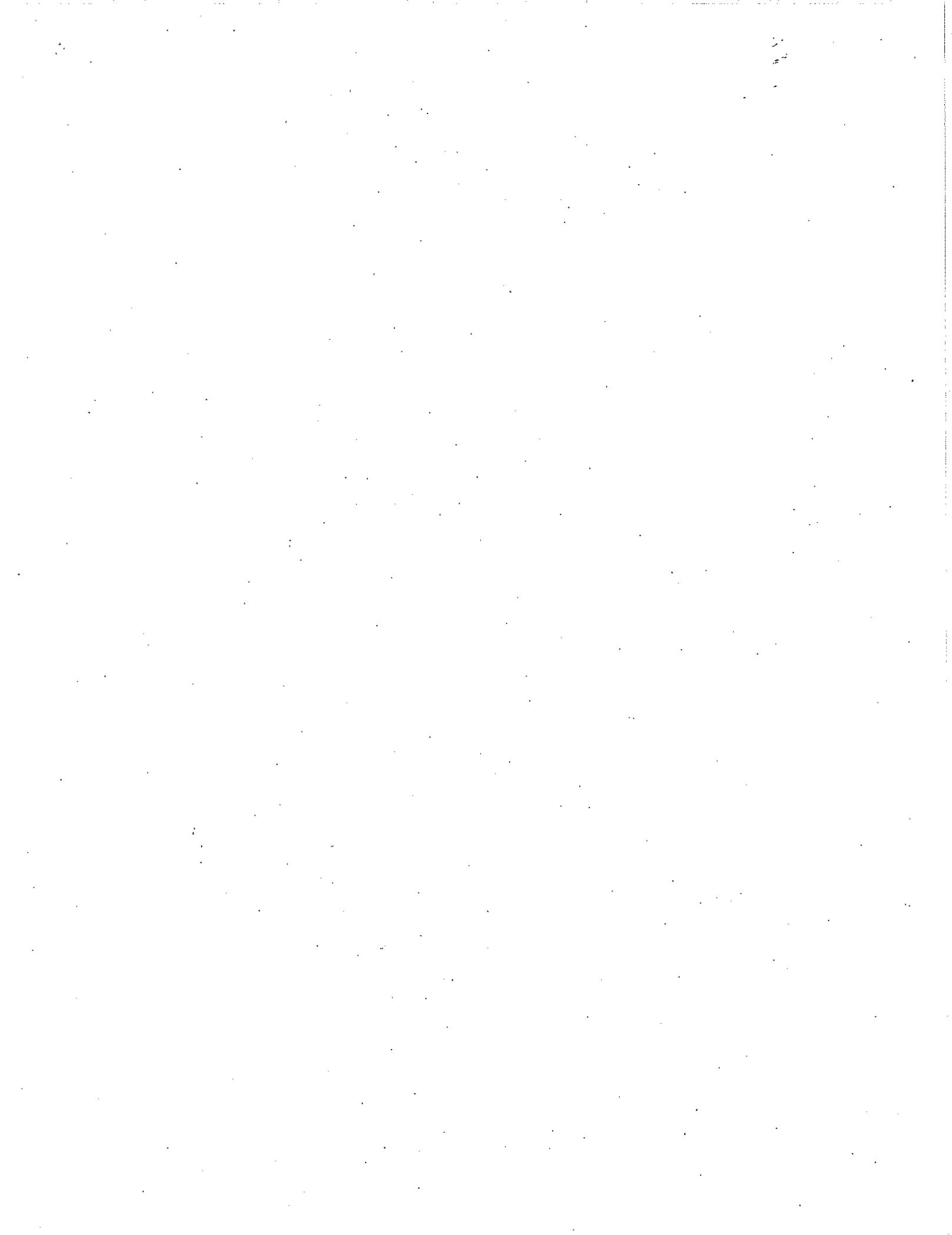
It is the position of this Board that a reduction of the speed limit to 20 miles per hour on Berkshire and Thornberry Roads is appropriate and recommends that a 20 mile per hour speed limit be recommended to and adopted by the Traffic Commissioner.

11. Except to the extent that the Traffic Commissioner deems implementation of any traffic changes necessary prior to or during the construction period, all changes approved by the Traffic Commissioner shall be constructed prior to the issuance of a temporary or permanent certificate of occupancy for the Project. The Petitioner shall be responsible for paying the costs of any roadway safety improvements approved by the Traffic Commissioner.
12. Except as specifically set forth on the Plans, all on-site and off-site utilities and roadways including, without limitation, drains, sewers, and a looped water system, serving the Premises or the Project shall be constructed by the Petitioner at its own cost (including, without limitation, materials, specifications and standards of workmanship) in accordance with the latest specifications of the DPW, Winchester Engineering Department and the Planning Board's Subdivision Rules and Regulations. In addition, all underground utilities shall be inspected and approved by the Town of Winchester Engineering Department, DPW or Building Department, as appropriate, prior to backfilling.
13. Upon completion of construction of all utilities, roadways and structures serving each construction phase, and prior to receiving an occupancy permit, either temporary or permanent, Petitioner shall file a so-called mylar "as-built" plan with both the Town Engineering Department and Building Commissioner.
14. Prior to the issuance of any occupancy permit, either temporary or permanent, security in the amount determined by the Town Engineer to be sufficient to cover the cost of any then-unfinished utilities, roadways, and Conservation Amenities shown on the Plans shall be posted with the Town. Such security shall be in an amount not less than 1.5 times the estimated costs to complete work on all of the then-unfinished roadways,

such inspections, maintenance or repairs. This condition is intended to grant the Town such rights only upon the neglect or failure of the owners of the Premises to perform such inspection, maintenance or repairs; and

- d. that the general public shall be entitled to access and use of the conservation amenities as depicted on the Plans for passive recreational purposes.
16. No occupancy permits (either temporary or permanent) shall be issued unless and until the base course of bituminous concrete has been installed on all portions of the Premises necessary to serve parking, and vehicular and pedestrian access to the Premises.
17. Prior to connecting to any existing drain or sewer lines owned by the Town, the Petitioner shall confer with the Winchester Department of Public Works and, if required, execute and deliver a drain release in a form suitable to the DPW.
18. All exterior lighting fixtures shall conform to the specifications submitted to the Board and the applicable provisions of Section 12 of the Zoning By-Law, and shall be tilted, aimed and shielded so as not to illuminate abutting properties.
19. The Petitioner shall install an automatic irrigation system to serve all newly landscaped areas on proposed Lots 234 and 236.
20. There shall be no parking along the access roadway to the Premises.
21. The sidewalks along the west side of Gershon Way shall be inspected on a monthly basis for the first twelve months after issuance of an occupancy permit for the Project to determine whether the stone dust surface of the sidewalks is subject to erosion, and then inspected semi-annually thereafter. To the extent that significant erosion of the sidewalk surface is identified during such inspections, concrete sidewalks shall be installed in this area.
22. The inside radius of the 180 degree turn (in the

27. Prior to the issuance of a certificate of occupancy, the Petitioner shall comply with all conditions imposed by the Massachusetts Department of Environmental Protection in any sewer connection permit issued for the Project, specifically including, but not limited to, any requirements for additional inflow and infiltration elimination.
28. As a condition of the issuance of a building permit, in addition to the foregoing conditions, the Petitioner shall pay not less than \$50,000.00 to the Town in sewer and water connection fees to be used to support the Town's on-going inflow and infiltration elimination program. Said payment also shall be delivered to the Town within ninety (90) days of the Director's certification of completion of the sewer improvements.
29. The Petitioner will comply with the provisions of the Affordable Housing Requirements of Section 6.33(j) of the Winchester Zoning By-law. At least twenty (20) percent of the Project's 88 units or 18 units shall be affordable within the meaning of Section 6.33(j) of the By-law and, if approvals are obtained as provided below, within the meaning of General Laws Chapter 40B. Specifically, in accordance with the last sentence of Section 6.33(j)(1)(a), the Petitioner shall negotiate with the Board of Selectmen arrangements for rent reductions in affordable units in lieu of the amount that would have been transferred to the Winchester Housing Fund under the first sentence of Section 6.33(j)(1)(a). The total amount of the rent reductions for all affordable units will be not less than \$715,800 per year. Prior to the issuance of a building permit, to the extent not already completed, Petitioner shall formalize its agreement to this effect with the Board of Selectmen in an executed, enforceable document approved as to form by Town Counsel.
30. Within sixty (60) days of the latter of either the expiration of the appeal period for this Decision, the entry of final judgment in favor of the Board in the event of an appeal of this Decision or the transfer of title to the Premises from the Town to the Petitioner, the Petitioner shall initiate whatever steps are required to secure approval of all 88 of the units of the Project as "affordable" under the Local Initiative



- (f) Maximum Height three (3) stories, but not more than forty (40) feet; the height of buildings as depicted in the plans does not exceed three (3) stories or 39 feet 10 inches;
- (g) Maximum lot area coverage: not more than fifteen percent (15%) of the total area may be devoted to buildings and structures; the Plans depict coverage of eight and two-tenths percent (8.2%);
- (h) Minimum lot frontage shall be at least 200 feet, although lots having one-half or more frontage on a circular turnaround of less than 100 foot radius may be reduced to a minimum frontage of fifty (50) feet provided a 200 foot lot width is provided at the front setback. The Plans depict frontage on such a circular turnaround, thus fifty (50) feet are required. The Petitioner shall provide at least 66.7 feet in accordance with Condition No. 3 above; the plans provide for a width of at least 672 feet at the front setback;
- (i) Permitted uses are multi-family residential structures intended solely for assisted living or elderly residents. The Application precisely meets this requirement. Moreover, the proposed facility contains a recreational facility, dining rooms for residents, meeting and function rooms, administrative offices and other services, all of which are permitted under Section 6.33(i) of the Zoning By-Law;
- (j) Affordable housing requirements will be met. The Petitioner is required to provide affordable housing through one or a combination of methods outlined in section 6.33(j) of the Zoning By-Law. Here, in accordance with Condition No. 30, pursuant to the last sentence of Section 6.33(j)(1)(a), the Board of Selectmen has begun and will complete an agreement governing rent reduction in the affordable units at the Project, in lieu of the amount that would have been transferred to the Winchester Housing Fund.

The Petitioner's submissions and testimony deal specifically with each of the Special Permit criteria established by Section

the Plans by the location of buildings, parking areas and screening and as demonstrated by the lower elevation of the Premises relative to abutters, off-street parking and loading areas are located and designed to minimize economic, noise, glare, and odor effects on adjoining properties and properties generally in the district;

- (c) *Refuse collection or disposal and service areas.* As shown on the Plans, refuse collection and service areas have been appropriately located to minimize economic, noise, glare and odor effects on adjoining properties and properties generally in the district;
- (d) *Screening and buffering.* The Plans depict sufficient screening and buffering to minimize potential impacts on adjoining properties and properties generally in the district;
- (e) *Signs and exterior lighting.* Proposed signs and exterior lighting have been designed to minimize glare, to minimize adverse traffic safety and economic effects, and to maintain compatibility and harmony with properties in the district;
- (f) *Required yards and other open space.* The required yards and other open space are sufficiently ample to minimize potential impacts on adjoining properties and property generally in the district and neighborhood; and
- (g) *General compatibility.* The Project is compatible with the remaining property in this SCI Zoning District.

Findings Supporting Compliance with  
the Site Plan Criteria under Section 8.7

Where the use proposed in this Application does not require a Special Permit/Site Plan Review under the Table of Use Regulations, the Board concludes that requirements of Section 8.7 do not apply to the Project. Nonetheless, in the event that a reviewing court might disagree with this conclusion and in light of the Petitioner's request that the Board review this Project pursuant to Section 8.7, the Board has applied the criteria for

Board found that the proffered evidence demonstrated that the problem pertains to the Inflow and Infiltration (I/I) of storm water into the sanitary sewer system during extreme weather events. The evidence indicated that this I/I occurs through leaks and illegal connections of residential sump pumps to the sewer system.

The Board further noted that the Petitioner, in response to neighborhood concerns, re-designed its waste water system to bypass the lower capacity Thornberry Road pump station and connect directly to the higher capacity Squire Road pump station. It was also found that the anticipated flow from the Project would likely be substantially less than the approximately 23,000 gallon per day estimate for the prior 145 unit proposal, and would represent a relatively small fraction of the several hundred thousand gallons handled by that pump station on a daily basis. The Squire Road pump station includes a first pump having a capacity of approximately 900,000 gallons per day, and thus has ample capacity to handle the increased flow generated by this Project. Moreover, this pump station also includes a second pump of similar capacity, which may be operated simultaneously with the first pump if necessary.

The Board finds that the effect that the Conditions imposed by this permit, including the requirements that Petitioner effect various improvements to both the Thornberry Road and Squire Road pump stations, will provide a significant positive benefit to the neighborhood by helping to ameliorate any existing sewer problems.

With respect to traffic, the Board considered the testimony and/or reports of various traffic experts. The Board found substantial agreement among this information to the effect that traffic levels of service and sight lines within the vicinity of the Project would remain within accepted guidelines. The Board also found that traffic impacts of this proposal would be reduced relative to those of the aforementioned decision by virtue of the reduction to 88 units.

#### Conclusion

Based on the substantial record before the Board and the findings set forth above, the Board grants Winning Farm, LLC the Special Permit pursuant to Sections 6.3 and 8.5 of the Winchester Zoning By-Law the Special Permit/Site Plan Approval pursuant to

Contents of Appendix for Petition 3421: Winning Farm, LLC

In addition to the Petitioner's application, the Board received the following documents:

1. Petitioner's memorandum in support of its petition for a Special Permit under Sections 6.3 and 8.5 of the Winchester Zoning By-Law.
2. Petitioner's memorandum in support of its petition for a Special Permit Site Plan Approval under Section 8.7 of the Winchester Zoning By-Law.
3. Plans prepared by Meridian Associates, Inc., Larson Associates, Inc. and the Architectural Team, consisting of:
  - a. Sheet 1 of 11, entitled "Record Conditions Plan of Land," final revision on 12/22/05;
  - b. Sheet 2 of 11, entitled "Layout and Materials Plan," final revision on 01/19/06;
  - c. Sheet 3 of 11, entitled "Grading Plan," final revision on 01/19/06;
  - d. Sheet 4 of 11, entitled "Planting Plan," final revision on 01/19/06;
  - e. Sheet 5 of 11, entitled "Drainage Plan," final revision on 01/19/06;
  - f. Sheet 6 of 11, entitled "Utilities Plan," final revision on 01/19/06;
  - g. Sheet 7 of 11, entitled "Details Plan," final revision on 12/22/05;
  - h. Sheet 8 of 11, entitled "Details Plan," final revision on 12/22/05;
  - i. Sheet 9 of 11, entitled "Site Details," final revision on 01/19/06;
  - j. Sheet 10 of 11, entitled "Site Details," final revision on 11/30/05;
  - k. Sheet 11 of 11, entitled "Photometric Plan of Site Lighting," final revision on 11/30/05;
  - l. Sheet A4.01, entitled "Exterior Elevation Plans," final revision on 10/31/05;
  - m. Sheet A4.02, entitled "Exterior Elevation Plans," final revision on 10/31/05;
  - n. Sheet A4.03, entitled "Conservation Shed Proposed Plan and Elevations," final revision 12/22/05.
4. "Storm Water Analysis and Calculations for 51 Thornberry Road located in Winchester Massachusetts" bound volume, drafted by Meridian Engineering.
5. "Operation Maintenance and Inspection Program for Site Construction and a Proposed Stormwater Management System" Report, drafted by Meridian Associated, final revision on 01/31/06.

- c. Revised Operations and Maintenance Plan, revised  
01/31/06.
23. Memo dated 12/21/05 to the Conservation Commission and the Zoning Board of Appeals from Robert Conway, Town Engineer, and Beth Rudolph, Assistant Town Engineer, with questions regarding Petition 3421 (subsequently answered in the 02/09/06 Memo [Item 22]).