

TOWN OF MEDWAY
Planning & Economic Development Board
155 Village ST
Medway, Massachusetts 02053

Andy Rodenhiser, Chairman
Robert K. Tucker, Vice-Chairman
Thomas A. Gay, Clerk
Cranston (Chan) Rogers, P.E.
Karyl Spiller-Walsh

October 23, 2012

CERTIFICATE OF ACTION
BAY OAKS – A PERMANENT PRIVATE WAY
MODIFIED DEFINITIVE SUBDIVISION PLAN
(APPROVED with Waivers and Conditions)

Location: 104 Fisher Street
Assessors' Reference: Map 26 - Parcel 20 (formerly Map 4-Parcel 44A-6A)
Parcel Size: 8.78 acres
Name/Address of Applicant: Andrew Rodenhiser
104 Fisher Street
Medway, MA 02053
Name/Address of Property Owner: Andrew Rodenhiser
104 Fisher Street
Medway, MA 02053
Engineer: GLM Engineering Consultants, Inc.
19 Exchange Street
Holliston, MA 02053
Land Surveyor: Joyce Hastings
GLM Engineering Consultants, Inc.
19 Exchange Street
Holliston, MA 02053
Plan Dated: May 18, 2012, last revised August 15, 2012
Zoning District: Agricultural Residential I
Street Name: Dover Lane

DISCLOSURE

The applicant, Andrew Rodenhiser, is presently an elected member of the Medway Planning and Economic Development Board and serves as its chair. Before submitting any preliminary subdivision application documents to the Town, Mr. Rodenhiser consulted with both Medway Town Counsel Barbara Saint Andre of Petrini and Associates and the Massachusetts Ethics Commission regarding conflict of interest issues. As a result of those discussions, the following actions were taken:

1. Mr. Rodenhiser recused himself from sitting on the PEDB during the public briefings on his proposed preliminary subdivision plan, during the hearing on the proposed definitive subdivision plan and during the hearing on the modification to the plan. He departed the Board table and sat in the audience as is customary for all applicants during a public hearing.
2. Statement of Disclosure of Appearance of Conflict of Interest – On the advice of Town Counsel, the remaining four PEDB members (Robert Tucker, Tom Gay, Karyl Spiller-Walsh, and Chan Rogers) along with Planning Consultant Gino Carlucci, Engineering Consultant David Pellegrini and Medway Planning and Economic Development Coordinator Susan Affleck-Childs prepared Disclosures of Appearance of Conflict of Interest as required by MGL c 268A, section 23 (b) (3). PEDB member disclosure statements were filed with the Medway Town Clerk; staff and consultant disclosure statements were filed with the Medway Town Administrator's office. The existence of such disclosure statements was announced during the July 24, 2012 public hearing.

I. PROJECT DESCRIPTION: The *Bay Oaks Definitive Subdivision Plan* dated May 18, 2012, last revised August 15, 2012, shows four residential house lots on an 8.78 acre parcel of land located at 104 Fisher Street, a Medway Scenic Road, in the Agricultural Residential I zoning district. The subject parcel is set back approximately 270 feet from Fisher Street and is presently owned by Andrew Rodenhiser of Medway, MA. The site includes one existing single-family house, Mr. Rodenhiser's residence, which will be retained on the newly created *lot #4*. The site is presently accessed from Fisher Street via an existing permanent private way that is owned jointly by Andrew Rodenhiser and abutting property owner Robert Reed (106 Fisher Street). They presently share the use of and maintenance responsibility for that access road.

The Bay Oaks subdivision includes construction of an approximately 170' linear foot long and 18' wide paved extension of that existing private roadway to provide access and legal frontage for 3 additional house lots. The existing private way and its extension will be known as Dover Lane. The project includes the installation of private wells and private septic systems and stormwater management facilities to comply with Massachusetts Department of Environmental Protection (DEP) stormwater management requirements. A portion of the site is in a Wetlands Resource Area.

II. PROCEDURAL SUMMARY:

1. On June 5, 2012, the Planning and Economic Development Board received an application for approval of the *Bay Oaks Definitive Subdivision Plan*, dated May 18, 2012 prepared by GLM Engineering of Holliston, MA. This definitive subdivision plan was preceded by submission of a preliminary subdivision plan which the Planning and Economic Development Board reviewed in July, August and September 2011. The Board issued a Preliminary Subdivision Plan Certificate of Action on September 27, 2011.
3. On July 10, 2012, the Board commenced a public hearing on the May 18, 2012 plan. The public hearing was duly noticed in the *Milford Daily News* on June 25 and July 3, 2012. Notice was posted with the Medway Town Clerk on June 14, 2012 and was sent by *Certified Sent* mail on June 18, 2012 to abutters in Medway and Holliston within 300 feet of the subject property and to parties of interest. The public hearing was continued to July 24, August 14, and August 28, 2012 when it was closed. During the course of the public hearing, the plan was modified twice; the first modification was dated July 31, 2012 and the second dated August 15, 2012.
4. On September 3, 2012, the May 18, 2012 Bay Oaks Definitive Subdivision Plan was “constructively approved” as the Board did not file a decision or a deadline extension with the Town Clerk within ninety days of the June 5, 2012 application submittal date.
5. On September 18, 2012, the Board voted to initiate a process to amend or modify the constructively approved Bay Oaks subdivision plan dated May 18, 2012.
6. On September 25, 2012 the Board informed various Town boards and departments, including the Board of Health, of the public hearing on the proposed modification of the constructively approved *Bay Oaks Definitive Subdivision Plan*.
7. On October 5, 2012, the constructively approved Bay Oaks Definitive Subdivision Plan was recorded at the Norfolk County Registry of Deeds in Plan Book 617, Page. 8
8. On October 9, 2012, the Board commenced a public hearing on the proposed modification of the constructively approved plan. In particular, the Board considered the plan dated August 15, 2012. The public hearing was continued to October 18 and 23, 2012 when it was closed.
9. The public hearing was duly noticed in the *Milford Daily News* on 9/24/12 and 10/2/2012. Notice of the public hearing was posted with the Medway Town Clerk on 9/19/2012 and was sent by *Certified Sent* mail on 9/19/2012 to abutters in Medway and Holliston within 300 feet of the subject property and to parties of interest
10. All members voting on this Certificate of Action were present at all sessions of the public hearing on the modified plan.

III. PUBLIC HEARING SUMMARY: The public hearing and Board review of the proposed modification of *Bay Oaks Definitive Subdivision Plan* was conducted on October 9, 2012 and October 18, 2012. In addition, the public hearings on the original Bay Oaks Definitive Subdivision Plan was conducted over the course of four Planning and Economic Development Board meetings in June, July

and August 2012 during which substantive information was presented and evaluated. The plan and its submitted revisions were reviewed for compliance with the *Subdivision Rules and Regulations* dated April 26, 2005 which were in effect at the time the applicant submitted a preliminary subdivision plan to the Board in July 2011.

Specified below is a list of plan documents and support materials, public comments, consultant and town departmental board review documents, and supplemental information which have been provided by the Applicant or placed on the record by the Planning and Economic Development Board since June 6, 2012. All information is on file in the Medway Planning and Economic Development office and is available for public review (except for confidential communications from Town Counsel).

Bay Oaks Definitive Subdivision Plan – GLM Engineering Consultants, Inc. dated May 18, 2012
Revised -July 30, 2012
Revised -August 15, 2012

Stormwater Report Bay Oaks Definitive Subdivision Plan – GLM Engineering Consultants, Inc.
Dated May 18, 2012
Revised - July 30, 2012

Storm Water Pollution Prevention Plan/Bay Oaks Subdivision – GLM Engineering Consultants, Inc.
Dated July 29, 2012

Request for Waivers from Subdivision Rules and Regulations – GLM Engineering Consultants, Inc.
Revised - August 15, 2012

Town Engineering Consultant Reviews – David Pellegri, P.E. Tetra Tech
July 2, 2012 letter
August 8, 2012 letter
August 20, 2012 letter

Town Planning Consultant Review Letters – Gino Carlucci, AICP, PGC Associates
July 5, 2012 letter
July 13, 2012 letter
August 9, 2012 letter
August 23, 2012

Supplemental Information Provided By Applicant and his Consultants

AASHTO Road Standards – *Lane Width: Flexibility in the AASHTO Guidelines* from a **Guide for Achieving Flexibility in Highway Design**.

Letter from Rob Truax, GLM Engineering, dated 7/30/2012 re: proposed mitigation measures

Letter from Rob Truax, GLM Engineering, dated 7/30/12 re: response to review comments from Tetra Tech (7/2/12), PGC associates (7/5/12), Medway Police (7/23/12) and additional comments from PEDB members and abutters as expressed at the public hearings.

Letter from Rob Truax, GLM Engineering, dated 8/15/2012 re: revised stormwater drainage calculations

Release from Middlesex Savings Bank dated October 18, 2012 re: Lots 1, 2 and 3 as shown on the May 18, 2012 Bay Oaks Definitive Subdivision Plan.

Supplemental Information Entered into the Record by the Medway Planning and Economic Development Board

Bay Oaks Preliminary Subdivision Plan *Certificate of Action* dated September 28, 2011 and filed with the Town Clerk on the same date.

Drawing dated 7/18/12 from Jimmie Smith, Medway Department of Public Services; drawing depicts location of stormwater facilities in Fisher ST and Stone End RD in the vicinity of the subject parcel

Land Transaction Chronology of 104 Fisher ST dated July 13, 2012 with associated Attachments A – M (deeds, plans, etc.) NOTE – Chronology prepared by Susan Affleck-Childs, Medway Planning and Economic Development Coordinator.

Photograph received September 23, 2011 showing Dover Lane with vehicles passing

Sidewalk Construction Cost Estimate prepared by Tetra Tech Engineering dated September 19, 2012.

Certificate of (Planning Board) Failure To Act issued by Medway Town Clerk Maryjane White, 9-25-12.

Citizen/Resident/Abutter Letters

Email communication dated July 26, 2012 (with attachments) from Attorney Deborah Batog of Franklin, MA on behalf of Joanne Giovanella, an abutting property owner to the project.

Email communication dated August 9, 2012 from Ed Duggan, 59 Fisher ST

Letter dated October 5, 2012 from attorney Deborah Batog of Franklin, MA on behalf of Joanne Giovanella, an abutting property owner to the project.

Citizen/Resident Testimony

Robert Reed, 106 Fisher Street – 7/10/12, 8/14/12

John Giovanella, 44B Fisher Street – 7/10/12, 7/24/12, 8/14/12

Katherine Presswood, 92 Fisher Street – 7/10/12

Krista Digregorio, 108 Fisher Street – 7/10/12

Trisha Letson, 97 Fisher Street – 7/24/12, 8/14/12

Chris Giovanella, 48 Fisher Street – 7/24/12

Professional Testimony

Gino Carlucci, AICP, PGC Associates, Inc. – Franklin, MA – 7/10/12, 7/24/12, 8/14/12 & 8/28/12

David Pellegri, P.E., Tetra Tech – Framingham, MA - 7/10/12, 7/24/12, 8/14/12 & 8/28/12

Rob Truax, GLM Engineering Consultants, Inc. – Holliston, MA - 7/10/12, 7/24/12, 8/14/12 & 8/28/12

Attorney Deborah Batog of Gilmore, Rees & Carlson, P.C. - Franklin, MA (*for the Giovanella family*) – 7/10/12, 7/24/12, 8/28/12, 10/9/12, 10/18/12.

Letter dated July 19, 2012 from Attorney Jay Aframe of Worcester, MA (*for the applicant, Andy Rodenhiser*)

Attorney Scott Sinrich of Worcester, MA (*for the applicant, Andy Rodenhiser*) – 8/28/2012
Town Counsel Barbara Saint Andre, Petrini and Associates of Framingham, MA (*for the Town of Medway*) – 8/14/12

Attorney Adam Costas of Concord, MA (*for the applicant, Andy Rodenhiser*) - 10/18/12.

Medway Departmental/Board Review Comments

Memorandum dated July 2, 2012 from Stephanie Bacon, Health Agent, on behalf of the Board of Health

Memorandum dated July 23, 2012 from Medway Police Department Safety Officer Sergeant Jeffrey Watson

Memorandum and map dated July 23, 2012 from Will Naser, Medway Principal Assessor

Letter dated July 26, 2012 from Jeff Lynch, Medway Fire Chief

Email communication dated August 20, 2012 from Conservation Commission chairman David Travalini.

The Board is also in receipt of confidential email communications from Town Counsel Barbara Saint Andre of Petrini & Associates.

IV. ACTION ON REQUEST FOR WAIVERS OF SUBDIVISION RULES & REGULATIONS –

The Applicant has requested and the Board has identified needed waivers from the following sections of the *Subdivision Rules and Regulations*, dated April 26, 2005.

SECTION 7.7.2 STORMWATER MANAGEMENT – (m) *Side slopes for stormwater detention basins/facilities shall be no steeper than three (3) horizontal to one (1) vertical.*

FINDINGS - The applicant has proposed a waiver to allow for a two to one slope on the side slopes of the detention basin. The basin is relatively small and shallow. Requiring a three to one slope will

necessitate more clearing of natural vegetation and disturbance to the topography. Due to the small size of the basin, the PEDB finds that a two to one slope is acceptable.

SECTION 7.7.2 STORMWATER MANAGEMENT – (p) *Detention and retention basins and underground infiltration systems and any related drainage structures shall be located on separate parcels and shall not be included on individual house/building lots.*

FINDINGS - The applicant has proposed installing the stormwater management facilities within the layout of the private roadway extension. The roadway layout is a separate parcel from the house/building lots and the PEDB has allowed detention basins to be located within the roadway layout of other private way subdivisions. Therefore, the location of the stormwater facilities within the roadway layout is acceptable.

SECTION 7.9.1. STREETS AND ROADWAYS – Location

- e) *The Board may authorize permanent private ways for subdivisions of up to three (3) lots/dwelling units.*
- f) *Neighborhood Street construction standards are to be used for subdivisions of up to five (5) lots/dwelling units.*

FINDINGS - The applicant proposes to divide the subject property into four house lots. A street serving a four lot subdivision would be categorized as a Neighborhood Street and would be expected to become a Town accepted street. However, the existing access to the subject parcel is provided by a paved, permanent private roadway; the right of way for that existing roadway is 60' wide by about 410' long from Fisher Street. Access and frontage for the new house lots will be created by extending that private way northeasterly into the property for an additional 230' which results in a combined right of way length from Fisher Street of 640 linear feet. By necessity, the roadway extension must also be a permanent private way. Because of this unusual circumstance, the Board finds it acceptable to designate the roadway extension as a Permanent Private Way for purposes of the roadway construction standards instead of as a Neighborhood Street.

SECTION 7.9.6 b) DEAD-END STREETS (Length) – *The maximum length of a dead end street shall be 600' as measured along the centerline of such street from the centerline of the intersecting through street into the dead end road. In the case of a group of connected streets . . . no point along the centerline of any dead end street shall exceed 600' measured from the centerline of the intersecting through street.*

FINDINGS - The full length of the layout of the Dover Lane right-of-way from the centerline of Fisher Street to its “new” end is approximately 657 linear feet. While the end of the right-of-way is shown as a bulb to create sufficient frontage for the house lots, the paved length of Dover Lane from Fisher Street to the point where the roadway splits into what are essentially driveways to Lots 3 and 4 is just over 600 feet, and the beginning of each driveway within the right-of-way forms the hammerhead. Therefore, this minor deviation from the 600-foot standard is acceptable.

SECTION 7.9.6 d) & e) DEAD-END STREETS (Turnaround Design) – To accommodate emergency vehicles, dead-end streets shall be provided at the closed end with an adequate turnaround acceptable to the Fire Chief. Turnarounds shall be designed in one of the two following ways: 1) A cul-de-sac turnaround with a perimeter diameter of one hundred feet shall include a twenty-four foot diameter center landscaped island (for use on a Neighborhood Street); 2) A hammerhead or T-shaped turnaround (for use on a Permanent Private way).

FINDINGS – The applicant has proposed the use of a hammerhead turnaround. As noted in the regulation, hammerhead turnarounds are allowed on permanent private ways. Since this roadway is by necessity a permanent private way, the hammerhead design is acceptable. More importantly, the Fire Chief has reviewed the plans and does not object to the hammerhead design as long as the turning radius is sufficient for fire apparatus. The use of a hammerhead turnaround instead of a center island cul-de-sac will also reduce the amount of impervious area and site clearing.

SECTION 7.9.7 g) ROADWAY CONSTRUCTION Width - The minimum width of the roadway pavement shall be Twenty Feet (20') for a Neighborhood Street.

FINDINGS – The applicant proposes that the road extension for Dover Lane be paved at an 18' width which is 2' less than the Neighborhood Street standards. However, the 18' paved width is consistent with the Town's standards for a Permanent Private Way. The reduced pavement width will result in more extensive preservation of the highly wooded setting and minimize site impacts. The 18' paved width is also consistent with the width of the existing Dover Lane permanent private way which accesses the subject parcel. It would serve little purpose to have a short extension be wider than the majority of the roadway. Furthermore, Fisher Street as paved varies in width but is generally no wider than 17'.

SECTION 7.10.2 CURBS AND BERMS – Sloped granite edging shall be provided along each side of the full length of a Neighborhood Street.

FINDINGS – The applicant proposes to eliminate curbing/edging along the edge of the proposed roadway extension to allow for the use of a country drainage swale for low impact stormwater management purposes. Eliminating the curbing and super-elevating the roadway is necessary to accommodate the low-impact drainage system. This will result in reduced site impacts. The Board and its Consulting Engineer have reviewed the proposal and find it to be acceptable.

SECTION 7.13.2 SIDEWALKS – Sidewalks (for a Neighborhood Street) shall extend the full length of the street and shall have a paved width of six feet on one side – hot mix asphalt with a minimum four-foot grass strip.

FINDINGS - The applicant proposes to not install sidewalks on the planned roadway extension. Not constructing sidewalks will reduce site impacts and will allow for stormwater runoff from the roadway to disperse into the swale along the roadway. The existing roadway which accesses the subject parcel does not include sidewalks. Consideration was given to adding sidewalks to the existing roadway. However, the existing topography and roadway with its retaining walls on both sides would make adding such a sidewalk not feasible. Therefore, providing sidewalks on the extension would serve little purpose. In lieu of constructing sidewalks, the applicant, within thirty days of the sale of the first house lot, will make a contribution in the amount of \$ 2,247 to the Town's Sidewalk Fund for the purpose of building sidewalks elsewhere in the community or the applicant will construct 166 linear feet of sidewalk elsewhere in the community as may be approved by the Medway Department of Public Services. This is specified in Specific Condition #16.

SECTION 7.17.1 FIRE PREVENTION AND PROTECTION MEASURES – *A fire alarm system shall be installed in accordance with the specifications of and located as directed by the Medway Fire Department or a sum of money paid to the Town equal to the cost of installing a fire alarm system within the subdivision, for use by the Fire Department for capital purchases.*

FINDINGS – The applicant proposes to not install a fire alarm system in the private way. The Fire Department no longer requires the installation of fire alarm boxes because it is converting to a higher technology alarm system. Therefore, the Board finds this waiver to be acceptable subject to a condition that the applicant shall make a \$1,000 payment in-lieu of installing the fire alarm system as has become the standard practice. Such payment shall be directed specifically into a Fire Department fund to be used exclusively toward the cost of a new fire alarm system for the community. This is specified in Specific Condition #15.

SECTION 7.19.2 – TREES AND SLOPE STABILIZATION - *Top enhance the aesthetic quality of the streetscape, deciduous street trees of nursery stock conforming to the standards of the American Association of Nurserymen, shall be planted on each side of each street in a subdivision. . . . At least three (3) trees are to be placed on each lot at approximately forty foot (40') intervals*

FINDINGS – The applicant does not propose to plant additional street trees on the house lots. The site is already heavily wooded and the applicant has provided a landscaping plan for the area where the roadway splits off to become driveways for Lots #3 and #4. The Board finds that this is an acceptable substitute.

MITIGATION PLAN

1. The new road will be private in perpetuity, owned and maintained by a homeowner's association, thus relieving the Town of this on-going responsibility and expense.
2. Maintenance and upkeep of the stormwater management facilities will be the responsibility of a homeowner's association, thus relieving the Town of this on-going responsibility and expense.

3. The reduced width of road paving will result in reduced disturbance to the topography and less impact on the site's wetlands, woodlands and other natural resources.
4. The applicant shall make a payment of \$1,000 to the Town of Medway Fire Department Fire Alarm Capital Fund in lieu of installing a fire alarms system for the subdivision. Specific Condition #15.
5. The applicant has agreed to make a payment in the amount of \$2,247 to the Town of Medway Sidewalk Fund in lieu of constructing sidewalks within the subdivision. Specific Condition #16.

ACTION ON WAIVER FINDINGS - At a duly called and properly posted meeting of the Medway Planning and Economic Development Board held on October 23, 2012, a motion was made by Karyl Spiller-Walsh and seconded by Chan Rogers to approve the above noted Waiver Findings. The motion was approved by a vote of three in favor (Rogers, Spiller-Walsh and Tucker) and zero opposed.

ACTION ON MITIGATION PLAN - At a duly called and properly posted meeting of the Medway Planning and Economic Development Board held on October 23, 2012, a motion was made by Karyl Spiller-Walsh and seconded by Chan Rogers to approve the above noted Mitigation Plan. The motion was approved by a by a vote of three in favor (Rogers, Spiller-Walsh and Tucker) and zero opposed. .

ACTION ON WAIVERS – At a duly called and properly posted meeting of the Medway Planning and Economic Development Board held on October 23, 2012, a motion was made by Karyl Spiller-Walsh and seconded by Chan Rogers to approve the above noted waivers from the *Subdivision Rules and Regulations*. The motion was approved by a vote of three in favor (Rogers, Spiller-Walsh and Tucker) and zero opposed.

V. PROJECT EVALUATION CRITERIA – Before taking action on the MODIFIED Definitive Subdivision Plan, the Board shall evaluate the proposed subdivision modification according to the criteria as specified in Section 5.16 of the *Subdivision Rules and Regulations*. At a duly called and properly posted meeting of the Medway Planning and Economic Development Board held on October 23, 2012, a motion was made by Karyl Spiller-Walsh and seconded by Chan Rogers to approve the Project Evaluation Findings noted below. The motion was approved by a vote of three in favor (Rogers, Spiller-Walsh and Tucker) and zero opposed.

5.16.1 Completeness and technical accuracy of all submissions.

FINDINGS – The Planning and Economic Development Board finds that the submissions were complete and technically accurate.

5.16.2 Determination that the street pattern is safe and convenient and that proper provision is made for street extension. The Board may disapprove a plan where it determines that dangerous traffic or unsafe conditions may result from the inadequacy of the proposed ways within the subdivision.

FINDINGS – The Board finds that, as conditioned, the proposed street pattern within the new subdivision is safe and convenient. The proposed new roadway within the subdivision is comparable to other recently-approved permanent private subdivision roadways that have been found to be safe and convenient. During the hearing, concern was expressed

about the safety of the existing access roadway (Dover Lane), more specifically its 18-foot width with retaining walls on both sides, for use by three additional property owners. However, photographic documentation was presented that two SUV's could pass one another safely. Moreover, the conditions were reviewed by both the Fire Chief and Police Safety Officer and the Town's consulting engineer. Signage was recommended to warn drivers to watch for pedestrians and has been incorporated into the plan. Also, it was represented by the applicant that he and Robert Reed of 106 Fisher Street, the other owner of Dover Lane, have jointly and successfully maintained the existing roadway for many years. Furthermore, as noted in Specific Condition #4, the required Bay Oaks Home Owners Association documents will include provisions for maintenance and upkeep of the roadway and drainage system.

- 5.16.3 Determination that development at this location does not entail unwarranted hazard to the safety, health and convenience of future residents of the development or of others because of possible natural disaster, traffic hazard or other environmental degradation.

FINDINGS – The Board finds that the location of the development does not entail unwarranted hazard. A drainage plan has been designed to handle anticipated stormwater runoff and the sight distances from the proposed road are adequate. The new houses will use private wells and septic systems approved by the Board of Health, and erosion controls will be in place during construction. The Town's Safety Officer has reviewed the plans and has not found any unwarranted safety deficiencies.

- 5.16.4 Determination, based on the environmental impact analysis, where submitted, that the subdivision as designed will not cause substantial and irreversible damage to the environment, which damage could be avoided or ameliorated through an alternative development plan.

FINDINGS – The site of the subdivision is not within a Priority Habitat area and the wetlands of the site will be protected. Stormwater management has been adequately addressed. There will be an increase of only three single-family houses to be constructed. The Board finds that the subdivision will not cause substantial and irreversible damage to the environment.

- 5.16.5 Determination that the roads and ways leading to and from the subdivision shall be adequate to provide emergency medical, fire and police protection as well as safe travel for the projected volume of traffic. The Board may disapprove a plan where it determines that dangerous traffic or unsafe conditions may result from the inadequacy of the proposed access or of any ways adjacent to or providing access to the subdivision.

FINDINGS – The Board finds that the proposed roadway as well as the existing roadway leading to the subdivision are adequate to provide emergency medical, fire and police protection as well as safe travel for the anticipated volume of traffic. The roadway extension shown on the plan will be built according to the Board's construction specifications for a permanent private way. The plans have been reviewed by the Fire Chief as well as the Town's Safety Officer.

- 5.16.6 Conformity with all applicable requirements of the Medway Zoning By-Law including but not limited to minimum area and frontage standards.

FINDINGS – The Board finds that the lots created by this plan conform to all applicable requirements of the Medway Zoning By-Law, including minimum area and frontage requirements.

5.16.7 Consistency with the purposes of the Subdivision Control Law.

FINDINGS – The Board finds that the proposed subdivision is consistent with the purposes of the Subdivision Control Law because the infrastructure proposed is adequate for the new development and the impacts of the subdivision have been mitigated to a reasonable extent. Reasonable waivers have been granted herein with good cause.

VI. OTHER FINDINGS

At a duly called and properly posted meeting of the Medway Planning and Economic Development Board held on October 23, 2012, a motion was made by Karyl Spiller-Walsh and seconded by Chan Rogers to approve the **Other Findings** noted below. The motion was approved by a vote of three in favor (Rogers, Spiller-Walsh and Tucker) and zero opposed.

- Road ownership for lower and upper portions of Dover Lane – The Board finds that, for the purpose of efficiency and clarity of responsibility, it makes sense for the ownership and maintenance responsibility for both the existing and extended segments of Dover Lane to be consolidated into a single entity/homeowners association. While the Board recognizes that the co-owner of the existing segment of Dover Lane is not a party to the Bay Oaks subdivision, it encourages the applicant to seek an agreement for consolidated responsibility for the entire roadway of Dover Lane.
- On-going roadway maintenance of lower Dover Lane – The Board finds that due to an increase in the usage of the existing segment of Dover Lane by at least three additional households, adequate maintenance of lower Dover Lane is critical. The Bay Oaks Homeowners Association will commit to ensure that, in particular, sanding and plowing is performed in a timely manner to reduce the potential for conflicts created by the increased usage.
- Stormwater flow off of Dover Lane – The Board finds, after evaluation by its consulting engineer and Town officials, that the management of stormwater flow coming off the existing segment of Dover Lane is adequate. However, the situation should be monitored closely to ensure that the Fisher Street catch basins at the bottom of Dover Lane continue to function adequately and that there is no increased stormwater flow onto properties across Fisher Street from Dover Lane.

VII. DECISION – At a duly called and properly posted meeting of the Medway Planning and Economic Development Board held on October 23, 2012, a motion was made by Karyl Spiller-Walsh and seconded by Chan Rogers to modify the **Bay Oaks Definitive Subdivision Plan**, prepared by GLM Engineering, dated May 18, 2012, as constructively approved on September 3, 2012, as shown on the last revised plan dated August 15, 2012, and further to modify the approved plan by imposing the Specific and General Conditions as specified herein and with Waivers from the following sections of the Subdivision Rules and Regulations dated April 25, 2005.

SECTION 7.7.2 m) and p) Stormwater Management

SECTION 7.9.1 e) and f) Streets and Roads
SECTION 7.9.6 b), d) and e) Dead End Streets
SECTION 7.9.7 (g) Roadway Construction
SECTION 7.10.2 Curbs and Berms
SECTION 7.13.2 Sidewalks
SECTION 7.17.1 Fire Prevention and Protection Measures
SECTION 7.19.2 Trees and Slope Stabilization

The motion was approved by a vote of three in favor (Rogers, Spiller-Walsh and Tucker) and zero opposed.

VIII. CONDITIONS – The following specific and general conditions shall apply to the Applicant, its executors, administrators, devisees, heirs, successors and assigns:

A. Specific Conditions

1. This subdivision of the subject property is authorized for no more than four residential house lots. As a permanent condition of the approval of this plan, no further subdivision of the property beyond these four lots is allowed.
2. The Applicant shall construct the roadway and all related infrastructure including the stormwater management system, and install all utilities as shown on the definitive subdivision plan, to the satisfaction of the Planning and Economic Development Board, within three years of the date of endorsement of the plan.
3. Prior to plan endorsement, the plans dated August 15, 2012 shall be further revised to include the following references:
 - A note shall be added to all plan sheets indicating that the plan is subject to this *Certificate of Action* which shall be recorded with the Plan at the Norfolk County Registry of Deeds.
 - A note shall be added to all plan sheets to indicate that present and future owners are subject to a *Declaration of Protective Covenants & Restrictions and Private Roadway Agreement Governing the Bay Oaks Subdivision*
 - Fisher Street pavement width shall be indicated.
 - A note shall be added to the plan that brush will be cleared on the east side of Fisher Street on either side of the bottom of Dover Lane to the satisfaction of the Police Safety Officer.
 - A note shall be added to the plan that trees remaining along the proposed roadway shall be clear of any branches from the approved grade level to a point seven feet above finish grade.
 - A note shall be added to the plan that the house address numbers shall be marked on a post at the end of each house lot driveway to facilitate easy identification from the private roadway for emergency and safety vehicles.

- Snow storage areas shall be shown on the plan.
4. *Ownership of Dover Lane extension* - The extension of Dover Lane depicted on this subdivision plan shall remain privately owned in perpetuity. There is no intention or expectation that the Town of Medway will ever accept the roadway as constructed pursuant to this plan. There shall be established the Bay Oaks Homeowners Association to own the roadway extension. The Association shall ultimately maintain the private roadway parcel including but not limited to snowplowing and sanding, and maintain and operate the stormwater detention/infiltration system and related infrastructure located within the roadway right of way.
 5. *The Bay Oaks Homeowners Association* - Prior to plan endorsement, the Applicant shall provide a proposed Articles of Association or Incorporation establishing The Bay Oaks Homeowners' Association to be reviewed and approved by the Planning and Economic Development Board and Town Counsel. At a minimum, the document shall include provisions for membership by the owners of Lots 1, 2, 3 and 4 (and may include provisions for membership by the owner of the present 106 Fisher Street (*Medway parcel 26-019*) and 0-R Fisher Street (*Medway parcel 26-032*), management responsibilities, procedures for voting and fee assessment, and for the ownership and financial responsibility for the on-going maintenance, upkeep and repair of the Dover Lane including but not limited to snowplowing and sanding and the stormwater management system. The documents shall specify that the costs shall be divided equitably among the members.
 6. The Applicant shall specifically reserve to itself ownership of the fee in the extension of Dover Lane and easements shown on the subdivision plan in any deeds or other conveyances or transfers of any of the lots. The Applicant shall convey the fee in the roadway and the drainage easement to the Bay Oaks Homeowners Association prior to the sale of the last lot.
 7. Prior to plan endorsement, the applicant shall review the turning radii at the driveways with the Fire Chief and provide the Board with a written determination from the Fire Chief that the planned radii are sufficient to accommodate the Town's largest fire apparatus, or the plan shall be modified to make it acceptable.
 8. The existing addresses for 104 and 106 Fisher Street will be changed to Dover Lane addresses as specified by Medway Fire, Police and Assessing officials.
 9. Prior to endorsement, the plan shall be revised to incorporate all conditions as specified in this Certificate of Action. The Applicant shall provide such revised plan to the Planning and Economic Development Board and the Town's Consulting Engineer for review and approval. All conditions of this Certificate of Action requiring changes to the definitive subdivision plan must be addressed to the satisfaction of the Town's Consulting Engineer and the Planning and Economic Development Board before the Board will endorse the definitive subdivision plan.
 10. *Declaration of Protective Covenants & Restrictions and Private Roadway Maintenance Agreement Governing the Bay Oaks subdivision* – The future owners of lots 1, 2, 3 and 4 are subject to the *Declaration of Protective Covenants & Restrictions and Private Roadway*

Agreement Governing the Bay Oaks Subdivision to be executed and recorded with the definitive subdivision plan. Prior to endorsement, the Applicant shall provide a proposed *Declaration of Protective Covenants & Restrictions and Private Roadway Agreement Governing the Bay Oaks Subdivision* to be reviewed and approved by Town Counsel and the Planning and Economic Development Board. At a minimum, the *Declaration of Protective Covenants & Restrictions and Private Roadway Agreement Governing the Bay Oaks Subdivision* shall include language regarding the installation of light posts for each lot, the property owners' responsibility through a homeowners' association for the upkeep, repair, and on-going maintenance of the roadway including snowplowing and sanding, and the operation and maintenance of the stormwater management system.

11. *Lot Deeds* – Prior to endorsement, the Applicant shall provide the Planning and Economic Development Board with copies of the proposed deed to convey or transfer each subdivision lot for review, comment, amendment and approval by Town Counsel. Each deed shall state that the Applicant shall reserve to itself ownership of the fee in the roadway and easements shown on the subdivision plan. Each deed shall specifically refer to any and all easements shown on the plan for that particular lot. The deed text shall include descriptive language specifying all easements, boundary delineations, specific usages and purpose. Each deed shall clearly state that Dover Lane is a private way, not ever to be owned by the Town of Medway. The deed shall refer to the MODIFIED definitive subdivision plan. The deed shall refer to the *Declaration of Protective Covenants & Restrictions and the Private Roadway Maintenance Agreement Governing the Bay Oaks Subdivision*.
12. *Road Deed & Easements* – Prior to endorsement, the Applicant shall provide the Planning and Economic Development Board with a copy of the proposed deed to convey Dover Lane and all drainage easements shown on the plan to the Bay Oaks Homeowner's Association, for review, comment, amendment and approval by Town Counsel.
13. *Document/Plan Recording* – Within thirty days of recording the endorsed MODIFIED definitive subdivision plan, the *Subdivision Covenant, the Declaration of Protective Covenants and Restrictions and Private Roadway agreement Governing the Bay Oaks subdivision*, any articles of association establishing the Bay Oaks Homeowner's Association, with the Norfolk County Registry of Deeds, the Applicant or his assign shall provide the Planning and Economic Development Board with a receipt from the Norfolk County Registry of Deeds indicating that all documents have been duly recorded, or supply another alternative verification that such recording has occurred.
14. *Maintenance Responsibility During Construction* – The Applicant shall provide for snow plowing, sanding and full maintenance of the existing Dover Lane and its extension and all related stormwater management facilities throughout the entire construction process until the roadway is determined to be complete by the Board and is subsequently conveyed to the Bay Oaks Homeowners Association.
15. The applicant shall make a payment of \$1,000 to the Medway Fire Department Fund to be used exclusively toward the cost of a new fire alarm system for the community. Said payment shall be made before the last house lot is conveyed.

16. The applicant shall make a payment of \$ 2,247.00 to the Town of Medway Sidewalk Fund for the purpose of building sidewalks elsewhere in the community or the applicant will construct 166 linear feet of sidewalk elsewhere in the community as may be approved by the Medway Department of Public Services. In either instance, the payment shall be made or the work completed before the last house lot is conveyed.

B. General Conditions

1. *Expiration of Appeal Period* – Prior to endorsement of the modified plan, the Planning and Economic Development Board must receive the statutory notification of the expiration of the twenty day appeal period from the Town Clerk’s office.
2. *Payment of Balance of Fees/Taxes* – Prior to endorsement of the modified plan, the Applicant shall pay the balance of any outstanding plan review services by any outside consultants retained by the Planning and Economic Development Board and any other outstanding expenses, obligations, fees or taxes due the Town of Medway. Proof is required from the Medway Town Treasurer/ Collector that all real estate taxes are current for all property owned in Medway by the applicant.
3. *Subdivision Covenant* – Prior to endorsement of the modified plan, the Applicant shall sign a *Subdivision Covenant*, on a form acceptable to the Planning and Economic Development Board, to be reviewed and approved by Town Counsel, to secure construction of the ways and all related infrastructure and installation of utilities and services as specified in the approved modified subdivision plan. Reference to the *Subdivision Covenant* shall be noted on the cover sheet of the Definitive Subdivision Plan. The *Subdivision Covenant* shall specify that the roadway and all relevant infrastructure including the stormwater management system shall be constructed and all utilities and services shall be installed to the satisfaction of the Planning and Economic Development Board within three years of the date of plan endorsement. The *Subdivision Covenant* shall apply to lots 2, 3 and 4 as shown on the plan.
4. *Subdivision Surety* – At such time as the Applicant wishes to secure a building permit for any lot within the subdivision, the security provided by the *Subdivision Covenant* shall be replaced by a subdivision surety in compliance with General Laws chapter 41 §81U and the Board’s Regulations. Prior to the Planning and Economic Development Board’s approval of the *Release of Covenant* for any house lot, the Applicant shall provide suitable performance security to the Town of Medway in an amount equal to 100% of the amount that would be required for the Town of Medway to complete construction improvements and infrastructure maintenance if the Applicant failed to do so. The surety amount shall be approved by the Planning and Economic Development Board based on an estimate provided by the Town’s Consulting Engineer. The applicant shall also enter into a surety agreement with the Planning and Economic Development Board as provided in the Regulations. Any company providing the surety shall be acceptable to the Medway Treasurer/Collector.
5. *Order of Conditions* – Prior to endorsement of the modified plan, the Applicant shall provide the Planning and Economic Development Board with a copy of any and all “*Order of Conditions*” as issued by the appropriate agency, and recorded by the Applicant, pursuant to the Massachusetts Wetlands Protection Act. Any changes to the definitive subdivision plan that may be required under the “*Order of Conditions*” shall be presented to the Planning and

Economic Development Board by the Applicant, for review and approval as a further modification to the definitive subdivision plan. The Planning and Economic Development Board reserves the right to negotiate with the issuing authority any mutually acceptable modifications to the "*Order of Conditions*" that may be deemed appropriate by the Planning and Economic Development Board and the Town's Consulting Engineer and acceptable to the applicant. After the public hearing and acceptance of the modifications to the plan, the Planning and Economic Development Board shall take action on the modified plan, reporting said action to the Town Clerk. The statutory notification of the expiration of the twenty day appeal period must be received from the Town Clerk's office before the Planning and Economic Development Board endorses the plan modification.

Additionally, upon issuance of any "*Order of Conditions*" requiring further individual filings under the Massachusetts Wetlands Protection Act, the Applicant shall prepare an amended plan clearly identifying the lots requiring further action under the Wetlands Protection Act. The Applicant shall provide this plan for endorsement by the Planning and Economic Development Board and shall provide a receipt from the Registry of Deeds indicating that the endorsed amended plan has been duly recorded.

6. *Construction Observation* – Inspection of roadway and infrastructure construction by the Town's Consulting Engineer is required. Prior to endorsement of the modified plan, the Applicant shall pay a construction observation fee to the Town of Medway for such inspections. The amount shall be determined by the Planning and Economic Development Board based on an estimate provided by the Town's Consulting Engineer. A construction observation account shall be established with the Medway Planning and Economic Development Board endorsement of the modified plan. The Applicant shall provide supplemental payments to the Town of Medway for reasonable construction inspection services upon invoice from the Planning and Economic Development Board, until the road construction and stormwater drainage system are completed and the as-built plan has been reviewed and determined to be satisfactory for filing with the Town.
7. Within thirty days of endorsement of the modified plan, the Applicant shall provide the Town with a set of the approved plans in 11" x 17" paper format. The Applicant shall also provide the approved plan in CAD format compatible with the Medway GIS and acceptable to the Medway Board of Assessors (ArcInfo shape file - .shp). The Applicant shall pay any reasonable associated costs, as may be determined by the Board of Selectmen, to update the Medway GIS/Assessor's maps relative to this subdivision.
8. *Pre-Construction Meeting* – At least seven days prior to the start of any construction on the site, a pre-construction meeting shall take place with the Town's Consulting Engineer, the Planning and Economic Development Coordinator, the Medway Department of Public Services, the Medway Conservation Agent, the developer and his contractors. The construction schedule shall be reviewed and the procedures for inspections discussed. A copy of the final Stormwater Pollution Prevention Plan (SWPP) as filed with the Massachusetts Department of Environmental Protection (DEP) shall be provided to the Town.
9. *Proof of Taxes Paid* – Prior to the Planning and Economic Development Board's approval of the *Release of Covenant* for the first building lot, proof is required from the Medway Town

Treasurer/Collector that all real estate taxes and other municipal fees and charges are current for the property included in this subdivision.

10. *As-Built Plans* - The Applicant agrees to prepare and provide as-built construction plans prepared in accordance with the approved subdivision plan and with the *Subdivision Rules and Regulations* in effect at the time the as-built plans are submitted, to the satisfaction of the Planning and Economic Development Board. The Applicant shall provide the final as-built plan in CAD format compatible with the Medway GIS and acceptable to the Medway Board of Assessors (ArcInfo shape file - .shp). The Applicant shall pay any reasonable associated costs, as may be determined by the Board of Selectmen, to update the Medway GIS/Assessor's maps relative to this subdivision.
11. *Compliance* - All construction shall be as specified in the approved definitive subdivision plan and in full compliance with the *Subdivision Rules and Regulations* and all applicable local, state and federal laws, including but not limited to the Americans with Disabilities Act, the NPDES permit requirements, the Massachusetts Department of Environmental Protection's Stormwater Management Policy requirements, MEPA requirements, the Massachusetts Wetland Protection Act (Chapter 131, Section 40, M.G.L.) and the regulations of the Massachusetts Architectural Access Board for handicap accessibility.

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**BAY OAKS DEFINITIVE SUBDIVISION PLAN – MODIFIED
CERTIFICATE OF ACTION
MEDWAY PLANNING AND ECONOMIC DEVELOPMENT BOARD**

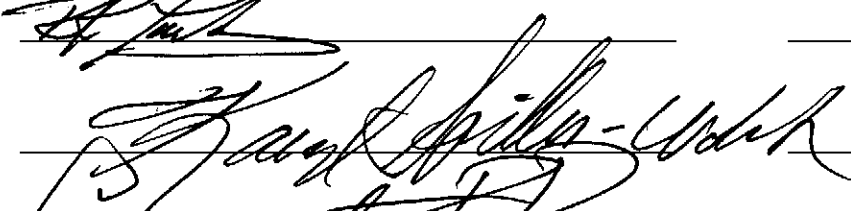
Date of Action by the Medway Planning and Economic Development Board:

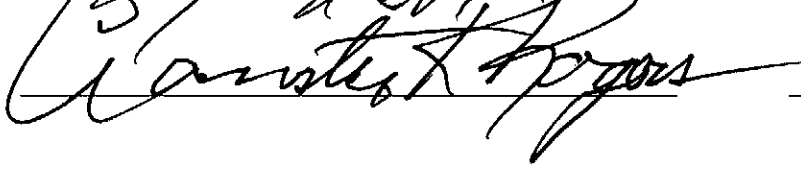
October 23, 2012

AYE:

NAY:







Date Signed: October 23, 2012

Attest: Susan E. Affleck-Childs Oct 23, 2012
Susan E. Affleck-Childs Date
Planning and Economic Development Coordinator

Date Filed with the Town Clerk: October 24, 2012

- Copies To:** Andy Rodenhiser
Rob Truax, GLM Engineering
Stephanie Bacon, Health Agent
David D'Amico, Public Services
John Emidy, Building Commissioner
Thomas Holder, Public Services
Suzanne Kennedy, Town Administrator
Jeff Lynch, Fire Chief
Will Naser, Assessor
Melanie Phillips, Treasurer/Collector
Barbara Saint Andre, Town Counsel
Karon Skinner-Catrone, Conservation Agent
Sergeant Jeffrey Watson, Police Safety Officer
Maryjane White, Town Clerk
Gino Carlucci, PGC Associates
Dave Pellegri, Tetra Tech