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November 4, 2010

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RE: Girard Estates

Dear Mr. Hanson:

This letter is a response to the issues presented at the October 26, 2010 Planning Board meeting concerning Girard Estates. The Board members appeared to be concerned with the following: 1) new lot owner adherence to the Girard Estates Declarations and Restrictions concerning removal of trees; 2) the Fuss & O'Neill septic design plan that included the Title V open space requirement; and 3) DEP Title V waiver of open space requirements. As discussed below, it is the position of Girard Estates that it has done everything it can to abide by its agreements with the Town, provide notice of development restrictions to buyers of lots and preserve the rural nature of the development.

As you know, Lot 3 was the first lot in the subdivision to be sold. The sales process to find a buyer for the first lot was long and involved. The subdivision is unique to the Town as it has the first shared septic system in Seekonk. Girard Estates discovered through the sales process that it had to provide enhanced disclosure of conditions pertaining to the lots. Accordingly, Girard Estates provided the following disclosure notices to potential buyers in a document entitled "Girard Estates Residential Compound" (See Exhibit 1):

1. Girard Estates Residential Compound First Amended Declaration of Easements and Restrictions (See Exhibit 2);
2. Drainage Easement, 20 feet at back of Lots 1 & 5 (See Exhibit 3);
3. DEP Title 5 Shared System Application (See Exhibit 4);
4. Grant of Title 5 Covenant and Easement (See Exhibit 5);

5. Declaration of Trust Establishing the Girard Estates Common Septic System Trust (See Exhibit 6);
6. Copy of deed (See Exhibit 7) referencing plans of land (See Exhibits 8, 9, 10, 11);

Each of these documents was requested by the attorney representing the lot 3 buyer. Each of these documents was requested by the attorney for the buyer's lender. The documents were provided to both attorneys before the sale was consummated. A field inspection of Lot 3 showed that the buyer has abided by the 20 foot easement cutting restrictions at the rear of the lot. In addition, the buyer has planted new trees and shrubs at the rear of the lot. The Declaration of Easements and Restrictions provides that:

ö . . . no live trees in excess of 4 inches in diameter at the base of the tree shall be removed unless necessary for the construction of buildings, parking areas, lawn areas, driveways, or septic systems.ö

It appears to Girard Estates that the buyer may not be in violation of the Declaration. Trees were removed from where the foundation is to be installed, the septic system is to be installed, proposed driveway area and lawn area. The restriction concerns trees not unsightly scrub brush. Furthermore, the buyer has assured Mr. Girard that he intends to professionally landscape his property once his home is built. The landscaper he has hired is his father, a man who has been a Seekonk resident for 30 years and whose landscaping business is located in Seekonk.

The above listed exhibits 2, 3, 5, 6, 7, 8, 9, 10 and 11 are a matter of public record at the Bristol County Northern District Registry of Deeds.

The original engineer and designer for Girard Estates was the national firm, Fuss & O'Neill. Percolation tests for septic systems conducted on the eight subdivision lots indicated that, while each lot could be deemed compliant under DEP rules, individual Title 5 compliant septic systems could not be installed inside of each lot. Therefore, it was determined a shared septic system was the only option available to Mr. Girard to develop the property. The Massachusetts DEP Title 5 Regulations pertaining to open space and shared systems contain the following provisions:

Cluster Development ö A cluster development as allowed by local zoning ordinances or by-laws in accordance with M.G.L. c. 40 A § 9. Where no local cluster development zoning ordinances or by-laws have been enacted in accordance with M.G.L. c. 40 A, § 9, a cluster development means a residential development design that preserves a minimum of 50% open space which may include wetlands. 310 CMR 15.002.

New Construction or Increased Flow to Existing Systems and Division of a Facility Using Shared Systems

(1) The Approving Authority may allow use of shared systems, subject to any special conditions established pursuant to 310 CMR 15.293, for new construction or increased flow to existing systems or to serve two or more Facilities that will result from division of a Facility without granting a variance only where:

(b) with the exception of a shared system serving a cluster development as defined in 310 CMR 15.002, the applicant demonstrates that the design flow from the

facility or facilities to be served by the shared system does not exceed the design flow which could have been constructed in compliance with 310 CMR 15.000 without the use of a shared system. 310 CMR 15.292 (1)(b).

Fuss & O'Neill developed a septic design in accordance with the 310 CMR 15.002 open space requirement. (See Exhibit 12) The June 3, 2008 letter (See Exhibit 13) from the Town of Seekonk Health Agent to the DEP's Brett Rowe clearly indicates that the 310 CMR 15.292(1)(b) demonstration plan Fuss & O'Neill submitted to the DEP for Girard Estates showed that the open space requirement would not be required by the Title 5 statute. Despite the availability of a Title 5 waiver, Fuss & O'Neill requested and received approval for the open space plan on June 17, 2008. Fuss & O'Neill did this without Mr. Girard's knowledge. Fuss & O'Neill knew or should have known that the submittal of the open space plan was a gross disservice to Girard Estates that would severely jeopardize the financial viability of the subdivision project. In 2009, Mr. Girard was scheduled to sign a purchase and sale agreement for Lot 3. The buyer discovered the open space designation that restricted any activity including building inside the open space. The open space requirement restricts a buyer's use of his or her property while requiring him or her to pay taxes on the property. The buyer backed out of the deal causing Mr. Girard to lose the sale. Mr. Girard immediately realized that lots 1 -5 were unmarketable due to the open space line running through 50% of each lot. He immediately knew that the subdivision project was in financial jeopardy. He contacted the Massachusetts DEP in an effort to discover whether the DEP could provide relief from the open space requirement. Mr. Girard was shocked to learn that the DEP had approved a waiver of the open space requirement before Fuss & O'Neill submitted the open space septic design for approval. The DEP explained to Mr. Girard that if he submitted another plan that demonstrated compliance with 310 CMR 292 (1)(b) it would waive the open space requirement. Mr. Girard submitted a second demonstration plan designed by a new engineering firm. DEP again waived the open space requirement in its October 30, 2009 letter to Mr. Girard. (See Exhibit 14)

Mr. Girard then approached the Town for removal of the split rail fence it required along the open space line that appeared in the Fuss & O'Neill open space design plan. The Town then made additional drainage demands pursuant to its consultant's review of the Fuss & O'Neill drainage calculations that included the open space. Mr. Girard and the Town came to a compromise agreement pursuant to the consultant's review. Mr. Girard agreed to commit an additional 20 feet of property border along the rear boundary lines of lots 1 ó 5 for an open space drainage easement. (See Exhibit 11)

The neighbors indicated that a representative of Fuss & O'Neill stated that the subdivision plan included open space that would protect the trees and their view. The Fuss & O'Neill representative was stating a fact concerning the plan it had submitted to the DEP. The neighbors indicated that they believed they had an agreement with Girard Estates concerning the open space and their view. Unfortunately, that is not the case. Fuss & O'Neill had no authority to make any agreements with anyone. The only person capable of making an agreement on behalf of Girard Estates was the manager of Girard Estates LLC, Conrad Girard. At the October 26, 2010 planning Board meeting the neighbors stated they had never met with Mr. Girard concerning the open space plan. The neighbors appeared to indicate that the agreement they believed they had was an oral agreement. The neighbors did not produce a copy of a written

agreement between the neighbors and Girard Estates LLC. A legal agreement between Girard Estates LLC and the neighbors does not exist. The neighbors have no legal right to request preservation of open space on land owned by Girard Estates. Girard Estates is in full compliance DEP and Town of Seekonk Regulations as the subdivision approvals from the Town of Seekonk and DEP indicate.

It is the position of Girard Estates that it has done nothing wrong with respect to the preservation of the rural nature of the subdivision other than believing Fuss & O'Neill provided him with competent representation before the DEP and the Town. Girard Estates has provided open space with the septic system easements present on the property. Open space is provided via the drainage easement on lots 1 ó 5. The Declaration document provides that trees be preserved. During the sale process of lot 3, Girard Estates provided the buyer with disclosure of restrictions on several occasions before the consummation of the sale. As stated at the October 26, 2010 meeting, Girard Estates will require future buyers to acknowledge via a disclosure document (Exhibit 15) that they have read and understand the restrictions contained in the Girard Estates Residential Compound First Amended Declaration of Easements and Restrictions and the drainage easement. Girard Estates shall monitor compliance with the Girard Estates Residential Compound First Amended Declaration of Easements and Restrictions and the drainage easement.

Girard Estates cannot do any more than it already has for the Town, the neighbors and future residents of Girard Estates. My client will not entertain any further discussion on open space and tree preservation. My client will be vigilant concerning adherence to the preservation restrictions on the record.

Yours truly,

David A. Marcelino