

Agenda

Town of Seekonk, MA Planning Board

12/10/13
6:30 PM
Seekonk Town Hall
BOS Meeting Room

Type of meeting:

Planning Board Regular Meeting, Public Hearing

Agenda topics – More information on each item can be found on our website – www.seekonk-ma.gov under Departments>Planning>Agenda Items

6:30 PM

Executive Session

Executive Session to discuss strategy relating to pending litigation, known as Palmer River Development Co., LLC v. Neal H. Abelson, et al., Land Court 2013 MISC 480210-RBF, which concerns the Jacob Hill Estates Subdivision and 16.9 acres of land located at 0 Taunton Avenue

Planning Board

Public Hearing

Definitive Subdivision: Jacob Hill Estates - Plat 17, Lot 79 – Off Jacob St and Taunton Ave – continued from 11/12/13

Applicant: Palmer River Development Co., LLC

Public Hearing

Definitive Subdivision: Summer Meadows – Plat 1, lot 271 (Warren Ave) – continued from 11/12/13

Applicant: Trebor Properties, LLC

Partial Covenant Release: Three Ledges

Applicant: H. Charles Tapalian

Correspondence:

Approval of Minutes: 11/12/13

Adjournment



Planning Board
100 PECK STREET
SEEKONK, MASSACHUSETTS 02771
1-508-336-2960

To: The Planning Board
From: John P. Hansen Jr., AICP, Town Planner
Date: November 13, 2013

DEFINITIVE PLAN REVIEW
Jacob Hill Estates – Plat 17, Lot(s) 79 – Off of Taunton Ave & Jacob St

Summary: The applicant has submitted an Application for Approval of Definitive Plan for a Conservation Subdivision.

Findings of Fact:

Existing Conditions

- Vacant wooded 16.9 acre lot zoned R-2/Mixed Use.

Proposal:

- Create 11 new house lots, all >15K sq. ft., on a ±788' public road ending in a cul-de-sac (Palmer River Rd). The yield plan indicates 9 developable lots are possible. The new incentive zoning provision is to be utilized here, which will designate one lot as affordable and one additional market rate lot will be granted as a density bonus for providing said affordable lot.
- Individual septic systems and public water will service the lots.
- Open space areas will equal 40%, (40% minimum required). Wetland percentage of open space does not exceed wetland percentage of site.
- Road to be 22' wide with sidewalks to increase distance of disturbance from large trees on property boundary to the north near Jacob St.

Waivers:

- Waivers as requested in 10/22/13 letter from Thompson Farland

Recommendations:

Public safety officials have agreed that Jacob St. is a better alternative than Taunton Ave. for access to this subdivision. In addition, they have also agreed that increasing the width of the road by 2' and adding sidewalks is adequate for public safety. The Board's consultant, CEI, is performing a review of the revised drainage calculations, which should be complete by the hearing date. Staff recommends the following conditions of approval:

1. Appropriate documentation shall be submitted for the establishment of a homeowner's association, drainage easements, and an open space restriction on the

- open space land, which shall be delineated by a split rail fence. These documents shall be submitted prior to endorsement and recorded along with the subdivision.
2. The provisions of sections 25.10.1 (affordable unit amounts, size & distribution) and 25.10.1.4 (construction schedule) shall be adhered to, which would require that the 6th lot built upon shall contain the affordable unit.
 3. Prior to issuance of a building permit for each lot, the lot owner/developer shall submit a lot site plan and supporting information documenting the following:
 - a. The grading of the lot is consistent with the impervious surface coverage and the drainage patterns depicted on the approved Subdivision Plans.
 - b. The development of the individual lots will implement and maintain erosion and sediment control measures during construction as stipulated on the approved Subdivision Plans. The lot plan should illustrate the placement and details of these measures.
 4. The applicant will cut back 5' of brush in a northerly direction from the proposed road to increase the sight distance.
 5. Runoff from the impervious surfaces of each individual lot will be required to be handled on the lots through stormwater management measures, such as roof infiltration systems and rain gardens. Said measures shall be submitted to and approved by the Planning Department prior to the issuance of building permits for each lot.
 6. Anchored tarps shall be required to secure temporary soil stockpiles.
 7. A satisfactory review shall be received from the Board's consultant, CEI, on the revised plan.
 8. A positive recommendation shall be received from the BOH and prior to issuance of a building permit for lot 3, Board of Health approval shall be required indicating acceptable soils and groundwater conditions have been documented to support a soil absorption system and perc tests have been performed.
 9. A copy of the USEPA NPDES General Permit No. 1 and SWPPP shall be submitted to the Planning Department prior to construction.
 10. Construction shall be closely monitored by the Board's inspector along the section of roadway that is offset from the centerline to ensure that measures to protect the adjacent property to the north are implemented and maintained.

To: Jack, Alan
Cc: John Hansen
Subject: RE: fire truck width & Jacob St.

Hello Chief,

Thank you for your response to the Planner below. Can you provide the following information?

- What is the width of the Fire Department's widest piece of equipment?
- What is the width of the Fire Department's widest piece of equipment with its outriggers extended?
- What is the width of the widest ambulance that might respond to an emergency scene?
- Is it safe for an outrigger to be extended on one side with the outrigger up on a curb that is six inches above the pavement on which the Fire Department's vehicle is located and with the equipment's ladder extended above the equipment?

Thanks very much.

Best regards,

Ilana M. Quirk, Esq.
Kopelman and Paige, P.C.
101 Arch Street
12th floor
Boston, MA 02110
(617) 556-0007 (Telephone)
(617) 654-1735 (Facsimile)
iquirk@k-plaw.com

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From: John Hansen [<mailto:jhansen@seekonk-ma.gov>]
Sent: Monday, November 18, 2013 3:51 PM
To: Ilana Quirk
Subject: FW: fire truck width & Jacob St.

FYI

John P. Hansen Jr., AICP

John Hansen

From: Ilana Quirk [IQuirk@k-plaw.com]
Sent: Tuesday, November 19, 2013 11:59 AM
To: John Hansen
Subject: FW: fire truck width & Jacob St.

Hi John,

The total width of the two widest pieces of equipment (with outriggers extended) does go slightly over 22 feet, however, the Chief indicated that it is safe for the outriggers to go up on the curb even with the ladder extended.

So, this information should be provided during the public hearing, so that the members are aware of it. I

Ilana

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From: Jack, Alan [mailto:Ajack@seekonkfd.com]
Sent: Tuesday, November 19, 2013 11:54 AM
To: Ilana Quirk
Subject: RE: fire truck width & Jacob St.

Hi Ilana:

Our widest vehicle is Rescue #3 at 8' 6"
Our widest vehicle with its outriggers extended is Ladder #1 at 13'6.5"
Our widest Ambulance is Rescue #3 at 8'6"
It is safe for an outrigger to be extended on one side with the outrigger up on a curb that is six inches above the pavement on which Ladder #1 is located and with the ladder fully extended.

Chief Alan R. Jack

From: Ilana Quirk [mailto:IQuirk@k-plaw.com]
Sent: Monday, November 18, 2013 3:57 PM

Donald E. MacManus

Attorney At Law

Admitted in Massachusetts & Rhode Island

546 Arcade Avenue, #10, Seekonk, MA 02771
Phone: (508) 336-6440 ♦ Fax: (508) 336-4644

CT

REC'D NOV 12 2013

November 7, 2013

Neil Abelson, Chairman
Seekonk Planning Board
100 Peck Street
Seekonk, MA 02771

Re: John W. Wright v. Palmer Development Co., LLC
Bristol County Superior Court Docket No. BRCV 2013-00484

Dear Mr. Abelson:

I am in receipt of a copy of a letter from Kyle Zambarano of Adler Pollock and Sheehan, PC regarding the above matter sent to John Hanson dated October 30, 2013.

Although I am not representing John Wright before the Planning Board, I did represent him in the above entitled matter in the Bristol County Superior Court where Mr. Zambarano represented Palmer Development ("Palmer").

I would like to take exception to Mr. Zambarano's characterization that the court decision allows construction up to 12 feet of the boundary line.

I am enclosing two documents to assist the Board in understanding this matter:

1. A copy of the entire order by Judge Kane
2. A copy of the entire affidavit presented to the court by Mr. Antonio.

First, let me say that there is a certain amount of confusion in the matter due to that fact that at times the parties were talking about different measurements. The trees in question lie in the middle of the property line and average approximately 3 feet in diameter at the base. Therefore, 12 feet from the trees is equal to approximately 13.5 feet from the property line.

That being said, the order from Judge Kane does not indicate the distance that work must stay away from the trees. Instead, it states that "Palmer's proposed intrusion upon the trees [sic] roots constitutes a use that benefits Palmer while not exposing Wright's substantial property interests to an undue risk of harm." (Quoted from Judge

Kane's order at the bottom of Page 8.) Therefore, to determine the distance we must look at Palmer's proposal.

At paragraph 21 of Mr. Antonio's affidavit, he states that they will "allow a 13.5-foot wide buffer zone *from the trees...*"[emphasis added]. Furthermore, the diagram presented on the next page shows a "NO EXCAVATION ZONE" extending 13.5 feet from the property line. While I admit these two pages are in conflict, there is no doubt that, at the least, the proposal calls for no excavation within 13.5 feet of the property line.

While Mr. Zambarano's letter makes reference to arguments Palmer made after the presentation of evidence, the actual evidence of the proposal is included in Pages 6 and 7 of Mr. Antonio's affidavit.

My understanding is that Palmer is now proposing to construct a concrete sidewalk in the area shown as "no excavation zone" on the plan presented to the court. The sidewalk would require excavation of at least 10 inches into the ground and the installation of two inches of concrete and eight inches of gravel over the roots that remain.

I hope that this clarifies this matter for the Board.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Donald E. MacManus", with a long horizontal flourish extending to the right.

Donald E. MacManus

P.S. I have also received a copy of a letter from Mr. Zambarano to Mr. Wright dated October 31 threatening legal action against him for exercising his First Amendment rights in this matter. I understand that he has made reference to that letter in letters sent to other town officials. I am writing to Mr. Zambarano today reminding him that Massachusetts has a very strong statute (M.G.L. Ch. 231 Sec. 59H) which protects citizens against what is known as "strategic litigation against public participation." I have advised Mr. Wright that he should feel free to exercise his rights in expressing any opinion he wishes regarding this matter.

Enclosures

cc: Kyle Zambarano (w/o enclosures)
John Wright (w/o enclosures)

BRISTOL, SS SUPERIOR COURT
FILED

Aug 19 2013
BRISTOL, SS

MARC J. SANTOS, ESQ.
CLERK/MAGISTRATE

COMMONWEALTH OF MASSACHUSETTS

SUPERIOR COURT
CIVIL ACTION
NO. 2013-00484

JOHN W. WRIGHT

vs.

PALMER RIVER DEVELOPMENT CO., LLC

FINDINGS, RULINGS AND ORDER

John W. Wright, a landowner, and Palmer River Development Co., LLC, a real estate developer, equally own linden trees that grace the north/south boundary line of their properties located at Jacob Street in the Town of Seekonk, Massachusetts. Each owner professes devotion to the trees' prosperity. The owners diverge in their intentions towards altering the trees. While Wright, whose ancestor planted the trees, intends to let the lindens follow their natural course, Palmer intends to intrude upon the trees' roots in order to construct an access road for a housing development.

Wright detests any artificial intrusion upon the lindens' roots fearing that the disturbance will molest the trees' health. Palmer promises to mitigate the intrusion and to implement construction and post construction procedures that limit the risk of injury to the trees.

The dispute presents the question of to what degree a co-owner of trees bears a duty to prevent harm to the other owner's interest. In this court's view, the common law as shaped by new circumstances and understandings, compels each owner to pay careful attention to the other owner's interests. Applying this view to the extensive factual record developed in this case, the court determines that Palmer may disturb the trees' roots provided that it provides an enduring

commitment to honor safeguards and procedures set forth in this decision.

I now outline the history of the case and set forth the findings and rulings that shape my orders.

CASE'S HISTORY

On May 16, 2013, Wright filed a verified complaint that requested issuance of injunctive relief. After holding a hearing, reviewing the parties submissions and independently examining the law on removing tree roots lying on the cutter's property, the court issued a preliminary injunction. In so acting, the court found significant the decision rendered by Justice Qua in Levine v. Black, 312 Mass. 242 (1942), where the justice, while recognizing precedent on an unlimited right to cut roots, noted other jurisdictions confinement of that right to circumstances where the landowner's cutting of roots occurs without undue harm to his neighbor's rights in the tree.

Determining that the potential scale of harm to Wright's ancestral trees warranted a just hesitation before mechanically endorsing a limitless authority to cut roots, the court issued the preliminary injunction. Recognizing the injunction's potential injury to Palmer's development plans, the court scheduled a quick hearing to enlarge the record on the competing harms and mitigating measures.

JULY 10, 2013 HEARING

On July 10, 2013, the court received 23 exhibits and listened to the testimony of five witnesses including two experts on the science of diagnosing and preserving trees' health and welfare. The two arborists, Dennis Panu and Daniel Cullen, presented their opinions on the potential for the trees' injury from construction activities and discussed methods to mitigate the

risk of such injury to trees. Based on consideration of the pictorial, documentary and testimonial evidence, I now set forth findings on: (1) the origin, identity and condition of the linden trees; (2) the results of a site investigation of the linden trees; (3) evaluation of the effect of construction activities on the trees health and longevity; (4) the potential for injury or death of the linden trees; (5) use of a protection zone; (6) ways to mitigate the risk of injury during and after construction activities; and (7) examination of Route 44 as an alternative access road.

Trees Origin, Identity and Condition

John Wright's ancestor planted 37 linden trees. Over time, part of Wrights' property was conveyed resulting in the linden trees now generally straddling the boundary line separating Wright's property and Palmer's property.¹

The trees originate from the European species of the linden genus. The trees have various trunk diameters. The two trees bearing the largest diameter are tree #1 and tree #6 which respectively measure 30 inches and 29 inches in diameter.² The mature trees are largely healthy.

Investigation

Both parties investigated the contemplated roadway. Panu and Cullen examined the trees to determine: genus, species, health, age and dimensions.

Additionally, Cullen conducted "air spading" to identify the location and size of roots. Panu observed the "air spading" process.

The "air spading" process involved five trees. The trees' trunk diameters ranged from 22"

¹ Only 24 of the 37 trees relate to root cutting as the roadway at the location of tree #24 veers off to the right.

² Some uncertainty applies to whether the parties or the Town own tree #1.

to 26". Cullen traced and measured a root from each tree. For each tree, Cullen measured the root's diameter at spatial intervals. The measurements revealed the following root diameters at marked distances from the tree's trunk: (1) tree #5(25 inches in diameter)-2 inches at 12 feet³; (2) tree #9(26 inches in diameter)-1 inch at 13 feet; (3) tree #15(26 inches in diameter)-2 inches at 9 feet; (4) tree #19(23 inches in diameter)-1.5 inches at 6 feet; (5) tree #22(22 inches in diameter) 1 inch at 10.6 feet.

Cullen, with Panu as an observer, also supervised excavation of a "pot hole" opposite tree 17. That excavation uncovered a 1.25-inch root 35 feet from tree 5.

The root's diameter bears upon the risk of harm to the tree's health. Literature on the relationship of root diameter to the risk of harm to the trees health indicates that special care must be taken with regards to roots having a diameter of over 1 inch.⁴

Protection Zone

The distance between the tree's base to the location where the cutting of roots occur bears upon the potential for damage to a tree from cutting a root. The literature on tree damage from construction activities discusses a structural rooting distance designed to "minimize damage to tree structural base". A tree having a 29" diameter would have for example a 13' structural rooting distance.

The literature on preventing damage to trees from root damage also discusses an "optimum tree protection zone". The "optimum" zone's separation distance derives from a

³ Panu measured the root to be 2 inches while Cullen measured it to be 1.8 inches.

⁴ Cullen cited Best Management Practices, International Society of Arboriculture as an authoritative source on the relation of root diameter to the risk of injuring a tree. The cited article stated that roots with a diameter of over 1 inch should be pruned rather than torn or crushed. According to the article, pruning ought to assume one of three recommended methods.

formula that relies generally on the tree's base diameter, age and tolerance to withstanding construction activities, produces an optimum distance for preventing damage to the tree.

Arborists regard this optimum distance as a starting point to determine what separation distance makes sense in terms of the particular needs and circumstances of a particular case.

An arborist, in applying the above guideline would factor the interest of one owner in using the area near the linden trees for purposes of constructing a road. The design of a safe distance separating the construction activities from the tree's base would also take into account the material point that construction would fail to occur around the entire circumference of the trees, but rather on only one side. It would also consider the positive effects of construction and post construction mitigation measures.

Protective Measures

The literature on protection of trees' health in relation to construction activities contains recommended procedures to lessen the risk of injury. Besides fencing off the tree protection zone, arborists recommend certain prophylactics during construction that can lessen the risk of damage. See Exhibit 8. Cullen also recommends construction and post construction measures to lessen the risk of injury to the trees.

Alternative Access Road

An access road off Route 44 represents an alternative to access off Jacob Street. Such access requires approval by the State and the Town. Town approval involves review of the proposed roadway's conformance with 7.1 of the Town's Rules and Regulations Governing the Subdivision of Land. According to 7.1, the roadway must satisfy the interest of vehicular safety. An informal consultation with the Town Planner on approval of access off Route 44 produced

skepticism on the logic of protecting trees rather than protecting people.

RULINGS

Relying on Michalson v. Nutting, 275 Mass. 232 (1931), Palmer asserts sovereignty over disposition of roots or branches occupying its property. But Michalson must be understood based on the circumstances that shaped the court's ruling that the landowner possessed authority to abate the influx of roots that seriously threatened "to injure the foundation of his home." Id. Such a threat to the home's structural integrity gave rise to the court's endorsement of the landowner's right to "protect himself." Id. at 234. Additionally, Michalson concerned a tree whose trunk stood solely on one party's property. Id. at 232.

The pending case presents the circumstance of the parties joint ownership of the linden trees, a case that raises "more difficult questions [than the facts faced in Michalson]." Levine v. Black, 312 Mass. 242, 243 (1942). We lack a case where the roots constitute a source of impending danger to Palmer's property. Rather, Palmer desires to remove the roots to advance its economic interests while Wright desires to prevent the roots removal to eliminate the risk that loss of the roots will injure the trees. Also, this case contains expert evidence on the relationship existing between removing roots and maintaining trees' health.

The salient differences between the pending dispute and the dispute presented in Michalson compels a different approach. Rather than seeing this dispute as invoking one owner's right to arbitrarily injure or potentially injure the other owner's property rights, this court adopts the view that each owner must exercise a reasonable regard for the other owner's property rights in the tree. Such reasonable care must be calibrated under the traditional manner of considering the case's particular circumstances. Such circumstances can identify the degree of risk of harm,

the likelihood of the incidence of harm and what burden will be borne to abate the risk.

Analysis of Intrusion Upon Roots

Wright makes two arguments that Palmer's cutting of roots constitutes an unreasonable use when weighed against the risk of injury to the linden trees. First, he maintains that the use of Jacob Way rather than Route 44 as an access way represents an unreasonable choice. In response to Wright's claim that defendant ought to use Route 44 to access the proposed subdivision, Palmer presented evidence that the Town would reject use of Route 44 as an access road on the basis of regulation 7.1's requirements for ensuring "safe vehicular travel". According to Palmer, the Town's Planner, John Hansen, expressed skepticism that the Planning Board would allow access off a state highway that theoretically poses safety concerns when access off a secondary roadway constituted an alternative access.

Wright failed to counter Palmer's evidence that access off Route 44 lacks credibility. In that context, the evidence fails to establish that Palmer could reasonable secure access off of Route 44. Without the existence of some threshold showing that Route 44 constitutes a plausible option, Palmer should not be put to the expense of exploring this option.

Second, Wright maintains that Palmer must construct the 40 foot wide roadway in accordance with the "optimum" tree protection zone. The "optimum" tree protection zone spans between 27 to 29 feet from the trees' base.

The "optimum" tree protection zone's use in this case precludes Palmer's use of the area as an access road. Scrutiny of the "optimum" protection zone raises serious doubts as to its application. The "optimum" zone applies regardless of practical problems, the degree to which a trees' roots are exposed to the risk of harm, and the degree to which mitigation measures can be

employed. The optimum protection zone constitutes a health guarantee regardless of what actual circumstances apply.

Scientific inquiry resulting in a prognosis on the trees' health takes into account the diameter of affected roots and the degree to which roots may be destroyed. Scientific analysis also evaluates what measures can be employed to lessen the loss of roots and to restore the health of trees enduring root loss.

Cullen and the literature on the relationship of root loss to trees' health and preventative/restorative measures enlighten the court on the degree to which the risk of harming the 24 linden trees applies. From that evidence, the court has gleaned the following factors relevant to assessing the risk that intrusion upon the linden trees roots will cause appreciable harm to the trees: (1) the trees represent the genus and species identified as *Tilia European*; (2) *Tilia European* linden trees have a "moderate-good" toleration to root loss as opposed to *Tilia Americana* linden trees that exhibit less toleration of root loss; (3) the trees, though mature, appear to be healthy; (4) construction activities will occur on only one side of the linden trees thus only exposing that side's roots to being harmed; (5) Palmer will comply with construction procedure that lessen the risk of harm to the trees; and (6) Palmer will use post construction methods to aid the trees' recovery from injury caused by the construction activities.

Based on the circumstances surrounding the cutting of the 24 linden trees roots, the court determines that Palmer's proposed intrusion upon the trees roots constitutes a use that benefits Palmer while not exposing Wright's substantial property interests to an undue risk of harm. This judgment on a reasonable exercise of Palmer's property rights relies on its loyalty to construction and post construction procedures that lessen the risk of harm to the trees.

Employment/Enforcement of Mitigation Procedures

As a condition to lifting the injunction, the court orders Palmer to comply with construction and post construction mitigation measures. In constructing the roadway in the area of the identified 24 linden trees, Palmer will comply with preventative measures it proposed and applicable prevention protocols set forth on pages 14-17 of Best Management Practices. If Palmer seeks exemption from such protocols it must proffer an informed affidavit explaining the deviation. As to post construction mitigation measures, Palmer must abide by its proposal set out in the “Bartlett Work Proposal”.

Review by the Court of compliance with the mitigation measures will be done at particular points. After completion of the roadway and prior to Town approval of the roadway, Palmer will submit a sworn detailed affidavit by a qualified arborist delineating damage to the trees, the trees health, and the use of mitigation measures to abate the harm to the trees and the risk of further harm. Wright may present an affidavit from a qualified arborist.

As to Wright’s authority to inspect the area on Palmer’s property where the 24 linden trees stand, this may be done prior to activities that will involve pruning the roots and after construction activities terminate. Reasonable notice of a proposed inspection must occur, and the inspection may be observed by Palmer’s designated agent.

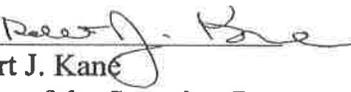
To ensure compliance, Palmer will post a \$40,000 bond. After completion of construction and the Court’s review of affidavits, Palmer may petition for release of a portion of the bond.

After the passage of 3 years from completion of construction, the Court, working from

lists of qualified experts submitted by the parties, will commission the expert to investigate and report in detail on post construction mitigation measures and present a diagnosis and prognosis of the 24 linden trees health.

ORDER

By the Court,



Robert J. Kane
Justice of the Superior Court

DATED: August 19, 2013

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, SS

SUPERIOR COURT

JOHN W. WRIGHT,

Plaintiff,

- v. -

PALMER RIVER DEVELOPMENT CO., LLC,

Defendant.

C.A. No. BRCV 2013-00484

**AFFIDAVIT OF MATTHEW ANTONIO
ON BEHALF OF DEFENDANT PALMER RIVER DEVELOPMENT CO., LLC**

In lieu of the affiant's direct testimony at trial in the above-captioned case on July 10, 2013, Defendant Palmer River Development Co., LLC ("Palmer River") hereby submits the following affidavit of Matthew Antonio.

Matthew Antonio, on behalf of Palmer River, hereby deposes and says:

1. The following statements of fact are based on my own personal knowledge gained through my efforts to develop an eleven-lot residential subdivision running off of scenic Jacob Street in Seekonk, Massachusetts, more specifically located at Assessors Map 17, Lot 79 ("Property").

Palmer River's Request to the Court

2. As explained in more detail below and in the contemporaneously-submitted affidavit of Mr. Scott Cullen Registered Consulting Arborist, Palmer River hereby requests that this Court permit Palmer River to construct a road on the Property permitting access to the subdivision via Jacob Street so long as Palmer River preserves a 12-foot wide buffer zone from the Wright boundary. This request is made along with the additional representation that Palmer

River will seek permission from the Town of Seekonk Planning Board to build a road that accommodates an even wider buffer zone of 13.5 feet. In support of this request, Palmer River offers the following summary of its proposed reasonable efforts to avoid any harm to the trees in question.

Background

3. I serve as Manager of Palmer River, and I am also a member of the limited liability company.

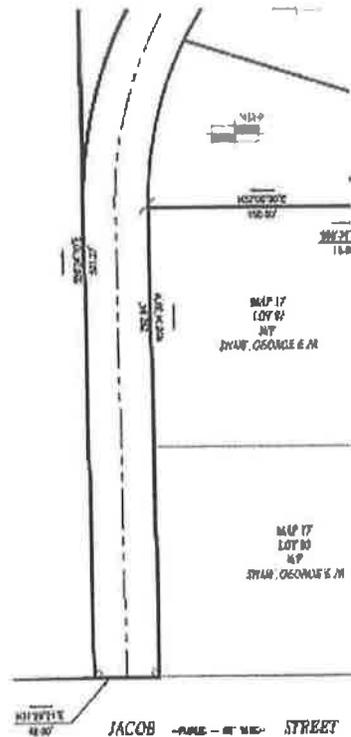
4. Palmer River, over its history, has been responsible for developing five subdivisions and building approximately 15 residential homes throughout Massachusetts and Rhode Island. In addition to the proposed subdivision to be built on the Property, Palmer River currently is in the process of developing another three subdivisions with approximately 27 residential homes throughout Massachusetts and Rhode Island.

5. I have worked in the field of real estate for approximately 17 years.

6. Palmer River purchased the Property in or about October 2012 for an approximate purchase price of \$500,000.00.

7. At the time of the purchase, Palmer River understood that the point of ingress and egress for the proposed subdivision that it intended to build would be via Jacob Street, as opposed to Route 44.

8. In order to access the proposed subdivision via Jacob Street, a public road located on a 40-foot wide right of way would need to be constructed. The 40-foot wide right of way is depicted below:



Excerpt taken from Preliminary Subdivision Plan (Jt. Ex. 1).

9. A 40-foot wide piece of right of way such as the one found on the Property is sufficient to accommodate a 24-foot wide road, with one-foot wide cape cod berm and seven-foot wide grassy areas on each side. Such a road is consistent with the Town of Seekonk's bylaws governing the construction of public roads.

Pre-Construction Communications with Plaintiff

10. Plaintiff John W. Wright ("Mr. Wright") owns the residential property that abuts the right of way on which Palmer River intends to build its public road.

11. Around the time Palmer River purchased the Property, I visited Mr. Wright at his

residence to introduce myself and discuss Palmer River's proposed subdivision.

12. Mr. Wright reacted negatively to the notice of construction on the Property, saying that he did not want automobiles and other traffic traveling along his property line. Mr. Wright said he would oppose development of the Property.

13. During this conversation, Mr. Wright did not mention any trees and/or the possible affects construction would have on trees in the area.

14. The first time I learned Mr. Wright believed the construction on Palmer River's property could affect trees owned by Mr. Wright was in approximately December 2012, after Palmer River had purchased the Property.

Road Design to Protect the Trees and Town Approval of Road Design

15. As alleged by Mr. Wright in his Complaint, the trees in question straddle the boundary line between Palmer River's land and Mr. Wright's property, and, therefore, the trees in question are owned jointly by Palmer River and Mr. Wright. The approximate locations of those trees are set forth in Jt. Ex. 2.

16. Palmer River has always maintained throughout this case, and will continue to maintain, that it intends to build a subdivision on the Property with a public road off of Jacob Street that is lined with the trees in question. The survival and vitality of the trees is important to Palmer River's proposed subdivision, in addition to that being in the best interests of both Palmer River and Mr. Wright. Palmer River, however, cannot design a road on the 40-foot wide right of way that is 28 feet (or thereabouts) from the Wright boundary. The request to build a road 28 feet from the Wright boundary is in actuality a request to prohibit Palmer River from accessing the proposed subdivision from Jacob Street.

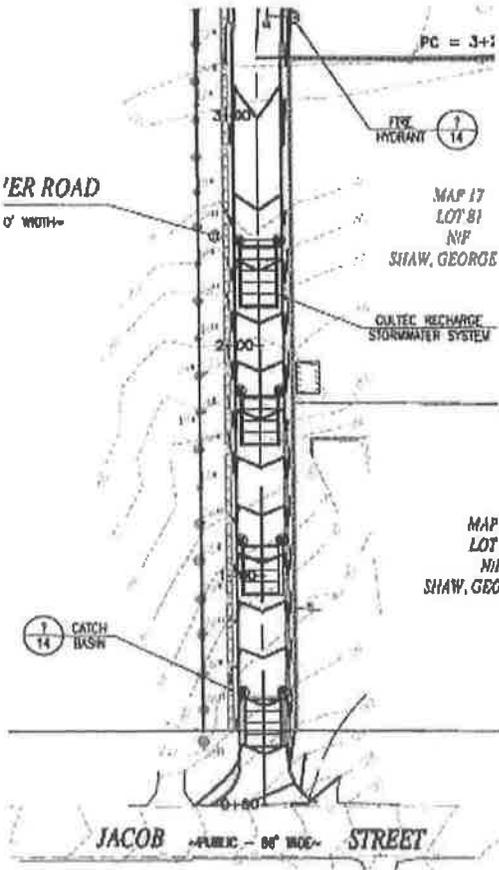
17. Palmer River has invested significant time and resources over the last several

weeks in order to design a road that is both acceptable to the Town of Seekonk Planning Board and promotes the health and stability of the trees.

18. To the extent Palmer River proposes to build a road that allows for a buffer zone between the boundary line and the road that is more than seven-feet wide, Palmer River will need to request waivers from the Seekonk Planning Board. These waivers include: (1) narrowing the width of the road from 24 feet to 20 feet; (2) moving the road from the center of the right of way and further away from the trees; and (3) permitting the road to be constructed without an abutting sidewalk.

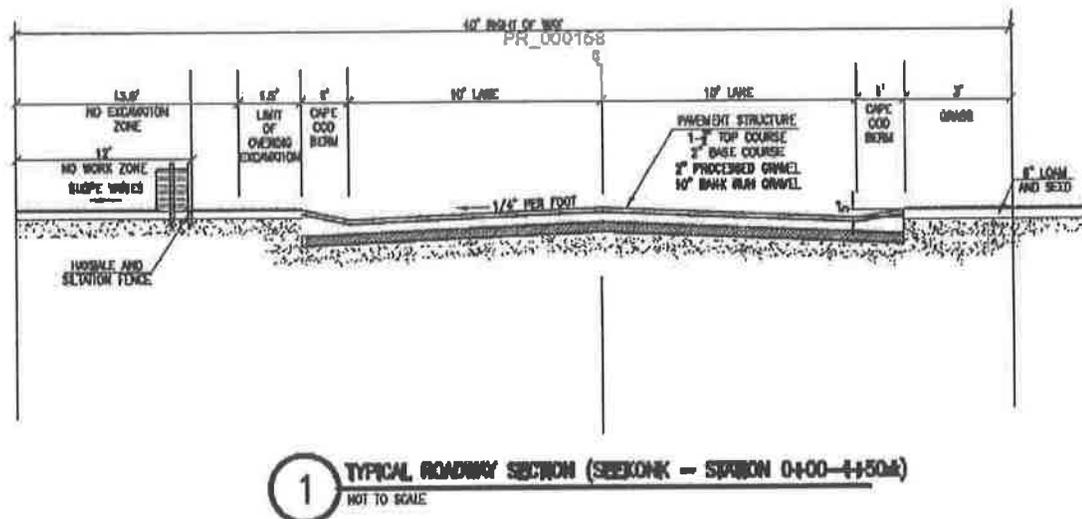
19. Palmer River believes that given the unique circumstances surrounding this property these are reasonable waiver requests that should be granted by the Seekonk Planning Board in order to help ensure the continued health of the trees. However, Palmer River at this time is unsure whether the Seekonk Planning Board will in fact grant these waivers.

20. In order to address stormwater management on the road, Palmer River also will propose to the Seekonk Planning Board that catch basins and infiltrators be installed at certain locations beneath the road. The catch basins and the associated excavation necessary to install those catch basins, is not constant along the entirety of the road. The specific locations of the catch basins are depicted in the plan found at Jt. Ex. 12, the relevant portion of which is set forth below:



21. Assuming that the Seekonk Planning Board does in fact grant these waivers and permit the installation of catch basins/infiltrators, Palmer River will be able to construct a road that allows for a 13.5-foot wide buffer zone from the trees, a 1.5-foot wide over-dig area, a 20-foot wide road with one-foot wide cape cod berm on each, and then a three-foot wide area between the berm and the opposite boundary. A cross-section of such a proposed road is found

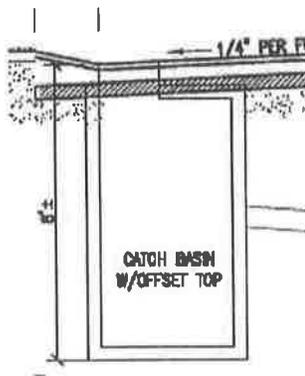
at Jt. Ex. 11, and a portion of that cross-section depicting the relevant distances summarized above is set forth below:



22. The 1.5-foot wide over-dig area is included in anticipation of the fact that excavation and other construction work performed will necessarily extend beyond the edge of the cape cod berm.

23. Jt. Ex. 11 depicts two separate cross-sections of the road, one with catch basins and one without.

24. The cross-section of the road with the catch basins identifies the type of catch basin to be used as ones “w/ offset top,” which is a specially-designed catch basin that eliminates the need to dig and install a catch basin closer to the trees. The portion of Jt. Ex. 11 showing the offset top catch basin is set forth below:



25. In light of the fact that Palmer River does not know for certain whether the Seekonk Planning Board will authorize the construction of a road that will allow for a 13.5-foot wide buffer zone, Palmer River requests that this Court enter an order permitting Palmer River to build a road outside of a 12-foot wide buffer zone. Such an Order by this Court allows Palmer River some flexibility before the Seekonk Planning Board, should that board decide not to authorize the proposed road depicted at Jt. Ex. 11.

Route 44

26. In response to Mr. Wright’s suggestion that Palmer River should access the subdivision via Route 44, Palmer River at this time is unsure whether that is a viable option.

27. In the course of its determination of whether Jacob Street or Route 44 is the better means of accessing the proposed subdivision, the Seekonk Planning Board is likely to make its decision in accordance with § 7.1 of the Rules and Regulations Governing the Subdivision of Land in Seekonk, Massachusetts, which provides “[a]ll subdivisions shall be designed and laid out so that in the opinion of the [Planning] Board they meet the requirements of public safety

including safe vehicular travel . . . [and a]ll streets in the subdivision shall be designed to provide for safe vehicular travel, livability, and amenity of the subdivision.”

28. I have had preliminary conversations with John Hansen, the Town Planner for the Town of Seekonk, regarding many issues related to this proposed subdivision, including whether access via Route 44 is a viable option.

29. Access via Route 44 would require not only town but also state approval, because Route 44 is a state highway.

30. If Palmer River were to seek access via Route 44 in order to avoid any possible negative impact on the trees, I am concerned that such a proposal may be criticized for prioritizing the health of the trees in question over the health and safety of motorists traveling on Route 44.

31. In addition to the potential safety concerns, numerous other reasons exist for Palmer River to access the subdivision via Jacob Street rather than Route 44, including: a Department of Public Works construction yard is located on the side of Route 44 opposite the Property; Palmer River is unsure whether it can still have land necessary to build 11 residential homes in the subdivision if it is accessed via Route 44; and Palmer River would incur substantial additional engineering and other costs should it have to redesign a subdivision that is accessed via Route 44.

32. In the event the Seekonk Planning Board were to determine that Palmer River could not build a subdivision that is accessed via Route 44, Palmer River’s sole means of ingress and egress to the Property would be via Jacob Street.

33. Mr. Wright’s proposal that construction cannot be performed within 28 feet of the trees in question, if sanctioned by this Court, would prevent Palmer River from building a road

that permits access to the subdivision via Jacob Street.

Bartlett Work Proposal & Other Reasonable Efforts

34. Assuming this Court and the Seekonk Planning Board both approve Palmer River's construction of a road, Palmer River is further prepared to perform the necessary work, both during and after construction, to promote the continued vitality of the trees.

35. Palmer River intends to engage Bartlett Tree Services to perform this work, and the relevant work proposal is found at Ex. PR-A.

36. The work proposal summarizes the pruning of roots and branches to be performed on the trees in question, the removal of additional trees and shrubs on the Property, the pest management to be performed on the trees in question (including treatment for root rot), the soil care, and the fertilization.

37. The cost of Bartlett Tree Services work will be \$13,595.00. That cost will be borne exclusively by Palmer River, notwithstanding the fact that Mr. Wright stands to benefit from that work.

38. Palmer River also is prepared to install a temporary chain link fence during construction at the edge of the buffer zone in order to preserve the integrity of the buffer zone.

39. Consistent with the advice from Bartlett Tree Services and/or Mr. Cullen, Palmer River also is prepared to administer moisture to the trees and mulching of the buffer zone, as needed.

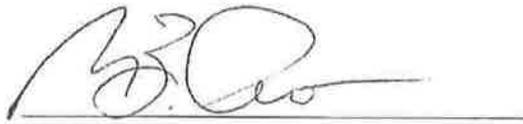
40. After construction of the road is completed, soil may need to be added to the buffer zone in order to comply with applicable grading requirements. To "grade" and/or to "fill" in this instance means to add a small amount (less than three inches deep) of soil from the edge of the cape cod berm and extending a width of 1.5 feet. Palmer River will consult with Bartlett

Tree Services and/or Mr. Cullen prior to adding fill in order to ensure no harm is done to the trees in question.

41. Palmer River will refrain from any additional work in the buffer zone for at least 30 months following the construction of the road. After that time, Palmer River will consult with Bartlett Tree Services and/or Mr. Cullen regarding whether the trees are healthy enough to withstand a modest degree of construction in the buffer zone, such as a gravel path that would function as a sidewalk.

42. It is respectfully submitted that the Bartlett Tree Services work and other efforts summarized above constitute reasonable care in Palmer River's construction of a road on the Property that it owns.

SIGNED UNDER THE PAINS AND PENALTIES OF
PERJURY THIS 7th THE DAY OF July, 2013

A handwritten signature in black ink, appearing to read 'M. Antonio', written over a horizontal line.

Matthew Antonio
Manager, Palmer River Development Co., LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the within Affidavit was sent via first class mail postage prepaid and email to the following attorney of record on this 8th day of July, 2013:

Donald E. MacManus, Esq.
546 Arcade Avenue
Seekonk, MA 02771



650762_1



Planning Board
100 PECK STREET
SEEKONK, MASSACHUSETTS 02771
1-508-336-2960

To: The Planning Board
From: John P. Hansen Jr., AICP, Town Planner
Date: November 21, 2013

PRELIMINARY PLAN REVIEW
Summer Meadows – Plat 1, Lots (s) 271 (Warren Ave.)

Summary: The applicant has submitted an Application for Approval of Preliminary Plan for a Conservation Subdivision.

Findings of Fact:

Existing Conditions

- Property contains 5.3 acres of land with a farm field in the front and a wooded area to the rear. The property is in an R-3 Zoning District.

Proposal:

- Create 5 new house lots, all >20K sq. ft., on an ±300' public road ending in a cul-de-sac utilizing
- Individual septic systems and wells will service the lots.
- Open space areas will equal approximately 2.6 acres or 48% of the total area (40% min). No wetlands exist on the site and the disturbance area proposed is 50% (25% is the maximum allowed). The Board gave a favorable recommendation on this at the Preliminary Plan stage. A variance would be needed from the ZBA for this.

Recommendations:

The Board's consultant, Horsley Witten, has completed their review and is satisfied with the plan, therefore staff recommends the following two typical conditions of approval along with a third condition:

1. Appropriate documentation shall be submitted for the establishment of a homeowner's association, drainage easements, and an open space restriction on the open space land, which shall be delineated by a split rail fence. These documents shall be submitted prior to endorsement and recorded along with the subdivision.
2. Prior to issuance of a building permit for each lot, the lot owner/developer shall submit a lot site plan and supporting information documenting the following:
 - a. The grading of the lot is consistent with the impervious surface coverage and the drainage patterns depicted on the approved Subdivision Plans.
 - b. The development of the individual lots will implement and maintain erosion and sediment control measures during construction as stipulated on the approved

Subdivision Plans. The lot plan should illustrate the placement and details of these measures.

3. The two large existing trees in the middle of the property should be preserved to the maximum extent possible, as per section 7.8 of the Subdivision Rules and Regulations.

Horsley Witten Group

Sustainable Environmental Solutions

24 Federal Street • Fifth Floor • Boston, MA 02110
www.horsleywitten.com



November 19, 2013

Town of Seekonk Planning Board
c/o John P. Hanson, Jr., AICP
100 Peck Street
Seekonk, MA 02771

Re: Peer Review Services for the Summer Meadows Subdivision
HW Job #13097

Dear Mr. Hanson and Members of the Board:

The Horsley Witten Group, Inc. (HW) is pleased to provide this third peer review of the proposed “Summer Meadows” subdivision project located on a 5.3 acre vacant lot on the east side of Warren Avenue. The Applicant proposes a five-lot Definitive Subdivision Plan that includes a 325-foot proposed roadway and an open stormwater management system, including a sediment forebay, a grass swale and an infiltration basin.

The following documents and plans were reviewed by HW:

- Drainage Analysis and Stormwater Management System Narrative prepared for “Summer Meadows” Subdivision, Warren Avenue, Seekonk, MA, prepared by InSite Engineering Services, LLC, dated November 8, 2013;
- Response to Review Comments letter dated November 5, 2013, prepared by InSite Engineering Services, LLC; and
- Definitive Subdivision Plan of “Summer Meadows”, Warren Avenue, Seekonk, Massachusetts, prepared for Trebor Properties, LLC, prepared by InSite Engineering Services, LLC, Sheets 1-8 of 8, revised November 05, 2013, which includes:
 - Definitive Subdivision Cover Sheet (Sheet 1 of 8)
 - Existing Conditions Plan (Sheet 2 of 8)
 - Definitive Lotting Plan (Sheet 3 of 8)
 - Plan & Profile – Becky Lane (Sheet 4 of 8)
 - Proposed Site Grading Plan (Sheet 5 of 8)
 - Erosion Control (Sheet 6 of 8)
 - Details (Sheet 7 of 8)
 - Soil Logs (Sheet 8 of 8)

Based on the materials received and reviewed to date, HW provides comments and recommendations on the project as noted in this document. Please note the numbering system below corresponds to HW’s second peer review letter dated October 30, 2013.

Stormwater Management Review

1. No further action required.
2. MASWMS Standard #2: The Applicant's response is adequate as noted below.
 - a. Response adequate.
 - b. Response adequate.
 - c. The Applicant has stated there are a few trees on the site which are now labeled on the Existing Conditions Plan. A wooded area appears on the Soils Map provided on page 4 of the Stormwater report. The Applicant has not commented on these trees, though the area in question will remain Open Space under proposed development. The Curve Number (CN) differential between a woods-grass combination and an open space pasture or meadow is minor. The Applicant's HydroCAD modeling for this area does not appear to be completely accurate, however it is acceptable.
 - d. Response adequate.
 - e. The layout and design of the revised infiltration basin is an improvement over the previous submission. The Applicant's response is adequate.
3. No further action required.
4. No further action required.
5. No further action required.
6. No further action required.
7. No further action required.
8. Response adequate.
9. MASWMS Standard #9: The Applicant's response is adequate as noted below.
 - a. The O&M plans reference the issuing of a Certificate of Compliance as assurance that the work is completed in accordance with the permit. The Planning Board should determine the appropriate means to verify that the work is completed as permitted. An As-Built plan should be provided to the Planning Board at the completion of construction, clearly labeling the dimensions and elevations of the forebay, swale, and infiltration basin and verifying they have been constructed per the design.
10. No further action required.
11. No further action required.
12. No further action required.
13. Design of Infiltration Basin: The Applicant's response is adequate as noted below.
 - a. Response adequate.

- b. Response adequate.
- c. Response adequate.
- d. The infiltration basin as currently designed has been expanded and has a longer outlet crest to allow the stormwater runoff to discharge over a larger area, similar to existing conditions. The basin has also been moved further from the abutting property line.
The response is adequate.

14. No further action required.

Subdivision Design Review

- 1. Response adequate. HW understands that the roadway dimensions are acceptable to the Public Works Department and the Seekonk Fire Department.
- 2. No further action required. HW understands that the Limit of Disturbance has been delineated in compliance with the requirements of the Planning Board and that the Planning Board has endorsed the percentage of land disturbance purposed.

Other General Comments

- 1. No further action required.
- 2. The existing trees are shown on the Existing Conditions Plan. The Applicant has not stated if these trees will remain as part of the development, it appears at least three trees will need to be removed for the construction of the roadway, the forebay, and the swale.
- 3. No further action required.
- 4. Response adequate.
- 5. No further action required.
- 6. No further action required.
- 7. Appropriate documentation should be submitted for the establishment of a homeowner's association, drainage easements, and an open space restriction on the open space land, which should be delineated by a split rail fence. These documents shall be submitted prior to endorsement and recorded along with the subdivision.
- 8. Prior to issuance of a building permit for each lot, the lot owner/developer should submit a lot site plan and supporting information documenting the following:
 - a) The grading of the lot is consistent with the impervious surface coverage and the drainage patterns depicted on the approved Subdivision Plans.
 - b) The development of the individual lots will implement and maintain erosion and sediment control measures during construction as stipulated on the approved Subdivision Plans. The lot plan should illustrate the placement and details of these measures.

Mr. John Hanson, Jr., AICP
Town of Seekonk
November 19, 2013
Page 4 of 4

Conclusions

HW is satisfied that the Applicant has addressed our comments and concerns and that the plans meet the Massachusetts Stormwater Management Standards, Rules and Regulations Governing the Subdivision of Land in Seekonk, Massachusetts, and Section 25 of the Seekonk Zoning Bylaws subject to any conditions proposed.

The Applicant is advised that provision of these comments does not relieve him/her of the responsibility to comply with all Town of Seekonk Rules, Regulations and By-Laws, Commonwealth of Massachusetts laws, and federal regulations as applicable to this project. Please contact Janet Bernardo at 857-263-8193 or at jbernardo@horsleywitten.com if you have any questions regarding these comments.

Sincerely,

HORSLEY WITTEN GROUP, INC.



Janet Carter Bernardo, P.E., LEED AP
Senior Project Manager

INTEROFFICE MEMORANDUM

TO: SEEKONK PLANNING BOARD
FROM: ALAN R. JACK, CHIEF OF DEPARTMENT 
SUBJECT: SUMMER MEADOWS
DATE: NOVEMBER 6, 2013

We have discussed "fire protection" in areas of Town without "municipal water" and we are not in favor of subsurface water storage tanks because of the potential liability.

Of the options referenced in the Subdivision Rules and Regulations we favor individual residential sprinkler systems.

November 11, 2012

Neal H. Abelson
Chairman
Seekonk Planning Board
100 Peck Street
Seekonk, MA 02771

RE: Summer Meadows Subdivision Plat 1, Lot 271

Dear Mr. Abelson –

Estes Express Lines owns and operates from the truck terminal located at 10 Industrial Court and abuts the above referenced property that is listed on the Planning Board November 12th meeting. I will be unable to attend the meeting on the 12th and respectfully ask that you make this letter part of the record.

Estes Express Lines purchased our property in 2000. We have since occupied and operated from the facility to service the Seekonk area. We are a twenty-four hour per day, seven days per week operation with trucks coming and going day and night. We currently employ 55 drivers, dock workers and office personnel.

Estes owns terminals all over the country and we are always concerned when we hear of plans for residential development proposed in the vicinity of one of our terminals. Our facilities, like most industrial facilities, are loud, brightly lit and heavily trafficked with tractors and trailers. Our dynamic does not typically mix well with a residential use, especially during the night hours when families are trying to sleep. Complaints of noise and truck traffic in areas where transportation facilities sit adjacent to residential developments are common. Past experience has shown that these problems are often not considered until a development has gained approval, construction is complete and residents take occupancy. At that point, the developer has moved on and the user is left to address the complaints.

We are not submitting this letter in protest to the type of development. We ask, though, that everyone consider the potential issues we bring up in this letter and how they will be addressed should they arise post-development. Estes has occupied our facility for several years prior to the application of the project, therefore, it is unreasonable to expect us to address noise, lighting and traffic complaints further down the road from residents of the subdivision. It is important to discuss now how these issues can be prevented and everyone can coexist amicably should the subdivision be approved.

Respectfully yours,



Angela J. Maidment
V.P. of Corporate Real Estate

ESTES



Planning Board
100 PECK STREET
SEEKONK, MASSACHUSETTS 02771
1-508-336-2961

MEMORANDUM

To: The Planning Board

From: John P. Hansen Jr., AICP, Town Planner

Date: November 12, 2013

Re: Three Ledges – Partial Covenant Release

The applicant for Three Ledges has requested a partial covenant release for said subdivision. The remaining work, which includes the top-course of asphalt, street trees and final site prep work, is valued at ±\$118K.

The method of surety proposed by the developer is to leave a covenant on lot 14 and release the covenant from lots 1-8 & 13. Based on the average purchase price of other lots this year within this subdivision (\$175K), a covenant for 1 lot appears to be adequate to cover the remaining construction costs. This office would recommend releasing the covenant on lots 1-8 & 13 for Three Ledges.

CAPUTO AND WICK LTD.

Civil Engineering and Surveying
Environmental Permitting
Traffic Engineering

1150 PAWTUCKET AVENUE
RUMFORD, RI 02916-1897

401-434-8880
FAX 401-434-1615
mail@cwLtd.net

November 8, 2013

Seekonk Planning Board
Seekonk Town Hall
100 Peck Street
Seekonk, MA 02771

Re: Partial Release of Covenant
Three Ledges
Seekonk, MA

Dear Board Members:

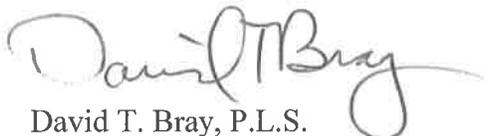
On behalf of our client, H. Charles Tapalian, we hereby request the release of Lots 1, 2, 3, 4, 5, 6, 7, 8 and 13 from the Covenant. Lots 9, 10, 11, 12 and 15 were previously released by the Planning Board on January 10, 2006. With this request, Lot 14 will remain under the Planning Board Covenant until the completion of the project. The drainage system and roadways have been constructed, and the granite bounds have been installed. The remaining work required to complete the project is the installation of the finish course of pavement, the planting of street trees, cleaning of the drainage system and the preparation of record drawings (please see the enclosed breakdown for a schedule of values). Based upon the recent activity within the subdivision, we anticipate that the remaining work will be completed before next fall.

I have completed a Certificate of Performance form regarding a Partial Covenant Release for Lots 1, 2, 3, 4, 5, 6, 7, 8 and 13 as shown on the Definitive Subdivision entitled "Definitive Subdivision Three Ledges Seekonk, Massachusetts Belonging to H. Charles Tapalian by Caputo and Wick Ltd., February 22, 2005".

Please feel free to call with any questions.

Very truly yours,

CAPUTO AND WICK LTD.



David T. Bray, P.L.S.

Enclosure

**Three Ledges Subdivision
Richard Circle and Emily Way
Seekonk, MA**

September 7, 2005
Rev. November 8, 2013

Cost Estimate

<u>Item</u>	<u>Quantity and Cost</u>	<u>Scheduled Value</u>	<u>Remaining Value</u>
<u>Clearing and Grubbing</u>	3 acres @ \$7,500/acre	22,500.00	0.00
<u>Install Storm Drainage</u>			
12"Pipe	680 l.f. @ \$26/l.f.	17,680.00	0.00
15"Pipe	235 l.f. @ \$28/l.f.	6,580.00	0.00
18"Pipe	295 l.f. @ \$30/l.f.	8,850.00	0.00
Catchbasins	13 @ \$1,500 each	19,500.00	0.00
Drop Inlet	1 @ \$1,500 each	1,500.00	0.00
Manholes	4 @ \$1,250 each	5,000.00	0.00
Rip-Rap	130 tons @ \$44/ton	5,720.00	0.00
Outlet Control Structure	3 @ \$2,500 each	7,500.00	0.00
Detention Basin	3 @ \$15,000 each	45,000.00	0.00
Clean Drainage System	1 @ \$1,500 each	1,500.00	1,500.00
Flared End Section	4 @ \$450 each	1,800.00	0.00
Water Quality Swale	1 @ \$5,000 each	5,000.00	0.00
<u>Roadway Construction</u>			
Gravel Base	1,800 c.y. @ \$10/c.y.	18,000.00	0.00
Processed Gravel	1,800 c.y. @ \$14/c.y.	25,200.00	0.00
1½" Binder Course	590 tons @ \$36/ton	21,240.00	0.00
1½" Type I-1 Top Coat	590 tons @ \$38/ton	22,420.00	0.00
	Now at \$100/ton		59,000.00
Asphalt Berm	4,000 l.f. @ \$3.50/l.f.	14,000.00	
	Now 59 tons @ \$100/ton		5,900.00
<u>Landscaping and Grading</u>			
Trees, 2-1/2 " caliper	85 @ \$350 each	29,750.00	29,750.00
Subgrade, Loam & Seed	125,000 s.f. @ \$0.50/s.f.	62,500.00	0.00
Haybales	1,500 l.f. @ \$5.00/l.f.	7,500.00	0.00
Silt Fence	2,000 l.f. @ \$2.50/l.f.	5,000.00	0.00
<u>Misc. Items</u>			
Survey Layout	4 @ \$5,000 each	20,000.00	0.00
Monuments	25 @ \$175 each	4,375.00	0.00
Roadway As-builts	\$5,000 lump sum	5,000.00	5,000.00
Street Signs	2 @ \$250.00	500.00	0.00
Utility Trench (conduit)	2,000 l.f. @ \$7.00	14,000.00	0.00
Inspections	\$11,000 lump sum	<u>11,000.00</u>	<u>2,000.00</u>
	Subtotal	408,615.00	103,150.00
Engineering	5%	20,430.75	5,157.50
Contingency	10%	<u>40,861.50</u>	<u>10,315.00</u>
	Grand Total	469,907.25	118,622.50

PLANNING BOARD MEETING DATES - 2014

Planning Board Meeting Dates

(Tuesday at 7pm)

January 14, 2014

February 11, 2014

March 11, 2014

April 8, 2014

May 13, 2014

June 10, 2014

July 8, 2014

August 12, 2014

September 9, 2014

October 14, 2014

November 18, 2014

December 9, 2014

(Nov. 4, 2014 elections/Nov. 11, 2014 Veterans Day)

SEEKONK PLANNING BOARD
Executive Session - Public Hearing - Regular Meeting
November 12, 2013

Present: Ch. Abelson, M. Bourque, R. Horsman, S. Foulkes, D. Viera, L. Dunn, R. Bennett
J. Hansen, Town Planner

6:30PM Ch. Abelson opened the meeting

Ch. Abelson read the Chairman's Declaration:

As Planning Board Chairman, I hereby declare, under G. L. c30A, 21(b) (3) and (4), that: the purpose of the scheduled executive session will be to discuss litigation strategy relating to litigation known as Palmer River Development Co., LLC v. Neal H. Abelson, et al., Land Court 2013 MISC 480210-RBF, which concerns Jacob Hill Estates Subdivision and 16.9 acres of land located at 0 Taunton Ave: A discussion of litigation strategy in open session could compromise the purpose for executive session; and the Planning Board shall return to open session at the conclusion of executive session.

A motion was made by R. Horsman and seconded by R. Bennett and unanimously

VOTED by roll call vote: Ch. Abelson, M. Bourque, L. Dunn, R. Bennett, R. Horsman, S. Foulkes & D. Viera: that the Planning Board go into executive session, under G. L. c30A, 21(b) (3) and (4), that: the purpose of the scheduled executive session will be to discuss litigation strategy relating to litigation known as Palmer River Development Co., LLC v. Neal H. Abelson, et al., Land Court 2013 MISC 480210-RBF, which concerns Jacob Hill Estates Subdivision and 16.9 acres of land located at 0 Taunton Ave: A discussion of litigation strategy in open session could compromise the purpose for executive session; and the Planning Board shall return to open session at the conclusion of executive session.

The Board returned to open session at 7:30pm

Public Hearing –

Definitive Subdivision: Jacob Hill Estates – Applicant Palmer River Development

Ch. Abelson opened the public hearing and read the order of business.

No motion was made to waive the reading of the legal notice.

Ch. Abelson informed the Planning Board and audience that the developer had asked that the Public Hearing be continued until December 10, 2013.

Ch. Abelson noted he would ask for the motion to waive the reading of the legal notice at the December 10, 2013 meeting.

Public Hearing –

Definitive Subdivision: Summer Meadows – Trebor Properties, LLC

Ch. Abelson opened the public hearing and read the order of business.

No motion was made to waive the reading of the legal notice.

Ch. Abelson informed the Planning Board that the Developer asked that the Public Hearing be continued until December 10, 2013.

Ch. Abelson noted he would ask for the motion to waive the reading of the legal notice at the December 10, 2013 meeting.

Partial Covenant Release: Madison Estates

J. Hansen summarized that the applicant for Madison Estates had requested a partial covenant release for said subdivision. The original construction cost estimate had been reduced to ±\$70K based on the work that had been completed by the applicant and inspected and approved by the Board's inspector. The remaining work includes top-course of asphalt application, street tree installation, and final site prep work.

The method of surety proposed by the developer is to keep a covenant on lot 7 and release the covenant from lots 2 & 6. Based on the average purchase price of other subdivision lots this year in town at \$142K, a covenant for 1 lot appears to be adequate to cover the remaining construction costs. He said he would recommend releasing the covenants on lots 2 & 6 in Madison Estates.

A motion was made by D. Viera and seconded by R. Bennett and it was unanimously

VOTED: To approve keeping a covenant on lot 7 and releasing the covenants on lots 2 & 6 of Madison Estates.

Discussion: Planning Board Packets

S. Foulkes said she was concerned over the fact that the PB members sometimes didn't get all the information in their packets pertaining to a case or cases. She suggested any information that came in after the packets were mailed to have the information emailed to all PB members.

D. Viera suggested in the case of a public hearing that a note be written at the bottom of the abutter's notification letter informing them that if they have any additional documents they must submit them one week prior to the meeting.

Ch. Abelson said he did not know if the board could refuse taking in documentation from the public the night of a meeting.

J. Hansen summarized the action to be taken would be; anything that comes in after the deadline the planning office would email it to the members and a note would be included at the bottom of the abutter's notification letter outlining that any comments in writing must be in the planning office one week prior to the public hearing.

Approval of Minutes: 10/8/13

A motion was made by D. Viera and seconded by R. Horsman and it was unanimously

VOTED: to approve 10/8/13 Planning Board minutes with minor typo changes.

Adjournment

A motion was made by R. Horsman and seconded by R. Bennett and it was unanimously

VOTED: to adjourn at 8:00 PM.

Respectfully Submitted by,

Florice Craig