

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is entered into between the Falmouth Town Council, acting through its Chair Andrew Vamvakias, and Tidewater LLC, acting through its principal, David Bateman. It is the intent of this Memorandum to set forth: a) the background of negotiations between the parties over the so-called Tidewater Development, b) the progress that has been made to date in reaching agreement on key issues associated with the development, c) the key issues on which there needs to be further discussion before an overall agreement can be reached and d) the procedural steps to accomplish the foregoing. Both parties acknowledge that there must be agreement on all of the key issues relating to the overall proposed development before any item of the proposal becomes effective. Both parties also acknowledge that this Memorandum of Understanding creates no legal rights for either party and that this document is simply to provide the basis for further negotiation.

A. Background of negotiations

1. Tidewater LLC, a Maine Limited Liability Company (the "Company"), has executed a purchase and sale agreement with the Finks Family Trust to acquire approximately 52 acres of land, and the existing structures referred to as "Tidewater Farm." The company has also executed a development agreement with Emery Waterhouse, the owners of approximately 20 acres of land adjacent Tidewater Farm. These parcels are located between Route 1 and Interstate 295 in Falmouth and are shown on various exhibits attached to this Memorandum.
2. The Company plans to develop the combined properties in a fashion which maintains a significant portion of the open fields and farm land associated with Tidewater Farm, and creates a viable "village center" on the adjacent Emery-Waterhouse parcel. This plan includes the creation of a non-profit "Tidewater Foundation" which will manage the open space and provide cultural and educational programs, the provision of diversified housing opportunity's in the form of both single, and multifamily housing as well as commercial retail and office and the development of an up scale hospitality venue integrated within a single Master Development Plan.
3. The current zoning applicable to both parcels does not provide the framework for the mutual goals of both the Company and the Town of Falmouth to be achieved. Both parties agree that the Master Development Plan process as outlined in the existing ordinance is the appropriate vehicle to accomplish these goals.
4. Various development plans have been shown to both the Town Council and the Community Development Committee, "CDC". The current Master Development Plan favored by the Company is attached to this Memorandum as Exhibit A. The current plan encompasses the "vision" outlined in a Town sponsored effort

conducted in 2001, which offered a development direction for these strategic properties. Specifically the plan addresses the following desired goals;

- Preservation of the majority of Tidewater Farm as open space along with its historic buildings.
- Provision for public access to the open fields and walking trails in and around the existing farmland.
- Creation of a mixed-use neighborhood off Clearwater Drive, consisting of retail, commercial office and residential housing.

B. Progress to date on key issues associated with the development

1. **Conservation and Recreation Easement** / The Company has agreed to place the open space as outlined in the current Master Development Plan subject to a conservation and recreation easement running in favor of the Town of Falmouth. This easement will preserve the current natural state and restrict its use to arts, cultural and recreational programming with public access managed by the Tidewater Foundation.
2. **Density** / The current plan reflects the concerns voiced to date by both the Town Council and CDC in terms of overall density and conceptual design. Residential housing has been decreased from 182 units as originally proposed to 86 units. Commercial retail / office has been decreased from 75,400 sq' to 65,000 sq'. The commercial retail / office development along Clearwater Drive has been redesigned to incorporate existing site restrictions in terms of wetlands areas while creating a traditional village center which is pedestrian oriented with "Falmouth scale" buildings.
3. **Public Recreation and Foundation Parking** / Improved parking will be provided for public use at the Tidewater Foundation. (e.g., 6-10 spaces). Additionally the fields may be used for seasonal overflow parking. The areas designated for seasonal parking will be improved with a suitable base and drainage and covered in turf to maintain the natural setting of the open space.
4. **Pedestrian Connection to Village Park** / Tidewater, LLC will provide access points for the Town of Falmouth to link existing and future Town trails to the Tidewater Foundation trail network. These access points will be labeled on the Master Development Plan.
5. **Sewer Force Main** / Tidewater, LLC will provide an easement for the Town Sewer infrastructure to connect directly across the Tidewater farm from Lunt Road to Clearwater Drive as opposed to the current route to the Foreside pump station on Route 88. A new pump station to serve the proposed development will connect into the proposed Lunt Road to Clearwater force main. The development will construct a new pump station and the section of the force main that runs from the new pump station out to Clearwater Drive. The Town will install a force main

from Lunt Road to connect to the developer's force main at a junction near the project's pump station. The size of the force main constructed by the developer will be adequate to accommodate flows from West Falmouth so that the line to Clearwater Drive does not need to be replaced when the Town connects from the Lunt Road pump station. The Town will accept the developments pump station and force main after they are constructed.

6. **Treatment Plant Odors and Future Commercial Development** / The developer will incorporate full disclosure requirements and explore hold-harmless provisions into all real estate transactions related to the project, (to the extent that they are legally enforceable) so that future residents will fully understand the implications of residing at this location.
7. **Treatment Plant and Commercial Buffering** / Minimum setbacks and vegetative buffers will be specified in the master plan documents to ensure that views to the treatment plant are avoided or minimized. Buffering between commercial facilities and residential facilities will also be designed appropriately. The actual details within defined parameters of the master plan could be worked out during the Planning Board review process as was done for the Exit 10 Master Planned Development District. (e.g., for buffering between commercial building service areas and the residence on Leighton Road.)
8. **Design Guidelines** / The current Route One architecture design guidelines are insufficient to produce the types of commercial buildings depicted in the developer's renderings. The development agreement will include directions to develop clear specifications for village-style development that will achieve the vision articulated by the developer.

C. Key issues which require further discussion before an overall agreement can be reached

1. **Rezoning** / the development proposal envisioned by the Town and Company requires rezoning of the area to be developed. Current Town ordinances allow for the creation of a new zoning district, which will require both filing a Master Development Plan, and council approval. The provisions of the proposed zoning have been submitted to the Town for Review.
2. **Town Financial Assistance** / the Company has requested that certain improvements which will benefit the public receive limited financial assistance from the Town. These improvements include the Town's commitment of \$390,000 to upgrade Clearwater Drive and request that the sewer connection fee for the first 50 units at Tidewater farm be waived. The proposed public improvements to receive limited financial assistance are outlined in the attached Exhibit B.

3. **Roads and utilities to be accepted by the Town /** The Company is requesting Town acceptance of the following roads and utilities;
 - New access road to the Foundation open space (2,640 l.f. running from Clearwater Drive to the existing farmhouse)
 - New sewer pump station and forced main built by the Company to serve the proposed development.

These improvements are outlined in detail in Exhibit B.

4. **Street Maintenance /** The existing farm lane running from Lunt Road to the intersection of the new foundation access road will be used as an emergency access road and will be maintained by the homeowners association. Additionally the future commercial development will be responsible for snowplowing the on street parking created along Clearwater Drive.
5. **Conservation and recreation easement /** The Company is willing to grant a conservation and recreation easement to the Town of Falmouth which ensures public access to the open fields and walking paths (open space areas.) The specific terms of this easement will be the subject of future discussions with the Town's Planning Board during the subdivision process, and incorporate a mutually agreeable management plan.

D. The procedural steps to accomplish the foregoing are outlined below.

1. **Rezoning and Local Approvals /** The Company has submitted a draft of proposed zoning amendments to create a Tidewater Master Planned Development District to the Town. During the first two weeks of December, these amendments will be reviewed with Town staff and the CDC and revised as needed. The revised amendments will be reviewed with the CDC prior to the December 2004 Council Meeting. The Town Council will formally consider the proposed amendments at its December meeting. If there are no significant issues with the proposed amendments, the Council will forward them to CPAC for a formal public hearing as required by state law and the zoning ordinance at CPAC's January 2005 meeting. The Council will then hold a public hearing and consider the adoption of the amendments at its January 2005 meeting depending on the outcome of the Council's public hearing.

The Company will submit a Master Development Plan to the Town that is consistent with the proposed zoning provisions for the Tidewater Development District by early December 2004. During December 2004, the plan will be reviewed with the Town staff and CDC and revised as needed. The Master Development Plan shall include a set of design parameters and design guidelines that will provide the developer with needed flexibility to develop the project while assuring the Town that the general goals for the layout and design meet the scale and quality objectives of the agreement. A revised Master Development Plan will

be formally submitted to the Town at least twenty-one days prior to the January 2005 Council Meeting and reviewed by the CDC prior to the Council meeting. The Council will schedule and hold a public hearing on that plan at the January 2005 Council meeting. If the Council adopts the proposed zoning amendments at the January meeting, the Council will also consider adoption of the Master Development Plan at that same meeting depending on the outcome of the public hearing on the Master Development Plan.

Following adoption of the Tidewater Master Planned Development District zoning amendments and the Master Development Plan, the Company will begin the approval process with the Planning Board and will submit an application for Phase 1 of the Tidewater Development by April 2005.

2. **State Approvals** / Following Town Council approval of the items discussed above, the Company will submit applications for necessary approvals to the Maine Department of Environmental Protection and other appropriate agencies. The parties will continue discussions as to the time for final execution of these items discussed above relative to the Company's receiving required land use and other approvals.
3. **Conservation Easement** / The Company will develop a proposed conservation easement for the open space areas and provide a draft to Town staff and legal counsel to review prior to submitting the application for subdivision review and approval of Phase One. A revised easement will be submitted to the Planning Board in conjunction with the Phase One application with the details of the easement language to be approved by the ~~Planning Board~~ Town Council

Falmouth Town Council

By: 

Andrew Vamvakias

DATED: 12/20/04

Tidewater, LLC.

By: 

David Bateman

DATED: 12/20/04

Exhibit B
Proposed Improvements to Receive Town Financial Assistance

Background - Our current analysis indicates that the commercial portion of the Master Plan should generate approximately \$140,000 per year in real estate tax revenue. *(This does not include a 75-room Inn or additional potential commercial development on the east side of Clear Water Drive.)*

Additionally the residential portion is expected to have a total market value of approximately \$29 Million. Based on the current tax rate of \$15.46 / \$1,000 @ 100% valuation, \$448,340 in residential tax revenue will be generated.

Summary of commercial related improvements to receive financial assistance -

	<u>Town Assistance</u>	<u>Private Developer</u>
1. Road and utility improvements @ Clearwater Drive (Town Owned)	\$390,000	\$256,900
2. New access road and improvements to Foundation open space and proposed Inn	\$0 (To be Town Accepted)	\$563,850
3. Applicable % of sewer pump station and force main required to serve commercial facilities and West Falmouth Connection from Lunt Road	\$110,000 (Funded via waiver of connection fees for first 50 homes. to be Town Accepted)	\$0 (Developer to fund the balance of non- comm. % = \$139,000)
4. Engineering and Legal for these Improvements	\$0	\$87,000
Totals	\$500,000	\$907,750
Total assistance requested =		\$500,000
% of commercial related improvements funded with Town Assistance =		35.5%
Total estimated infrastructure improvements funded without financial assistance (commercial & residential) =		\$3,460,236
Total estimated cost for all Proposed infrastructure improvements =		\$3,960,236

Rational for financial assistance -

1. **Clearwater Drive Improvements** / Clearwater Drive is currently owned and maintained by the Town of Falmouth. When this road was constructed provisions to maintain the original drainage patterns were apparently not a priority. Basically, Clearwater Drive now acts as a dam blocking drainage from the east side of the road from moving southwest to the Presumpscot River. If the "desired vision" for a village center is to be realized, subsurface storm drainage and underground utilities will be key elements.

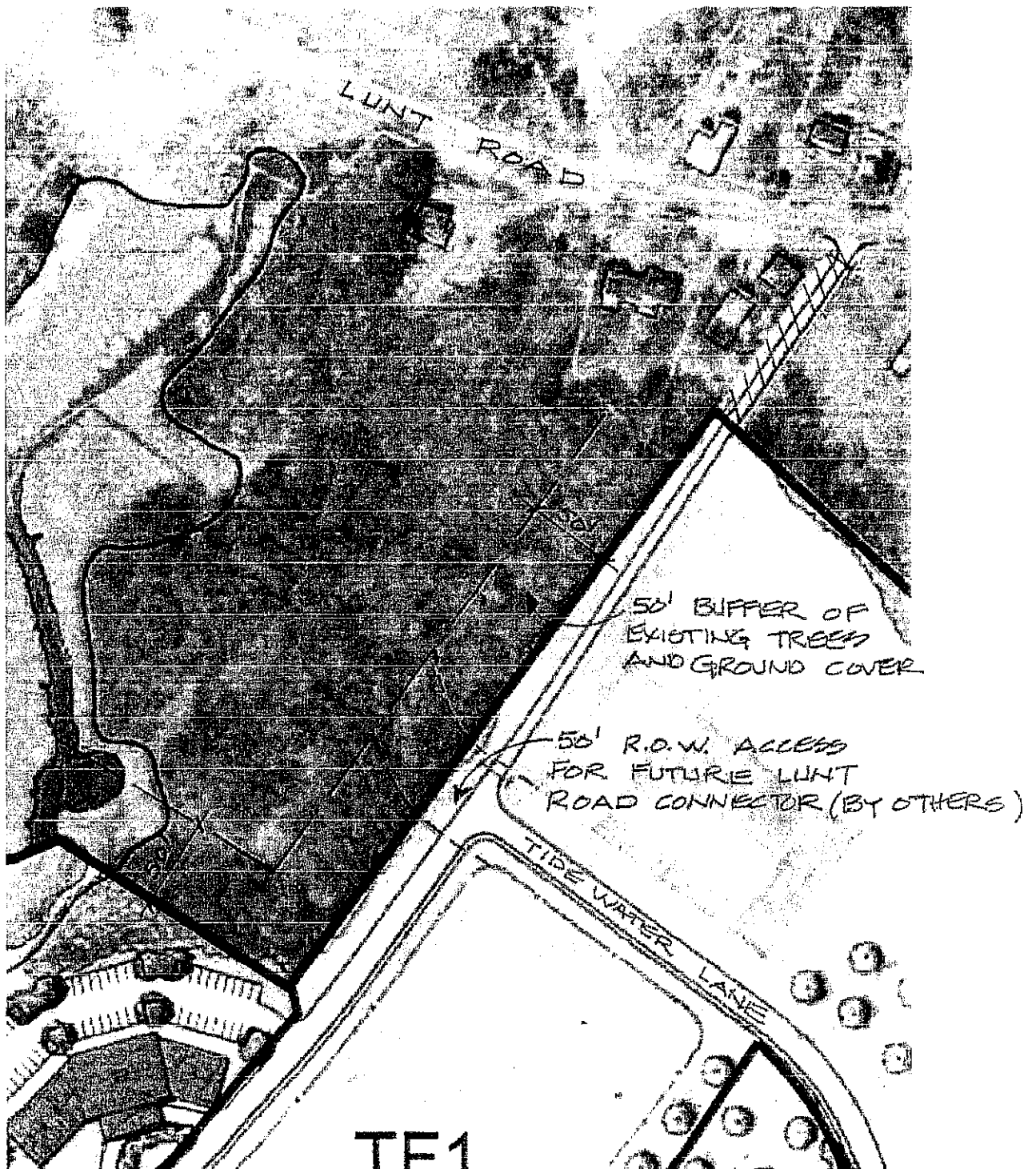
Improved sub-surface storm drainage and management could result in much of the acreage on the east side of Clearwater Drive returning to its previous state. Should this occur, additional developable land would be available to expand the commercial uses of the planned village center in 5 to 6 years.

2. **New access road to Tidewater Foundation and proposed Inn** / The new road will provide primary access for the public to the common open space at Tidewater Farm. The open fields and walking paths as proposed will connect to the adjacent Town recreational facilities via a path way along this road as well. This section of road (2,640 l.f.) to be built) is proposed to be owned and maintained by the Town of Falmouth.

Initially the first 1,165 l.f. of this road is proposed to be paved with the remaining section built with a gravel surface. This gravel section would be paved at a later date as part of the construction phase of the proposed Inn, along with an additional paved section of road (500 l.f.) running to this facility.

3. **Applicable % of new sewer pump station and forced main required to serve the commercial facilities** / The existing topography limits the practical application of a gravity sewer system to service the proposed development. The most likely system to be utilized will involve a combination of a gravity collection system, and a pump station with forced main. This system will be designed to accommodate the residential uses, along with current, and future commercial development (i.e. future 75 room Inn and commercial development on the east side of Clearwater Drive.) Based on the projected usage the commercial percentage is estimated at 33%. The Company will build the entire system and is requesting financial assistance on only the portion applicable to commercial usage, and that section of force main to be enlarged to accommodate the Towns anticipated flow from West Falmouth to be re directed across the property via an easement to Clearwater Drive. Additionally, the Company would request that the ownership of the new pump station and forced main be transferred to the Town upon completion.

EXHIBIT C




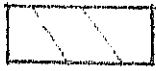
 = EXISTING ACCESS ROAD EASEMENT
(IF FUTURE LUNT ROAD CONNECTOR IS BUILT THIS EASEMENT WILL BE DISCONTINUED FOR EMERGENCY VEHICLE USE)

EXHIBIT D



=

25'-0" strip of land to be transferred to the town of Falmouth Sewer Department in consideration to 60% of the total cost up to \$390,000 to improvements to Clearwater Drive.

