

**November 16, 2010
Medway Planning and Economic Development Board
155 Village Street**

BOARD MEMBERS PRESENT: Andy Rodenhiser, Bob Tucker, Chan Rogers, Tom Gay, and Karyl Spiller-Walsh.

ABSENT WITH NOTICE:

ABSENT WITHOUT NOTICE:

ALSO PRESENT: Susy Affleck-Childs, Planning and Economic Development Coordinator
Amy Sutherland, Meeting Recording Secretary
Gino Carlucci, PGC Associates Planning Consultant
Dave Pellegri, Tetra Tech Rizzo

The Chairman opened the meeting at 7:00 pm.

146 MAIN STREET ADAPTIVE USE OVERLAY SPECIAL PERMIT:

The Board is in receipt of a memo dated November 12, 2010 from Susy Affleck-Childs relative to the draft Adaptive Use Special Permit Decision. (**See Attachment**). The letter recommends that the Planning and Economic Board hold Mr. Steinhoff accountable for the condition of the sidewalk in front of the property and give him two options. The two options are included on page 9 of the revised AUOD Special Permit Decision dated November 11, 2010. (**See Attachment**)

The Board is in receipt of the most recently revised draft Adaptive Use Special Permit Decision dated November 11, 2010 for 146 Main Street. (**See Attachment**) The most recent revisions were noted in gray. The language references that the sidewalk has experienced heaving and cracking and could benefit from improvement. The language recommends that the Board hold Mr. Steinhoff accountable for the current sidewalk condition in the instance that the Route 109 Reconstruction project does not occur. Mr. Steinhoff would like to be accountable to option (b) which would require him to deposit with the Town of Medway, a check in the amount of \$6,928 as estimated by Tetra Tech Rizzo based on Mass Highway pricing. If as anticipated, the Route 109 Reconstruction Project is funded and implemented, the applicant's payment to the Medway Sidewalk Special Account shall be refunded to the applicant after the replacement sidewalk work is installed.

The Sidewalk Construction Estimate was submitted and reviewed by the Board. (**See Attachment**).

The Board suggested that if after two years from the date of the signed decision that if the Town has not entered into a contract then the money would be returned to Mr. Steinhoff with interest.

The Board discussed page (9) of the draft Decision relative to a proposed condition regarding landscaping. Member, Karyl Spiller-Walsh believes that there is a landscape plan which the Design Review Committee has seen and provided input. Susy Affleck-Childs will follow-up on this.

Findings (pages 5 && 6)

On a motion made by Karyl Spiller Walsh and seconded by Bob Tucker, the Board voted unanimously to approve the findings as amended on pages 5 & 6 of the Adaptive Use Special Permit for 146 Main Street for Steinhoff Realty Trust.

Waivers (pages 6, 7, & 8):

On a motion made by Chan Rogers and seconded by Bob Tucker, the Board voted unanimously to approve the waivers as written on pages 6, 7, & 8 of the Adaptive Use Special Permit for 146 Main Street for Steinhoff Realty Trust in relation to the Site Plan Rules and Regulations.

Special Permit:

On a motion made by Chan Rogers and seconded by Karyl Spiller-Walsh, the Board voted unanimously to approve the Special Permit as amended with noted changes for the Adaptive Use Special Permit for 146 Main Street for Steinhoff Realty Trust.

Fox Run Farm 40B development:

Susy Affleck-Childs informed the Board that she met with the new developer/owner and was provided a check for \$13,000 to be placed into the construction inspection account for this project. The covenant and bond estimate will be ready for the meeting next Tuesday. The Board will essentially be the manager of this project.

Dave Pellegrini from Tetra Tech Rizzo visited the site and provided an update. The binder coat is down and the road is ready to be paved. The sewer pressure was done. A compaction test will be done and a report will be provided. The contractor needed to remove some unsuitable material from the roadway and this was then backfilled with good dark gray crushed stone. There was an issue with soft spot paving. This will be cut out and fixed at a later date. Tetra Tech Rizzo will also be reviewing the drainage and utilities.

The developer is having a public hearing with the ZBA on December 1, 2010 to look at modifying the initial permit to allow for 12 units on 12 lots instead of 15

units on 10 lots. The Zoning Board voted that this was a going to be a significant change so there must be a new public hearing.

CHARLES RIVER VILLAGE OSRD

The Chairman reopened the public hearing for the proposed Charles River Village OSRD Development.

Town Counsel Barbara Saint Andre was present. She explained that the status of Neelon Lane is such that it is not a public way but has been laid out as a statutory private way. The burden is on the applicant to show it has rights to use this access. There is the issue with the utilities. If the applicant can prove and has made a reasonable basis that they can use Neelon Lane, then the Board will have to decide if the road is of sufficient size to install further utilities down this street. Another issue appears to be access. The Board will have to determine if there needs to be a second access to the site.

Member Spiller-Walsh wanted to know if this gives the abutters rights to change the existing way for commercial gain.

Town Counsel noted that it comes down to the deeded rights. The Town has the right to do this. No single abutter has the right to do this alone. It appears to be reasonable since the street is currently there and is serving homes with utilities and water.

Susy Affleck Childs reviewed the documents which were provided both within the Board packet along with additional information which was provided at the meeting by various parties. **These documents will be scanned and placed at the end of the minutes as Attachments.**

Documents Presented:

1. Letter from O'Driscoll Land Surveying Co dated October 20, 2010.
2. Letter from Joanne Kramer dated October 12, 2010.
3. Proposed Conditions Sketch – Village and Neelon Lane intersection
4. Letter from Sydney Smithers dated November 4, 2010.
5. Letter from Susan DiIulio dated November 15, 2010.
6. An email from Kim Boultenhouse Medway Fire Department dated November 16, 2010 on behalf of Fire Chief Paul Trufant.
7. Report of September 9, 2010 Site Visit by PEDB – 6 Neelon Lane
8. Planning Board decision for Charles River Acres Open Space Residential Development dated October 11, 2006.
9. A memo from Jeff Watson, Medway Police Department dated November 16, 2010.
10. Disclosure letter dated September 29, 2010 from Paul Yorkis.

11. Letter from Charles River Neighborhood Alliance dated November 9, 2010.
12. Letter from Attorney Thomas Valkevich dated November 16, 2010.
13. Letter from Guerriere & Halnon dated November 12, 2010.
14. Letter from traffic specialist Gillon Associates dated November 15, 2010.
15. Letter from abutter Ken Bancewicz dated November 15, 2010.

Faist Engineering:

Faist Engineering showed a revised plan dated October 29, 2010. The new plan shows Neelon Lane expanded to 20 ft width at the intersection with Village Street. The new plan showed a widening at both sides at the intersection with Village Street. This would allow an increase for turning radius and would require removing one tree. There are no sidewalks indicated.

Mr. Yorkis states that the letters from both the Fire and Police Departments approve the width as referenced in the most recently revised plan.

Letter Medway Police Department:

The Medway Police Department supplied a letter dated November 16, 2010. The letter is in relation to the drawing dated October 29, 2010. The letter makes reference that the proposed change in width would make it easier for vehicles and emergency vehicles to enter and exit Neelon Lane. The Police Department would like to see the installation of “No Parking” signs placed on Neelon Lane 20 feet from the intersection with Village Street. (See Attached)

Medway Fire Department (Email from Kim Boultenhouse):

The email makes reference that the Medway Fire Department has reviewed plans and has given approval. (See Attached)

Abutter, Mrs. Kaplan:

Mrs. Kaplan does not believe the conditions are improved with the new plan. It will still be difficult to have two cars coming and going at the same times. She questions if this is the safest option? Village Street is a busy street with lots of traffic.

Member Gay communicates that he feels the proposed paved roadway width is wide enough for a full size car at 30 miles an hour. He noted that there are other streets in Medway with much less width and that he lives on one of them (Maple Street).

Ms. McDonald makes reference that the oak tree would have to come down and possibly need to have a hearing in order for the developer to take down the tree.

Member Spiller-Walsh is wondering if there is enough space for the survival of the trees.

Letter from abutter Ken Bancewicz, 223 Village Street:

Mr. Bancewicz wants to make sure his letter is read. He does not see the new changes as a better option. Moving the 20' wide paved roadway toward the westerly edge of Neelon Lane causes considerable loss of his existing lawn. It also makes a non-conforming building setback condition worse. He wants to make sure that the Board considers this when acting on the submittal. **(See Attached)**

Abutter, Beth McDonald:

Ms. McDonald wanted to know what is different from the other decision which was rendered by the Board.

The Chairman reminds all that the applicant has proposed the project and the Board must review it based on how it is submitted. The previous decision was a different submittal. There does seem to be conflicting information and the Board will have to address this.

Member Spiller-Walsh recollects that with the previous decision, Neelon Lane was only presented as an emergency access road. The main access was Cherokee Lane and not Neelon Lane.

Letter from Mr. Yorkis:

The Board is in receipt of a letter from Paul Yorkis dated September 29, 2010 in relation to his disclosure. **(See Attached)**

Letter from abutter, Joanne Kramer 231 Village Street:

The Board is in receipt of a letter from Joanne Kramer dated October 12, 2010. Her concern is in relation to the 5 units which would abut her property along with privacy and trespassing through her yard. Mrs. Kramer makes note that her house is positioned wrong on the plan. She would like to see this corrected. **(See Attached)**

Chairman Rodenhiser indicated he would like to see a buffer provided for Ms. Kramer.

Member Spiller-Walsh sees the density as being far in excess than it should be. She further references the land use section and the open space section of the bylaw. This should not increase density. Based on the density formula, this site should only be 6 units and not 13 as referenced as usable acres based on the master plan.

Engineer Faist makes a point that the bylaw allows an OSRD on smaller pieces of land near the Charles River, and affordable housing bylaw requires them to have two affordable units and then get two bonus units.

Letter from Attorney Thomas Valkevich:

The Board is in receipt of a letter from Attorney Valkevich dated November 16, 2010. (See Attached)

Attorney Valkevich notes that the OSRD Bylaw text says that an OSRD cannot be on a site less than 3 acres and it should be 8 acres. There is a typographical error.

Susan Affleck-Childs acknowledged the typo, confirmed that it should be 8 acres and apologized for the error.

Member Spiller-Walsh noted that the OSRD is already protected under secondary conservation area. The applicant made a mistake. It is already protected by the reference to steep slope.

Abutter Beth McDonald wanted to know what is considered habitat? Mrs. McDonald also noted that her home is not referenced on the plan exactly as it is. This needs to be corrected.

The Board would like a reference point added to include the McDonald and Kramer property.

Letter from abutters Richard & Susan DiIulio, 7 Massasoit Street:

The Board is in receipt of a letter dated November 15, 2010 from Richard and Susan DiIulio. The letter identifies several issues in relation to the proposed Charles River Village development. The big concern is having public parking that might block access to the double gates on the property owned by the Charles River Tennis Club. Having parking spots there for the walking paths would block access to the gates owned by Charles River Tennis Club. DiIulio's are also concerned about the pine trees being taken down. (See Attached)

The Chairman noted that the gravel could be an improvement to the current parking on site.

Mr. Yorkis communicates that there has not been any discussion or proposal about the taking down of trees. There was a discussion about making a path way to the proposed path within the property and this would meander between trees.

Report of September 9, 2010 Site Visit – 6 Neelon Lane:

The site visit notes from September 9, 2010 were officially submitted into the record. (See Attached)

O'Driscoll Land Surveying, Co:

The Board is in receipt of a letter from O'Driscoll Land Surveying dated October 20, 2010. The letter provides explanation of the location of Neelon Lane.

(See Attached)

Paul Yorkis indicated he had a preliminary discussion about parking with Medway DPS Director Tom Holder. There are no specifics to report on.

Dave Faist, from Faist Engineering indicated that the exact location of the parking would need to be drawn more exact during the Definitive Plan phase.

Gillon Associates Letter:

A letter from Gillon Associates Traffic Parking Specialist, dated November 15, 2010 was presented to the Board. This letter references that the minimum width provided does not appear adequate for a roadway open to the public. It also notes that the American Disabilities Act requires that all sidewalks must be widened to five-foot minimum every two hundred feet. The letter also notes that the National Center for Safe Routes to school has indicated that the ADA 36 inch minimum sidewalk width was not a sidewalk recommendation. **(See Attached)**

Letter from Guerriere & Halnon:

A letter came from Guerriere & Halnon dated November 12, 2010. The letter is written on behalf of their client Beth McDonald. The letter provides information pertaining to the location, width and status of Neelon Lane. **(See Attached)**

Letter from Charles River Neighborhood Alliance:

The Board is in receipt of a letter from the Charles River Neighborhood Alliance. This letter is a series of questions addressed to the Board. The Neighborhood alliance also would like to know how the development complies with the OSRD provisions of the Town of Medway Zoning Bylaw. **(See Attached)**

Member Rogers notes that there were no signatures for the letter from the Charles River Neighborhood Alliance.

Beth McDonald provided a sheet of signators.

Cain Hibbard & Myers, PC:

A letter was received from F. Sydney Smithers dated November 4, 2010 who represents John Claffey. This particular letter addresses issues related to the letter submitted by Attorney Thomas Valkevich dates September 28, 2010. **(See Attached)**

Spiller-Walsh communicates that she would like to see the reduction of the density. She would also like to see the developer use the mature woodland since it is aesthetically pleasing. This could be used as a buffer in the car path location from Mrs. Kramer's property.

Member Gay communicates that there are issues with private versus public way along with having access through the properties. These issues need to be resolved.

The Board is in agreement that they would like to Tetra Tech Rizzo review the information presented relative to the width of the streets and report back with their findings. Both the applicant and the abutters need to provide all the necessary paperwork to Susy Affleck-Childs by Tuesday, November 23rd.

The public hearing for Charles River will be continued to Tuesday, December 14, 2010 at 7:30 pm.

DANIELS WOOD II Subdivision Modification – Endorse plans & Sign Covenant:

On a motion made by Chan Rogers and seconded by Bob Tucker, the Board voted unanimously to sign the new Covenant and endorse the Daniel Wood II Subdivision Plan Modification.

REQUEST FOR BOND REDUCTION - Williamsburg Condominium OSRD:

On a motion made by Chan Rogers and seconded by Bob Tucker, the Board voted unanimously to reduce the bond for Williamsburg Condominium to \$133,169 based on the estimate provided by Tetra Tech Rizzo.

MEETING MINUTES

September 28, 2010:

On a motion made by Chan Rogers and seconded by Bob Tucker, the Board voted unanimously to sign the minutes from September 28, 2010 with the noted revisions.

October 12, 2010:

On a motion made by Chan Rogers and seconded by Bob Tucker, the Board voted unanimously to sign the minutes from October 12, 2010 with the noted revisions.

October 19, 2010:

On a motion made by Chan Rogers and seconded by Bob Tucker, the Board voted unanimously to sign the minutes from October 19, 2010 with noted revisions.

October 26, 2010:

On a motion made by Chan Rogers and seconded by Bob Tucker, the Board voted unanimously to sign the minutes from October 26, 2010 with the noted revisions.

ADJOURN:

On a motion made by Bob Tucker, and seconded by Karyl Spiller-Walsh, the Board voted unanimously to adjourn the meeting at 10:00 PM.

Future Meetings:

The next meetings scheduled are: Tuesday, November 23, and December 14 & 28, 2010

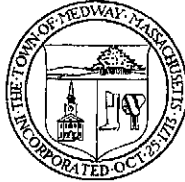
The meeting was adjourned at 10:00 PM.

Respectfully Submitted,

Amy Sutherland
Meeting Recording Secretary

Reviewed and edited,

Susan E. Affleck-Childs
Planning and Economic Development Coordinator



11-16-10

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

MEMORANDUM

November 12, 2010

TO: Planning and Economic Development Board members
FROM: Susy Affleck-Childs
RE: 146 Main Street - Adaptive Use Special Permit Decision

Attached is a revised Adaptive Use Special Permit Decision dated 11-11-10 for 146 Main Street.

At your 9/28/10 meeting, you reviewed the first draft of the AUOD special permit decision (dated 9/23/10) for this project. As I was preparing the special permit decision for you before I left for Australia, I realized we had not discussed the sidewalk in front of the property. As you know, we have language in the *Site Plan Rules and Regulations* (which apply to AUOD projects) regarding the owner's responsibility to supply or improve sidewalks. Consequently, I asked TTR to evaluate the sidewalk in front of 146 Main Street. You were previously provided a memo dated 9/16/10 from Dave Pellegrini regarding the condition of the sidewalks. TTR also provided that memo to Mr. Steinhoff. Another copy of that memo is attached.

I understand from reading the notes of the 10/12/10 PEDB meeting that Mr. Steinhoff attended the meeting and objected to the Board's discussion about him replacing the sidewalk in front of 146 Main Street. Apparently Mr. Steinhoff indicated that last spring when he met with Tom Holder and me about this project, he was told that he wouldn't have to replace the sidewalk in front of the property because of the Route 109 reconstruction project. Mr. Steinhoff provided an email note dated 9/29/10 from James Spaulding, PE with The Turner Group to confirm that conversation. The Board decided to hold off on approving the AUOD special permit until I could give you a recommendation on the sidewalk matter.

I certainly recall meeting with Mr. Steinhoff, his engineer and Tom Holder last spring about Mr. Steinhoff's project and briefing them about the strong prospects for the Route 109 reconstruction project. I believe we probably told him that if the Route 109 project was carried out, it wouldn't make any sense for Mr. Steinhoff to have to do any work on the sidewalk. I checked this week with Tom Holder and he believes he did NOT and would NOT have given him a completely free pass on the sidewalk. Although we were all enthused about the prospects of

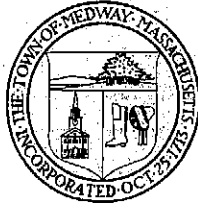
the federal and state funding of the project, we knew the funding was not a sure bet by any stretch!!

I would recommend that the PEDB hold Mr. Steinhoff accountable for the sidewalk and give him two options. I have included these two options on page 9 of the revised draft AUOD Special Permit decision dated 11/11/2010.

- A. Replace as part of this development project, the existing sidewalk along the entire frontage of the property with a 5' wide, fully ADA/AAB compliant concrete sidewalk. If this option is selected, before the Board endorses the plans, the project plans need to be revised to include this sidewalk construction.

or/

- B. Deposit with the Town of Medway, before an occupancy permit is issued, an amount equal to what the Town's cost would be to replace the entire length of sidewalk in front of 146 Main Street (\$6,938) as estimated by Tetra Tech Rizzo, the Town's Consulting Engineer based on Mass Highway pricing. If as anticipated, the Route 109 Reconstruction project is funded and implemented, the applicant's payment to the Medway Sidewalk Special Account shall be refunded to the applicant after the replacement sidewalk work is installed.



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

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

REVISED DRAFT – November 11, 2010

ADAPTIVE USE SPECIAL PERMIT DECISION
Steinhoff Realty Trust for 146 Main Street
SPECIAL PERMIT – _____

Name/Address of OwnerApplicant: Steinhoff Realty Trust
133 Main Street
Medway, MA 02053

Designer: The H.L. Turner Group
27 Locke Road
Concord, NH 03301

Plan Date: June 11, 2010, last revised September 8, 2010

Project Location: 146 Main Street

Assessor's Reference: MAP 5, Parcel 5/264.

Zoning: Agricultural Residential II and Adaptive Use Overlay District

Purpose: Substantially renovate the existing 1,632 sq. ft. residential structure on the property and construct a 2-story, 7,045 sq. ft. addition to the north of the existing structure, all space to be used for professional offices.

This is a decision of the Medway Planning and Economic Development Board (hereinafter “Board”) on the July 1, 2010 petition of Steinhoff Realty Trust (hereafter “Applicant”) of 133 Main Street, Medway, MA 02053, for an Adaptive Use Special Permit for property located at 146 Main Street presently owned by Steinhoff Realty Trust of Medway, MA. (hereinafter “Property”). The Special Permit is sought pursuant to *SECTION V. USE REGULATIONS, Sub-Section W. Adaptive Use Overlay District of the Town of Medway Zoning Bylaw (last amended November 19, 2007)* and other relevant provisions of the *Zoning Bylaw* in order to allow the Project as described below.

This Decision includes the following sections:

- I. Project Description
- II. Decision of the Board
- III. Procedural History
- IV. Supplemental Materials
- V. Findings
- VI. Waivers
- VII. Conditions, Limitations
- VIII. Appeal

I. PROJECT DESCRIPTION

The Petitioner seeks to modify the most recent previous single family residential use of the subject property at 146 Main Street. The Applicant is the current owner of the .7 acre parcel. The Applicant proposes to develop an 8,677 sq. ft. building through renovation and new construction, all to be used for professional offices. The project includes three components:

- renovation/reconstruction of the existing building
- construction of a new 2 story, 7,045 sq. ft addition
- extensive site improvements including drainage, parking, lighting, and landscaping and connections to Town water and sewer services.

The plan for the development of this property is shown on *Steinhoff Office Building, 146 Main Street, Medway, MA* prepared by the H.L. Turner Group of Concord, NH for Steinhoff Realty Trust. The plan was originally dated June 11, 2010 and was revised June 30, 2010. August 4, 2010 and September 8, 2010.

The applicant intends to develop this project as an energy neutral building (in general compliance with LEED standards) and will incorporate both solar and geothermal heating devices.

II. DECISION OF THE BOARD - After reviewing the application and information gathered during the public hearing process and considering all the evidence, the Medway Planning and Economic Development Board, at a duly posted meeting on September 28, 2010, voted to grant by a _____ vote, an Adaptive Use Special Permit to Steinhoff Realty Trust for the subject property at 146 Main Street, Medway, MA. as represented in the hearing and shown on the plans, subject to the waivers, conditions, safeguards and limitations granted herein. This special permit is general and runs with the land. It is the decision of this Board, as evidenced by its vote herein, that the aforesaid Property is a proper parcel to be developed under *SECTION V. USE REGULATIONS, Sub-Section W. Adaptive Use Overlay District of the Medway Zoning Bylaw (as amended June 6, 2005)* in that it meets all the requisite site development standards and special permit criteria.

Voting Planning & Economic Development Board Member

Grant/Not Grant

Karyl Spiller-Walsh
Andy Rodenhiser
Cranston Rogers
Robert K. Tucker
Thomas A. Gay

III. PROCEDURAL HISTORY

On July 1, 2010, Steinhoff Realty Trust filed an application for an Adaptive Use Special Permit with the Board and the Medway Town Clerk. The application consisted of:

- an Adaptive Use Overlay District Special Permit application dated July 1, 2010.
- an Adaptive Use Overlay District (AUOD) Plan titled Steinhoff Office Building dated June 11, 2010, revised June 30, 2010 prepared by The H.L. Turner Group, Inc of Concord, NH.
- a project narrative
- a drainage report dated Jun 11, 2010, revised June 30, 2010 from The H.L. Turner Group; and
- a certified abutters list.

Upon the Board's receipt of the Applicant's petition, a Public Hearing was scheduled to commence July 27, 2010 in the Sanford Room of Medway Town Hall, 155 Village Street, Medway, MA. Notice of the public hearing was posted with the Town Clerk at Medway Town Hall on July 1, 2010 and on the Town of Medway web site. The required legal advertisement was published in the *Milford Daily News* on July 13 and 19, 2010. Notice was also sent by registered mail to all parties of interest and abutters and the Planning Boards of all adjacent towns on July 6, 2010.

On July 6, 2010, a memo from the Board soliciting comments on the application and plan was distributed to the Board of Selectmen/Town Administrator, Assessors, Conservation Commission, Department of Public Services, Design Review Committee, Historical Commission, Inspector of Buildings, Fire Department and Police Department. The memo indicated that the public hearing was scheduled to begin on July 27th and requested review comments by that date. Review letters were received from the Economic Development Committee and the Design Review Committee.

The plans and all associated application materials were reviewed against the Medway Zoning Bylaw, SECTION V. USE REGULATIONS, Sub-Section W. Adaptive Use Overlay District, the Medway Site Plan Rules and Regulations, the Medway Subdivision Rules and Regulations, the Water/Sewer Department Rules and Regulations and good engineering practices. Tetra Tech Rizzo, the Town's Consulting Engineer provided review memos dated 6/24/10, 7/22/10, 8/5/10 and 8/25/10. PGC Associates, the Town's Consulting Planner, also provided review letters dated 7/22/10 and 8/26/10. As review letters were issued, the plans were modified to address the identified concerns and deficiencies which resulted in revised plans dated August 4, 2010 and September 8, 2010.

The public hearing commenced on July 27th and was continued to August 24, 2010 when the hearing was closed. Present for both public hearing sessions were members Andy Rodenhiser, Karyl Spiller-Walsh, Cranston Rogers and Tom Gay. Member Bob Tucker missed the July 27th hearing but was present for the August 24th hearing. Mr. Tucker did provide a Mullin's Rule certification that he had viewed a videotape of the July 27th hearing. Also present were Dave Pellegri of Tetra Tech Rizzo, the Town's Consulting Engineer and Gino Carlucci, the Town's Consulting Planner

Richard Steinhoff, the petitioner, was present at both sessions of the public hearing. Jim Spaulding of The H.L. Turner Group, attended the 7/27/10 session. Abutters and residents of the adjacent neighborhood attended the public hearing; they asked questions and provided opinions about the proposed development:

- Tom and Judith Giovangelo, 144 Main Street
- Ted and Elizabeth Lambert, 7 Temple Street
- Robert and Diane Piacentini, 9 Temple Street
- Vallishayee Rashmi, 25 Temple Street
- Tara Werlich, 155 Main Street
- Nancy Hamm, 10 Temple Street

The Board carefully reviewed the various plan submittals and all associated materials and information. Throughout its deliberations, the Board has been mindful of the statements of the applicants and their representatives, and the comments of the general public, all as made at the public hearings. The Board carefully analyzed the general purposes of the Adaptive Use Overlay District provision of the *Zoning Bylaw* and its specific requirements and standards as well as the requirements of Section 9 of Chapter 40A, M.G.L. specifically relating to Special Permits in making its findings, conditions of approval and decision.

IV. SUPPLEMENTAL MATERIALS

Documents

- Review Memorandum dated August 26, 2010 from the Medway Design Review Committee
- Letter of support dated August 23, 2010 from the Medway Economic Development Committee
- Response letter dated July 1, 2010 from The H.L. Turner Group, Inc. in response to the Tetra Tech Rizzo review dated 6/24/10.
- Response letter dated August 10, 2010 from The H.L. Turner Group, Inc. in response to the Tetra Tech Rizzo review dated 7/22/10 and the PGC review dated 7/22/10.
- Written communication received July 27, 2010 from Richard Steinhoff regarding the status of small wind power generation on the site.
- Request for waivers from Richard Steinhoff received August 17, 2010.

Plans

- Revised plans Steinhoff Office Building dated August 4, 2010 by The H.L. Turner Group, Inc.
- Revised Landscape Plan by Carolyn Cooney & Associates.
- Revised Lighting Plan dated September 8, 2010

V. FINDINGS - Based on the evidence and testimony presented at the public hearings as documented in the application materials and detailed record of this case, the Board makes the following findings regarding this application in accordance with *SECTION V. Sub-Section W. Adaptive Use Overlay District of the Town of Medway Zoning Bylaw (last amended November 19, 2007)*.

1. The Subject property, located at 146 Main Street, is located within the Adaptive Use Overlay District. The property has 165.95 feet of frontage on Main Street. *(This complies with the Zoning Bylaw requirement for a minimum of 50 feet of Main Street frontage for an adaptive use project.)*

2. The primary building existing on the parcel at the time of application was constructed in 1880. *(This complies with the Zoning Bylaw requirement for the site to have on it an existing building constructed before June 28, 2004.)*

3. The proposed use of the Property for offices for business and professional uses is allowed pursuant to *SECTION V, USE REGULATIONS, Sub-Section W, 3. b)* of the *Medway Zoning Bylaw (as last amended November 19, 2007)*. Overall, the subject parcel is in a portion of Main Street in which residential, professional and commercial uses historically and presently co-exist.

4. The Project preserves the overall residential character of the buildings along this stretch of Main Street/Route 109 as the original building is being maintained/renovated and the addition is designed in a highly complementary fashion. The change in use of the existing vacant and deteriorated residential structure to an office for professional businesses will establish a new economic viability for the existing structure.

5. The Project as proposed includes improvements to the existing historic residential building which has gone into extreme disrepair over recent years and does not presently enhance Main Street as a building of its age and character should. Planned work includes replacement of the siding, gutters and woodwork to maintain and enhance the structure's original architectural integrity and installation of modern services. The Medway Design Review Committee has provided significant input to the overall building and site design, working diligently to achieve a design for the new office structure that is substantively residential in character and compatible with the existing structure's architecture. The design of the addition as it has evolved is now compatible with the existing structure and the residential character of the adjacent properties. The combination of the building improvements and landscaping plan enhances the aesthetic appeal of the primary building and the site. The impact of the project on Main Street's visual character is positive.

6. A professional landscape plan has been prepared. Extensive landscaping is planned to enhance the existing structure and its new addition. The proposed landscaping serves as a buffer zone to adjacent residential properties on the east, north and west of the subject parcel.

7. The site is adequate for the proposed use for professional offices.

8. *Parking* – The applicant has proposed to provide 29 off-street parking spaces. All proposed parking is shown to be at the rear and side of the building. The proposed parking layout has been adjusted to ensure that there is the required 50 feet between the first parking space and the edge of roadway pavement on Main Street. The applicant has adjusted the layout to include 14 “compact car”

spaces along the eastern edge of the parking lot which have reduced dimensional requirements. Visitor and handicap accessible spaces are labeled on the plan. The Board finds that the provision of 29 parking spaces is adequate for the proposed uses of the site and the 8,677 sq. ft. size of the building @ one space per 300 sq. ft of gross floor space.

9. *Lighting* – As initially presented, the parking lot lighting plan was not residential character as it included 14’ tall light posts. As shown on revised plan dated September 8, 2010, the light posts were reduced to 10’ in height. A photometric analysis has been conducted and shows that lighting is adequate for the parking areas but results in 0 foot-candles at the property lines.

10. *Vehicular Access* - Provisions for traffic are adequate based on the Property’s proposed use. Sole vehicular access to this site shall be provided from Main Street. Although no new curb cuts are being added, the existing 12’ wide curb cut is being expanded to 24”. The Board finds this enlargement is necessary to ensure safe access into and egress from the property.

11. *Pedestrian and Bicycle Access* – The proposed provisions for pedestrian and bicycle accesses are adequate based on the building and the site. The property already has an existing sidewalk across the Main Street frontage. However, the sidewalk has experienced heaving and cracking and could benefit from improvement. It is anticipated but cannot be guaranteed that new Main Street sidewalks and curbing will be installed by fiscal year 2014 as part of the Route 109 Reconstruction project.

The applicant’s plans for 146 Main Street also show the construction of a new sidewalk from the front door of the building to the existing Main Street sidewalk. In addition, a sidewalk will be installed alongside the entrance driveway up to the main entrance of the new addition on the east façade of the building. A bicycle rack to accommodate 5 bicycles is also provided.

12. *Provision of Utilities* - The provisions in the Project for utilities, including sewerage disposal, water supply and stormwater management are adequate. The stormwater management design was reviewed by Tetra Tech Rizzo, the Town’s consulting engineer. The Project provides for adequate on-site retention and treatment of stormwater in compliance with Massachusetts’ Stormwater Management Policy and the Board’s Subdivision Rules and Regulations. The sewer and water connections were reviewed by the Medway Department of Public Services and determined to be adequate.

13. The proposed Project complies with the purposes of *SECTION V. USE REGULATIONS, Sub-Section W. Adaptive Use Overlay District of the Medway Zoning Bylaw (as amended June 6, 2005)*. The Project implements certain goals of the Medway Master Plan including encouragement of economic development, protecting small town character, and preserving historic sites.

V. WAIVERS

The applicant has requested waivers from the following sections of the *Site Plan Rules and Regulations*:

1. Section 204-4 B requires a scale 1 inch = 40 feet. The applicant requests a scale of 1” = 20’ to improve site drawing clarity and a finer resolution.

The Board grants(?) the waiver because 1"=20' provides greater detail and a finer resolution.

2. Section 204-4 D requires use of the North American Vertical Datum (NGVD) of 1988. The applicant requests the use of NGVD 1929 in order to match the recent survey of Main Street completed by the Norfolk County Engineers.

The Board grants(?) the waiver because matching the survey done by Norfolk County Engineers makes sense and will eliminate confusion in the future.

3. Section 204-5.B.4 requires existing topography to be shown at 2-foot intervals. The applicant requests that topography at 1-foot intervals be allowed to improve site drawing clarity and a finer resolution.

The Board grants(?) the waiver because 1-foot contours provide greater detail and a finer resolution.

4. Section 204-5.C.1 requires that existing conditions be shown within 100 feet of the subject property. The applicant requests that this be waived, at least as it pertains to manmade features because providing this information would require an extensive survey effort and would not add to the project or to any greater understanding of the project.

The Board grants(?) the waiver because it has a clear understanding of the context of the project and its impact on its surroundings. In this instance, the additional surveying effort required to comply will not add materially to the Board's understanding of the project

5. Section 204-5.D.4 requires site grading to be shown at 2-foot intervals. The applicant requests that site grading at 1-foot intervals be allowed to improve site drawing clarity and a finer resolution.

The Board grants(?) the waiver because site grading at 1-foot intervals provides greater detail and a finer resolution.

6. Section 204-5.D.6 requires that site utilities be shown on the plan. The applicant requests that the electric, cable, fire alarm and telephone service at the entrance to the building not be shown because the utility companies will connect to the building.

The Board grants(?) the waiver because the utility companies will have some discretion as to the location of these utilities. However, the location of these utilities shall be shown on the as-built plan (See Condition 15 B (2)).

7. Section 205-6.G.3.a requires parking spaces to be 10' x 20'. The applicant requests spaces to be 9' x 18' for regular spaces and 8' x 18' for compact spaces. This will allow for a safer parking lot by providing a full 50-feet between the street pavement and the first parking space.

The Board grants the waiver because the proposed 9' x 18' size of the regular spaces is a standard size that reduces impervious surface, the compact spaces conform to those allowed by the Zoning Bylaw, and the smaller spaces reduce impervious surface while maintaining the required number of spaces and allowing a 50-foot distance between the street pavement and the first space resulting in a safer lot.

8. Section 205-6H requires vertical granite curb along the perimeter of parking lots. The applicant requests that the vertical granite curbing be required only on the building side of the parking lot and no curbing on the remainder in order to facilitate site drainage and provide a softer, more aesthetically beneficial design.

The Board grants(?) the waiver in order to allow the low impact design drainage system and to soften the aesthetic look of the parking lot in a residential district.

The Board finds that a waiver is needed from the following section of the Site Plan Rules and Regulations:

9. Section 205-3, D. 3 requires that existing pedestrian ways shall be maintained and improved.

The Board finds that the existing sidewalk at 146 Main Street is deteriorated showing evidence of cracking and heaving. However, the Board grants (?) this waiver as provisions for improvements to the sidewalk are included in Condition #6.

The applicant has requested a waiver from the following section of the Subdivision Rules and Regulations

10. Standard Detail CD-12 requires a 7" curb reveal. The applicant requests a 6" curb reveal to facilitate compliance with ADA and Architectural Access Board regulations pertaining to slopes due to the distance between the building and parking areas.

The Board grants(?) the waiver since a 6" reveal is the Massachusetts Department of Transportation standard and using it will allow compliance with the AAB slope requirements.

The applicant has requested a waiver from the following sections of the Adaptive Use Overlay District Rules and Regulations

11. Section V. W. 5. e of the Zoning Bylaw requires that no curb cut be added and no existing curb cut be expanded unless the Planning Board finds that such changes are necessary to ensure safe access to the property.

The Board finds that due to the significantly expanded use of the property and its use as an office building necessitates that the curb cut be expanded in order to ensure safe access to the property.

VII. CONDITIONS/SAFEGUARDS/LIMITATIONS OF APPROVAL

1. The property shall not be altered or used except for a maximum of 8,677 sq. ft. of professional office space. No other use of this building is permitted. Any other uses will require the filing of a new special permit application.
2. *Plan Endorsement* - The Medway Planning & Economic Development Board shall endorse its approval of the Adaptive Use Special Permit on all sheets of the Steinhoff Office Building plan for 146 Main Street. Within 30 days after the Board files this Special Permit decision with the

Town Clerk, the Applicant shall submit a final AUOD plan reflecting all required revisions for the Board's endorsement.

The endorsed Adaptive Use Overlay District (AUOD) Plan is considered part of the Special Permit and shall be recorded therewith. Prior to Board endorsement, the Steinhoff Office Building plan for 146 Main Street shall be revised as follows:

- A. Title Sheet – Update index to include all sheets in the plan set.
 - B. Title Sheet – Remove list of abutters
 - C. Title Sheet – Add reference that the plan is also subject to an Adaptive Use Overlay District Special Permit to be recorded with the plan.
 - D. Sheet C2.1 Site Lighting Plan shall be revised. Light fixtures shall not be more than 10 feet tall so to achieve a more residential character. Also, details of the lighting fixtures shall be added to the plans.
 - E. Sheet L1 Landscape Plan shall be revised to specify the installation of evergreen plantings at the base of the free-standing building development sign.
 - F. Landscape plan along the northern boundary of the property adjacent to Temple Street shall be revised to include a more dense and varied landscape materials.
 - G. The signature block for Selectmen shall be removed and a signature with 5 lines for each member of the Planning and Economic Development Board shall be added to all sheets in the plan set.
3. This approval is conditioned on project completion in full compliance with the Steinhoff Office Building plan for 146 Main Street, as last revised September 8, 2010, as may be further revised as a condition of this permit.
 4. *Parking* – The Project shall include at least 29 parking spaces, which shall be a permanent condition of this permit.
 5. *Lighting* must comply with the Medway Zoning Bylaw, SECTION V. B. 7 Exterior Lighting Regulations. The exterior parking lot lights shall be turned off by 9:30 p.m.
 6. *Main Street Sidewalk* – Dependent on federal and state funds, the Town plans to undertake a Route 109 Reconstruction Project that will include improvements in the right-of-way at 146 Main Street (approximately 166 linear feet). However, as federal and state construction funding has not yet been specifically authorized, there is no guarantee that the Route 109 Reconstruction Project will take place. The Board must hold the applicant responsible for the current sidewalk condition in the instance that the Route 109 Reconstruction Project does not occur. The applicant can meet this obligation in one of two ways:

CK
DR
LTR

Kelly

Kathy belows
this has
been
done.

A. By replacing as part of this development project, the existing sidewalk along the entire frontage of the property with a 5' wide, fully ADA/AAB compliant concrete sidewalk. If this option is selected, before the Board endorses the plans, the project plans need to be revised to include this sidewalk construction.

or

B. By depositing with the Town of Medway, before an occupancy permit is issued, an amount equal to what the Town's cost would be to replace the entire length of sidewalk in front of 146 Main Street (\$6,938) as estimated by Tetra Tech Rizzo, the Town's Consulting Engineer based on Mass Highway pricing. If as anticipated, the Route 109 Reconstruction project is funded and implemented, the applicant's payment to the Medway Sidewalk Special Account shall be refunded to the applicant after the replacement sidewalk work is installed.

7. Fees - Prior to plan endorsement by the Board, the Applicant shall pay:

★ additional expenses

A. the balance of any outstanding plan review fees owed to the Town for review of the plans by the Town's engineering, planning or other consultants; and

B. any other outstanding expenses or obligations due the Town of Medway pertaining to this property, including real estate and personal property taxes and business licenses.

The Applicant's failure to pay these fees in their entirety shall be reason for the Planning Board to withhold plan endorsement.

8. The applicant shall make no further site improvements/changes that would alter the site's drainage patterns or characteristics as indicated on the plan approved by the Board.
9. Collection of garbage and domestic trash shall be the responsibility of the applicant subject to Board of Health *Rules and Regulations*.
10. The hours of operation for professional offices in this building shall be limited such that there will be no customer access to the building after 9:30 p.m.
11. This Special Permit shall lapse unless exercised within two years of its recording.
12. No expansion, addition, or any change of use(s) of any building or portion of the property at 146 Main Street shall be permitted without an amendment to or issuance of a new Adaptive Use Special Permit by the Board.
13. Inclusion of a design for the free-standing development sign as shown on Sheet A5.2 does not constitute approval of the sign by the Town of Medway Building Department.
14. *Wind Turbines* - The Steinhoff Office Building plan shows possible locations of wind turbines as the applicant expects to install small wind electric generation turbines on this property in the future. The Board's approval of this permit and the plan does NOT constitute an approval of either the future use or location of such small wind system turbines on this property. After the building is constructed and location testing is completed, the applicant is required to apply to

the Zoning Board of Appeals for a special permit to install small wind energy generation devices on this property and shall review such plans with the Medway Design Review Committee at that time.

15. *Construction Inspection*

- A. Duly authorized agents of the Town of Medway including but not limited to members of the Planning and Economic Development Board and its agents, staff or consultants shall have the right to enter upon the property at any time to inspect the site to ensure compliance with the terms and conditions of this Special Permit.
- B. The Department of Public Services will conduct inspections for any construction work occurring in the Town's right-of way in conjunction with the Town of Medway Street Opening/Roadway Access Permit.
- C. The applicant shall have a professional engineer licensed in the Commonwealth of Massachusetts conduct progress inspections of the approved site improvements. Inspections shall occur at least on a monthly basis. The engineer shall prepare a written report of each inspection and provide a copy to the Planning Board within 5 days of inspection.
- D. In the event the applicant seeks an occupancy permit before all site work is satisfactorily completed (see Condition 18 B. herein), the Applicant shall establish a construction inspection account with the Medway Planning & Economic Development Board. The Applicant shall pay a construction inspection fee to the Town of Medway in an amount to be determined by the Board based on an estimate prepared by the Town's Consulting Engineer. The funds may be used at the Board's discretion to retain professional outside consultants to inspect the site, identify what site plan work remains to be completed, prepare a bond estimate, conduct other reasonable inspections until the site work is completed and determined to be satisfactory, review as-built plans, and advise the Board as it prepares to issue a *Certificate of Completion* (see Condition 17 herein). Depending on the scope of professional outside consultant assistance that the Board may need, the Applicant shall be required to provide supplemental payments to the project's construction inspection account, upon invoice. Any funds remaining in the applicant's construction inspection account after the *Certificate of Completion* is issued shall be returned to the applicant.

16. *During Construction*

- A. The applicant shall take all measures necessary to ensure that no excessive dust leaves the premises during construction.
- B. There shall be no tracking of construction materials onto any public way. Daily sweeping of roadways adjacent to the site shall be done to ensure that loose gravel/dirt does not create hazardous or deleterious conditions for vehicles, pedestrians or abutting residents. In the

event construction debris is carried onto a public way, the Applicant shall be responsible for all clean-up of the roadway within twenty-four (24) hours of its occurrence.

- C. All erosion and siltation control measures shall be installed and observed by the Board's consulting engineer or the Conservation Commission prior to the start of construction, and maintained in good repair throughout the construction period.
- D. *Construction Time* - Construction work at the site and in the building shall commence no earlier than 7 a.m. and shall cease no later than 7 p.m. No construction shall take place on Sundays or legal holidays.
- E. *Construction Traffic/Parking* – All parking for construction vehicles and construction related traffic shall be maintained on the subject property. No parking of construction and construction related vehicles shall take place on nearby public or private ways.

17. *Project Completion*

- A. This permit shall lapse after two years of the grant thereof if substantial use has not commenced except for good cause. The approved work shall be completed by the applicant or its assignees within two years of the date of plan endorsement. Upon receipt of a written request by the applicant filed at least thirty (30) days prior to the date of expiration of this permit, the Board may grant an extension for good cause. The request shall state the reasons for the extension and also the length of time requested. If no request for extension is filed and approved, the special permit shall lapse and may be reestablished only after a new filing, hearing and decision.
- B. Prior to issuance of a final occupancy permit, the Applicant must secure a *Certificate of Completion* from the Board and provide the *Certificate* to the Inspector of Buildings. The *Certificate* serves as the Board's confirmation that the completed work conforms to the approved site plan and any conditions and modifications thereto, including the construction of any required on and off-site improvements. The *Certificate* also serves to release any security/performance guarantee that has been provided to the Town of Medway. To secure the *Certificate* of Completion, the applicant shall:
 - 1) provide the Board with written certification from a Professional Engineer registered in the Commonwealth of Massachusetts that all building and site work has been completed in strict compliance with the approved and endorsed plan, and any modifications thereto; and
 - 2) Submit six (6) copies of an As-Built Plan, prepared by a registered Professional Land Surveyor or Engineer registered in the Commonwealth of Massachusetts, to the Board for its review and approval. The As-Built Plan shall show actual as-built locations and conditions of all work shown on the original plan and any modifications thereto, as well as the location of all underground utilities. The final As-Built Plan shall also be provided to the Town in an electronic format as may be specified by the Board of Assessors.

18. *Plan Compliance*

- A. The Applicant shall construct all improvements in compliance with the approved and endorsed plan and any modifications thereto.
- B. No occupancy permit shall be granted until the Board has provided a written communication to the Inspector of Buildings that the project, as constructed, conforms to the approved AUOD plan and that any conditions including construction of any required on and off-site improvements, have been completed to the Board's satisfaction OR unless suitable security/performance guarantee has been provided to the Town of Medway, in a form and amount to the Board's satisfaction, to cover the cost of all remaining work.
- C. The Board or its agent(s) shall use all legal options available to it, including referring any violation to the Building Commissioner/Zoning Enforcement Officer for appropriate enforcement action, to ensure compliance with the foregoing Conditions of Approval.
- D. The Conditions of Approval are enforceable under Section. V. C. 12 of the *Medway Zoning Bylaw* (non-criminal disposition) and violations or non-compliance are subject to the appropriate fine. Any work that deviates from the approved plan and permit shall be a violation of the Zoning Bylaw.

VIII. APPEAL – Appeals, if any, shall be pursuant to Section 17 of Chapter 40A, M.G.L., as amended, and shall be filed within twenty (20) days after the date of filing of this notice in the Office of the Town Clerk. After the appeals period has expired, the Applicant must obtain certified notice from the Town Clerk that no appeals have been made. Said notice must be filed with the Norfolk County Registry of Deeds with this special permit and the endorsed plan. A copy of said recording must be returned to the Town Clerk and the Board to complete the file.

The Board hereby makes a detailed record of its findings and proceedings relative to this petition, sets forth its reasons for its findings and decision, incorporates by reference any plan or document received by it, and directs that this decision be filed in the office of the Town Clerk and be made a public record and that notice and copies of its decision be made forthwith to all parties or persons interested.

**IN ACCORDANCE WITH MASSACHUSETTS GENERAL LAW, CHAPTER 40A, SECTION 11,
NO VARIANCE, SPECIAL PERMIT OR CONSTRUCTIVE GRANT OF A VARIANCE
TAKES EFFECT UNTIL RECORDED AT THE REGISTRY OF DEEDS.**

ADAPTIVE USE SPECIAL PERMIT
146 Main Street – Medway, MA
Steinhoff Realty Trust
November 16, 2010

MEDWAY PLANNING & ECONOMIC DEVELOPMENT BOARD

I hereby certify that 20 days have elapsed from the date of this decision and that no appeal has been filed in this office.

Attest: _____ Date _____
Town Clerk

- cc: Richard Steinhoff, Steinhoff Realty Trust
Town Administrator/Board of Selectmen
Board of Assessors
Building Commissioner/Zoning Enforcement Officer
Department of Public Services
Design Review Committee
Economic Development Committee
Fire Department
Historical Commission
Police Department
Zoning Board of Appeals

Tetra Tech Rizzo

EXTRA SERVICE PROPOSAL

1 Grant Street
Framingham, MA 01702

Tel: 508-903-2000
Fax: 508-903-2001

Date: November 16, 2010	Project:	146 Main Street
Project No.: 127-21583-10005	Name:	Mr. Andy Rodenhiser c/o Susan Affleck-Childs
Extra Service Proposal No. 002	Company:	Town of Medway-Planning and Economic Development Board
Extra Service Description:		Sidewalk Estimate

NEED FOR EXTRA SERVICE:

Tetra Tech Rizzo was requested to complete a cost estimate to replace the existing sidewalk in front of the project site. We will prepare and present to the board.

DESCRIPTION OF TASKS:

- Prepare a cost estimate of a proposed concrete sidewalk at the project site and distribute.

CHANGES TO THE FEE SCHEDULE (CONTRACT PRICE):


Cost of the work described above is \$250, and will be added to the contract budget.

CHANGES TO THE COMPLETION DATES:

None

As confirmation of your authorization to provide these services and as approval of the budget, please execute and return one copy of this agreement for our records.

TETRA TECH RIZZO

By: 
 David R. Pellegrini, P.E.
 Project Manager

AGREED AND ACCEPTED FOR
TOWN OF MEDWAY

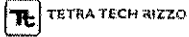
By: _____
 Andy Rodenhiser
 Title: Planning and Economic Development Board
 Chairman

Date: _____

Certified by: _____
 Susan Affleck-Childs

Title: Planning and Economic Development Coord.

Date: _____



Bond Value Estimate
146 Main Street-Sidewalk
Medway, Massachusetts
 November 12, 2010

One Grant Street
 Framingham, MA 01701
 Tel: 508/963-7000 Fax: 508/963-2001

ITEM NO.	WORK ACTIVITY	QUANTITY	UNIT	UNIT PRICE	TOTAL	COMMENTS
EARTHWORK						
127	Concrete Excavation	9	CY	150.00	\$/CY	1,350
	Subtotal					<u>1,350</u>
AGGREGATE						
151	Gravel Borrow ¹	5	CY	30.00	\$/CY	150
	Subtotal					<u>150</u>
CONCRETE						
701	Cement Concrete Sidewalk	77	SY	45.00	\$/SY	3,465
	Subtotal					<u>3,465</u>
LANDSCAPING						
751	Loam Borrow ²	12	CY	40.00	\$/CY	480
765	Seeding ²	70	SY	1.50	\$/SY	105
	Subtotal					<u>585</u>
	Project Summation					5,550
	Contingency	25%				1,388
	Site Total					<u>6,938</u>
	Project Total					<u>6,938</u>

Notes:

1. Assume 2 inches of new gravel for the length of the sidewalk to fine grade the sidewalk base.
2. Assume two feet of Loam and Seed installed on the side of sidewalk to transition the disturbed areas.
3. Unit prices are taken from the latest information provided on the Mass DOT website. They utilize the Mass DOT weighted bid prices (Combined - All Districts) for the time period 11/2009 - 11/2010.

RECEIVED
 NOV 12 2010

TOWN OF MEDWAY
 PLANNING BOARD

O'DRISCOLL LAND SURVEYING Co.
46 COTTAGE STREET
MEDWAY, MASSACHUSETTS 02053
Phone (508) 533-3314

RECEIVED
NOV 03 2010

TOWN OF MEDWAY
PLANNING BOARD

Mr. Andy Rodenhiser, Chairman
Planning and Economic Development Board
Town of Medway
155 Village Street
Medway, MA 02053

October 20, 2010

RE: Neelon Lane

Dear Mr. Rodenhiser,

I am writing this letter to confirm my explanation of the location of Neelon Lane, sometimes called Wilson's Lane, on the south side of Village Street in Medway.

The layout and description of Neelon Lane is from the Town meeting of April 6, 1863. According to the 1863 description of Neelon Lane, the way was to be located partly on land of J. W. B. Wilson, partly on land of C.B. Whitney and partly on land of Neeland.

The description of the way is as follows:

"beginning at the easterly end of the wall in front of the house of the heirs of John Karnes at the old Hartford Road (now Village Street), and running southerly in a straight line to the easterly front in the pickit fence separating land of said heirs from land of said Neeland, and thence running in the same direction to a fence opposite the southerly side of Neeland's barn and to be twenty five feet wide on the easterly side of said line."

Based on the description, the intent of the way is to be from the end of a wall, to a picket fence, extending to a fence opposite the southerly side of the Neeland's barn. Since the wall and the picket fence no longer exist, and their position can not be determined, I relied on deeds, plans of record, and monuments that still exist to form my opinion as to the location of Neelon Lane.

In 1950 the land formerly owned by the heirs of John Karnes (book 250 page 26) was divided into two lots. The lots are shown as Lot A and Lot B on a plan recorded in the Norfolk County Registry of Deeds as plan number 335 of 1950 in book 2903 page 45. This plan calls the way "Wilsons Lane". Lot A is now owned by Bancewicz, and Lot B is now owned by Newell. This appears to be the first recorded plan to show "Wilsons Lane" / Neelon Lane since it was layed out in 1863.

The perimeter of this plan does not mathematically close by 3.68 feet, nor does it show the end of the wall or picket fence mentioned in the 1863 description of Neeland Lane.

The deeds from Karnes forward to 1950 do not call for distances along Village Street to give evidence as to the location of Neelon Lane.

The 1950 plan also calls for iron pipes on the corners of Lot A and Lot B, which were not found.

Based upon my field survey, if the westerly side of "Wilson's Lane" is in the location of the 1950 plan, the lot corners of Lot B would fall into the existing pavement.

In 1863, at the time of the town meeting laying out the lane, the east side of Neelon Lane was owned by Charles B. Whitney.

In January of 1868 Charles B. Whitney sold his land to Milton Fisher. The deed is recorded in book 363 page 210. The description of that deed is as follows:

On Village Street nearly opposite the dwelling house of Alfred Brown and bounded easterly by land of Patty Lericohn (?) southerly upon Charles River, Westerly upon land of Francis Neeland in part and upon a town road in part and northerly upon Village Street. Containing 12 (?) $\frac{3}{4}$ acres more or less. Being the same (with the exception of the town road) conveyed to the grantor.

In April 1878 Milton Fisher sold his land to Jedidiah P. Plummer. The deed is recorded in book 579 page 559. The description of that deed is as follows:

Beginning at the northwest corner at Wilson's Lane and running easterly 9 rods more or less upon said Village Street to land of James L. Adams, thence southerly and bounded easterly upon land of Adams 60 rods more or less to Charles River thence southerly by river to the heirs of Francis Neeland, thence northerly, bounded westerly by land of heirs and Wilsons Lane to the point of beginning on Village Street.

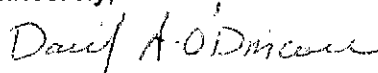
The deed from Fisher to Plummer in book 579 page 559 not only mentions the existence of Wilsons Lane, but calls for a distance of 9 rods, which equates to 148.50 feet, along Village Street from the corner of Wilsons Lane to the property corner. This appears to be the first deed distance call along Village Street from a lot corner to Wilsons / Neelon Lane.

The land formerly owned by Plummer was divided into two lots. The lots are shown as Lot 1 and Lot 2 on a plan recorded in the Norfolk County Registry of Deeds as plan number 1253 of 1959 in book 3776 page 530. The plan also shows a twenty five foot way called "Neelon's Lane. Lot 1 is now owned by Kaplan. Lot 2 is now owned by McDonald. The distance along Village Street for Lot 1 as shown on the 1959 plan is 148.50 feet, or 9 rods, which is in agreement with the distance cited in the deed from Fisher to Plummer in 1878.

It is my opinion that after analyzing all the abutting deed and plan information, that the northeast corner of Neelon Lane is located 148.50 feet from the northeast corner of Lot 1 as depicted on plan number 1253 of 1959. Further, it is my opinion that Neelon Lane extends twenty-five (25') feet to the west from the northeast corner of Lot 1.

Please feel free to contact me if you have questions concerning this matter.

Sincerely,



Daniel A. O'Driscoll
Professional Land Surveyor



Joanne M. Kramer
231 Village Street
Medway, MA 02053

RECEIVED
OCT 21 2010

TOWN OF MEDWAY
PLANNING BOARD


October 12, 2010

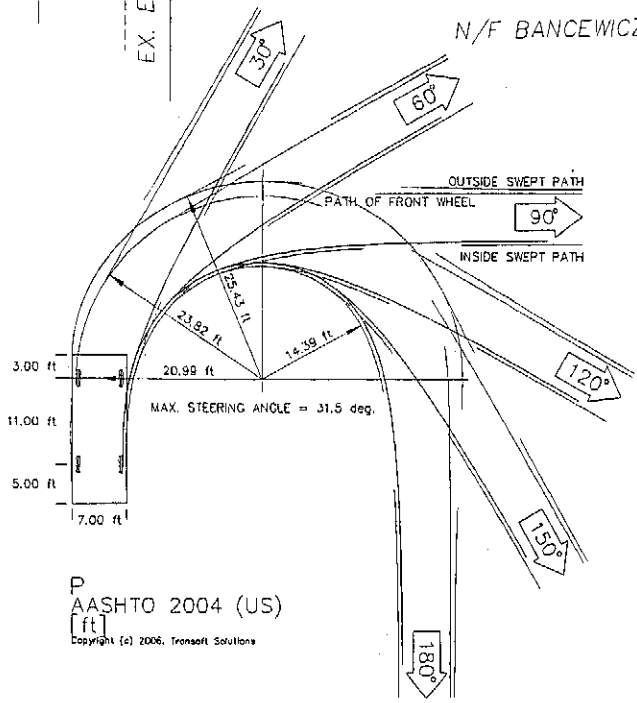
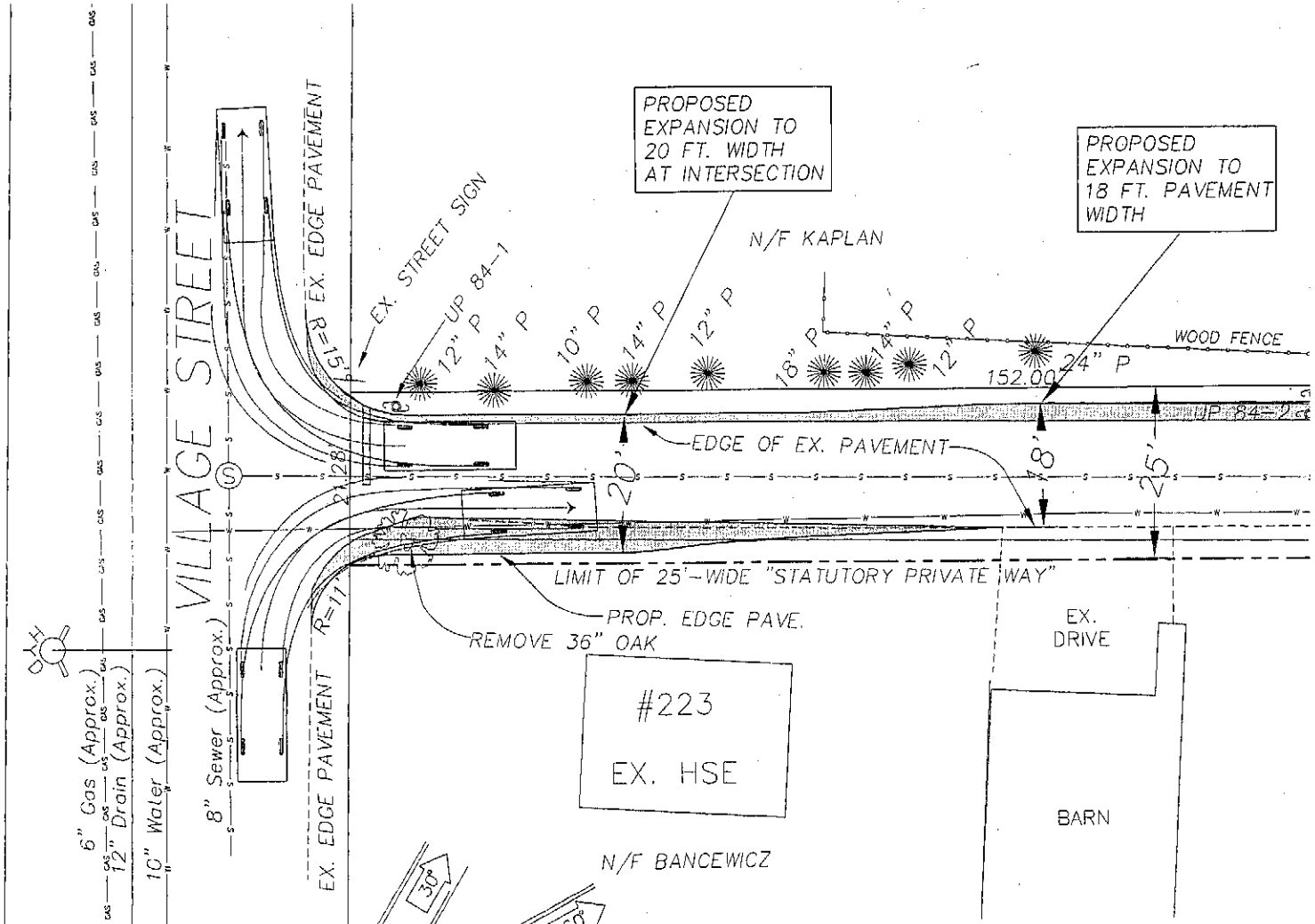
Dear Planning Board:

I am concerned about the number of units to be built in the Charles River Village development project. Thirteen units are too many. My property abuts the northwest side of the proposed development and five units out of the thirteen units are going to abut my property within 25 to 30 feet and two will be within 50 feet of my house.

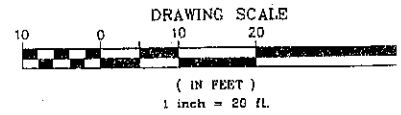
I am concerned about privacy and trespassing through my yard. There is a direct line between these units and the Burke school that is directly across the street from the end of my driveway. I would like the committee to consider approving less than thirteen units and to require the applicant to erect a 10 foot fence (to be maintained by the condo association) along the northern and western border of the development that abuts my property.

Thank you for your consideration,


Joanne Kramer



VILLAGE STREET - NEEL PROPOSED CONDITIONS



P
AASHTO 2004 (US)
(ft)
Copyright (c) 2006, Transoft Solutions

- NOTES:**
- 1) LIMITED EXISTING CONDITIONS & SITE PROPERTY BOUNDARIES SHOWN ON-THE-GROUND SURVEY BY O'DRISCOLL LAND SURVEYORS. THIS PLAN IS SOLELY FOR OSRD SPECIAL PERMIT CONCEPT PLAN.

Cain Hibbard & Myers PC
Counselors at Law

66 West Street, Pittsfield, Massachusetts 01201-5764, 413-443-4771 Fax 413-443-7694
Direct Extension: 413-629-1304 email: fssmithers@cainhibbard.com

F. Sydney Smithers

November 4, 2010

Mr. Andy Rodenhiser, Chairman
Planning and Economic Development Board
Town of Medway
155 Village Street
Medway, MA 02053

Re: Charles River Village – Neelon Lane
Proposal by John Claffey for Open Space Residential Development

Dear Mr. Rodenhiser:

This office represents the project proponent, John Claffey, with respect to a proposed open space residential development at Neelon Lane, Medway. We have previously provided you our opinion dated September 21, 2010 with respect to the status of Neelon Lane.

In particular, I have been requested to respond to portions of correspondence to your Board dated September 28, 2010 by Attorney Thomas J. Valkevich.

Mr. Valkevich is correct in asserting that the *Casagrande v. Town Clerk of Harvard* case holds that frontage on a statutory private way does not qualify for the endorsement “subdivision approval not required”, but no such endorsement is being sought from the Planning Board in this OSRD proposal.

Neelon Lane’s status as a statutory private way, explained in my letter of September 21, is not a cause for “utmost concern” as suggested by Mr. Valkevich. The public at large has the right and easement to use Neelon Lane, a statutory private way, as fully and effectively as any other town way in the Town of Medway. The portion of the Supreme Judicial Court’s holding in *Flagg v. Flagg* cited in my letter of September 21 clearly stands for the proposition that a statutory private way is distinguished from a town way or a county way only “because in its origin it was laid out for the accommodation and benefit of individuals. But when laid out and established, it becomes a way or easement in its nature public, which anyone having occasion may use and enjoy until it is lawfully discontinued.” *Flagg v. Flagg*, 82 Mass. 175, at 180 (1860).

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It is thus not at all “of importance...that such ways have different legal status than a public way.” (Valkevich letter, third paragraph).

The fifth paragraph of the Valkevich letter says:

As a Land Division under Part T., 2., c it would appear that the access does not qualify. Further, the proposal considered as a condominium project the access over Neelon Lane is questionable for a number of reasons beyond subdivision control.

The Claffey OSRD proposal before the Board is for a condominium form of land ownership. The cited section of the Medway Zoning Bylaw reads as follows:

c) *Land Division* – to be eligible for consideration as an OSRD, the tract may be a subdivision or a division of land pursuant to M.G.L. c. 41, §81P, provided, however that an OSRD may be permitted where intended as a condominium on land not so divided or subdivided (emphasis added).

The tract of land proposed for development as a condominium comprised of thirteen units and common areas and facilities is in fact “a condominium on land not so divided or subdivided,” and access to the development site by way of Neelon Lane is permitted, legal, appropriate and hardly “questionable.”

Neelon Lane is in fact 25 feet in width and the entire length and width of Neelon Lane as laid out may be used for accommodation of public passage including a paved street and sidewalk. The 1863 layout can be accurately reproduced on the ground (see correspondence dated October 20, 2010 addressing this issue from O’Driscoll Land Surveying Co.). The suggestion in the sixth paragraph of the Valkevich letter to the contrary is just not accurate.

Furthermore, as a statutory private way, open to public use as described in *Flagg v. Flagg*, no abutting party can obtain prescriptive rights in the location of Neelon Lane unless those prescriptive rights were obtained against the underlying land prior to the layout of Neelon Lane in 1863. In other words, since Neelon Lane has been laid out as a statutory private way and accepted, it has been open to the public use, and no party can get a prescriptive easement in Neelon Lane after 1863, any more than the public can obtain a prescriptive easement in Village Street. There has been no suggestion that the MacDonald family obtained a prescriptive easement by 20 years of open, notorious, hostile and continuous use prior to 1863.

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We think the assertions made in the seventh paragraph of Mr. Valkevich's letter, respecting traffic, are more than adequately answered by the traffic consultant's report dated September 2, 2010 issued by Connelly Associates.

The last sentence of that paragraph in Valkevich's letter states:

Given the limitations of the statutory private way [a traffic study should be required].

In answering, we respectfully suggest that the Connelly Associates report of September 2, 2010 constitutes a traffic study and secondly, there are no "limitations of the statutory private way" because, as previously explained, for purposes of access, installation of utilities, and improvement of the 25 foot width of the way to improve its access, there are no "limitations" arising by virtue of the fact that this is a statutory private way.

It is, of course, true that Neelon Lane was required to be constructed by Francis Neeland and that statutory private ways are maintained by the party(ies) for whom they are laid out, or his successors (in this case, John Claffey). We have been advised that the Town of Medway has maintained Neelon Lane. The town certainly may require that Claffey improve Neelon Lane for the purposes of his project, and, thereafter maintain it.

Because a statutory private way is open to the unfettered use and enjoyment by members of the public at large, be they abutters or persons not living in the neighborhood, we are confident that the town has it within its power to manage traffic, parking, signage and the like on Neelon Lane. To do so certainly does not require any additional takings by the town of the "rights" of abutting owners.

We have had referred to us excerpts of Article XII of the town bylaws and in particular, Section 12.9 (c)(3). Section 12.9 relates to access to public ways or a way which is certified by the town clerk as maintained and used as a public way. It is clear that a statutory private way is a "public way" for purposes of Section 12.9. As has been pointed out earlier, a statutory private way is "private" only in that it was laid out at the request of a private individual, was constructed at the expense of that private individual; and maintained by that private individual, it is public for all other purposes. We conclude that the town bylaws, including Section 12.9, apply to Neelon Lane and are perfectly within the authority of the town to regulate Neelon Lane.

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Because Neelon Lane is for all purposes a public way, except the manner of its layout and maintenance, no additional permissions or approval is required to install within Neelon Lane utilities and sidewalks (except, of course, the necessary permissions from the Town of Medway). Mr. Valkevich's reference to G.L. c. 187, §5 is a red herring. For the reasons stated in Mr. Valkevich's letter, G.L. c. 187, §5 does not apply to statutory private ways because they are, as he acknowledges, laid out by public authority. Chapter 187, §5 provides authority to owners of real estate abutting on private ways [not statutory private ways] who have an easement in that private way, to install certain enumerated public utilities within that private way. Mr. Valkevich's suggestion that c. 187, §5 is pertinent in the context of Neelon Lane is wholly misplaced.

The MacDonalds have no rights in Neelon Lane to any particular form of access or point of access other than as set forth in the town bylaw.

The Valkevich letter suggests in its fifteenth paragraph that the applicant's OSRD proposal "fails to comply with the existing rights of parties on Neelon Lane" but doesn't identify what those rights are. We respectfully suggest that Neelon Lane abutters have the same rights as the public at large – to pass and repass over the street. Mr. Valkevich asserts that the proposal doesn't comply with the Planning Board's own standards for issuance of a special permit as stated in §§10 and 11 of Article T of the Medway Zoning Bylaw, but he points to no specific instance where the applicant's proposal fails to comply with any of those criteria nor does he identify how the proposal fails to meet the purposes section of site plan review. The mere assertion of noncompliance is not evidence of noncompliance.

Finally, we have been asked to reply to the following inquiry from Susan E. Affleck-Childs, the Medway Planning and Economic Development Coordinator, in her e-mail of Tuesday, November 2, 2010 addressed to Paul Yorkis, as follows:

Please supply the Medway Planning and Economic Development Board with information/documentation to indicate what rights the current owner of the 7.6 acre subject property at 6 Neelon Lane (Parcel Id. 33) has to improve Neelon Lane, to install utilities and infrastructure in Neelon Lane, and otherwise use Neelon Lane to provide access to the site of the proposed Charles River Village OSRD Development.

As repeatedly stated above and in our earlier letter, Neelon Lane is a public way in the Town of Medway for all usual purposes of travel and installation of utilities in public

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ways. It was laid out in 1863 at the behest of a private individual and probably originally constructed on the ground by that private individual.

John Claffey, as the successor in interest to Francis Neeland, who was charged with the original cost of construction of Neelon Lane absolutely may be charged by the town with the costs of necessary improvements to Neelon Lane to make it suitable for his OSRD project. Moreover, as has long been recognized by Massachusetts Courts, a town can contract with a private party to make improvements to town ways. See, Perry v. Planning Board of Nantucket, 15 Mass. App. Ct. 144 at 157 (1983) where a developer sought an “approval not required” endorsement from the Nantucket Planning Board for lots shown as bounding on a duly laid out and accepted county way, which county way had never been constructed on the ground.

Perry expresses concern that he may be left without the realistic prospect of access to the proposed lots sufficient to permit development. He may, of course, petition to have the paper or otherwise inadequate public ways constructed or upgraded. Responsibility for construction [of county ways] rests with the town... The town, however, is free to contract with others, including Perry, to do the work. (emphasis added).

It is usual for town permit granting authorities to condition their approval of development plans upon the installation or upgrading of adequate public access, utilities, lighting, and other features necessary to provide for the health and safety not only of the occupants of the development but occupants of ways impacted by such development. The OSRD bylaw requires a special permit (Article T. 3), sets forth design standards (Section 10), requires certain findings be made by the permit granting authority (11), and permits the imposition of conditions, limitations and safeguards to promote the health, safety, convenience and general welfare of the community (Section 13). Among the conditions which may be properly imposed by the permit granting authority are “controls on the location and type of access to the site” which surely may be read to include requirements for paving, sidewalks, installation of utilities, signage, lighting and the like.

If the Board has any questions we will be happy to try to address them.

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Very truly yours,

CAIN HIBBARD & MYERS PC



F. Sydney Smithers

FSS/klm

cc: Paul G. Yorkis, President
John Claffey
Thomas J. Valkevich, Esquire
Barbara J. Saint André, Esquire

November 15, 2010

7 Massasoit Street
Medway, MA 02053

(508) 533-8043

Mr. Andy Rodenhiser, Chairman
Planning & Economic Development Board
Town Hall
155 Village Street
Medway, MA 02053

RECEIVED
NOV 15 2010

TOWN OF MEDWAY
PLANNING BOARD

Dear Mr. Rodenhiser,

Rich and I are presenting this to you to outline and reiterate some of our questions and concerns regarding the Proposed Charles River Village OSRD Development. Please share our concerns and questions with the members of the Planning & Economic Development Board. This letter contains thoughts and concerns from our perspective from Massasoit Street and the Charles River Road neighborhood. Since I, Susan A. Di Iulio, am also on the Board of Directors of the Charles River Tennis Club, Inc., I will also address a couple of issues that pertain to the same.

We have some issues that we would like to have taken into consideration in the decisions being made as the process proceeds. We were waiting for the best time to present this, and felt as time is going by that some of these issues need to be brought up sooner than later, to make sure they are taken into consideration as the development is currently moving through the process and decisions are being made.

As a follow up to the first part of this hearing on September 28th, we would like to address the comment that Tom Gay made, regarding access to the Open Space. He said that it was **not necessary to have Public Access**. For several reasons, we would like to request this to be considered.


- 1) **The loss of the four pine trees that would have to be cut down** for that to happen would greatly change the natural landscape that we have. It has taken many years for these trees to grow to the size they are now and we have lost so many pine trees over recent years due to a disease that went thru not only our neighborhood, but other parts of town. You can't replace the natural landscape that they provide as opposed to the man made open space that is being proposed.
 - a. We are enclosing a few pictures of the four pine trees that would have to be cut down to make room for these parking spaces.
 - i. We have also included a CD with these pictures in case you need to make copies for other members of the board.
 - b. There are two winter pictures and the rest are in the summer and fall.

We also feel that even if the "cottage style" houses conform to the style of other houses in the area, which we do not agree, that to put a development of that number of houses in between two reasonably populated existing neighborhoods does not necessarily conform to the rest of the area.

Cottage Style houses do not necessarily fit in with the designs of the original "cottages" that made up this neighborhood initially.

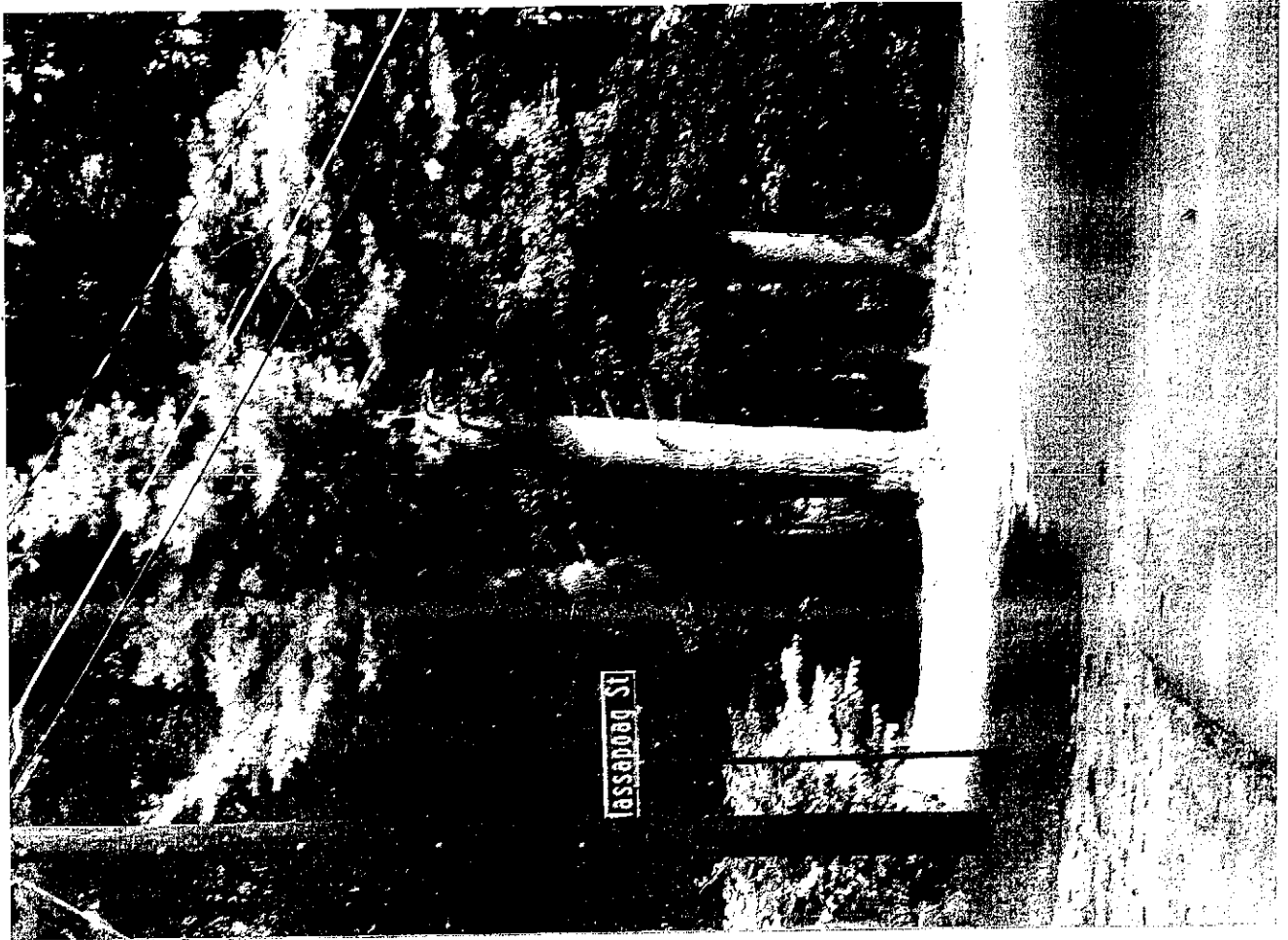
Thank you for considering our request.


Susan A. Di Iulio


Richard J. Di Iulio

- c. They show the picturesque view that these trees give that cannot be replaced with man made attractions. These are visible to anyone traveling on Massasoit Street.
 - d. They are a small part of the original landscape that was left when this part of the neighborhood was developed. They were left there and preserved for all these years, and have been a reminder of the natural beauty that has existed in this part of our neighborhood. When I drive up to my house, I see them ahead, and they remind me why I like to call this home.
- 2) **Having parking spots there for the walking paths would also block the access to the double gates owned by the Charles River Tennis Club, Inc. They use that entrance to their property for deliveries of surfacing and other materials, as well as utility equipment needed to maintain the courts, lights, and do other necessary work to maintain the tennis court area.** Pick up trucks and other equipment needs to come in off of that “stub end” of Massasoit Street to get into those gates.
 - 3) The Tennis Club, does not want to have to call the police to track down the owners of those cars to be moved whenever there is a need to access their gate. You don’t normally park in places that block access to gates on the property of a residence or business.
 - 4) This would also invite less than desirable visitors into our neighborhood, which has a population of young children, and people who walk dogs throughout the neighborhood. This has always been a great neighborhood for children to grow up and for people who want to own pets. Having unknown people in this area is too close to the Tennis Club property and neighboring houses.
 - 5) Both neighborhoods have issues with parking. On Neelon Lane and the Charles River Road neighborhood, no one has space for cars to park if they have company. There are always cars parked along Charles River Road and the side streets. So, to bring traffic thru Cherokee Street, or to use Massasoit Street as an access to the “open space” would add more to the congestion
 - 6) Over 40 years ago, there were variances provided for the tennis courts to build close to that part of Massasoit Street. Also, #1 Massapoag Street has a variance that was granted to the Realtor who built up Massapoag Street in the mid 60’s so that house could be built near the Street. At least the developer did leave those 4 trees there and they have provided some privacy to the house beyond them, as well as adding to the landscape of this neighborhood.
 - 7) Assuming that the town has records of this, I think we need to go back and find the minutes of any meetings pertinent any variances that were granted at that time.
 - 8) **If you plan to proceed with that plan, we see the need to have several people with different interests come by to meet with us and physically show us where that is proposed.** What you see on the map is not detailed enough with measurements to know exactly where you are talking about. We wish that to be a combination of 1 or 2 members of the Planning Board, and the developer. We will not meet with just the developer without someone from the town present.



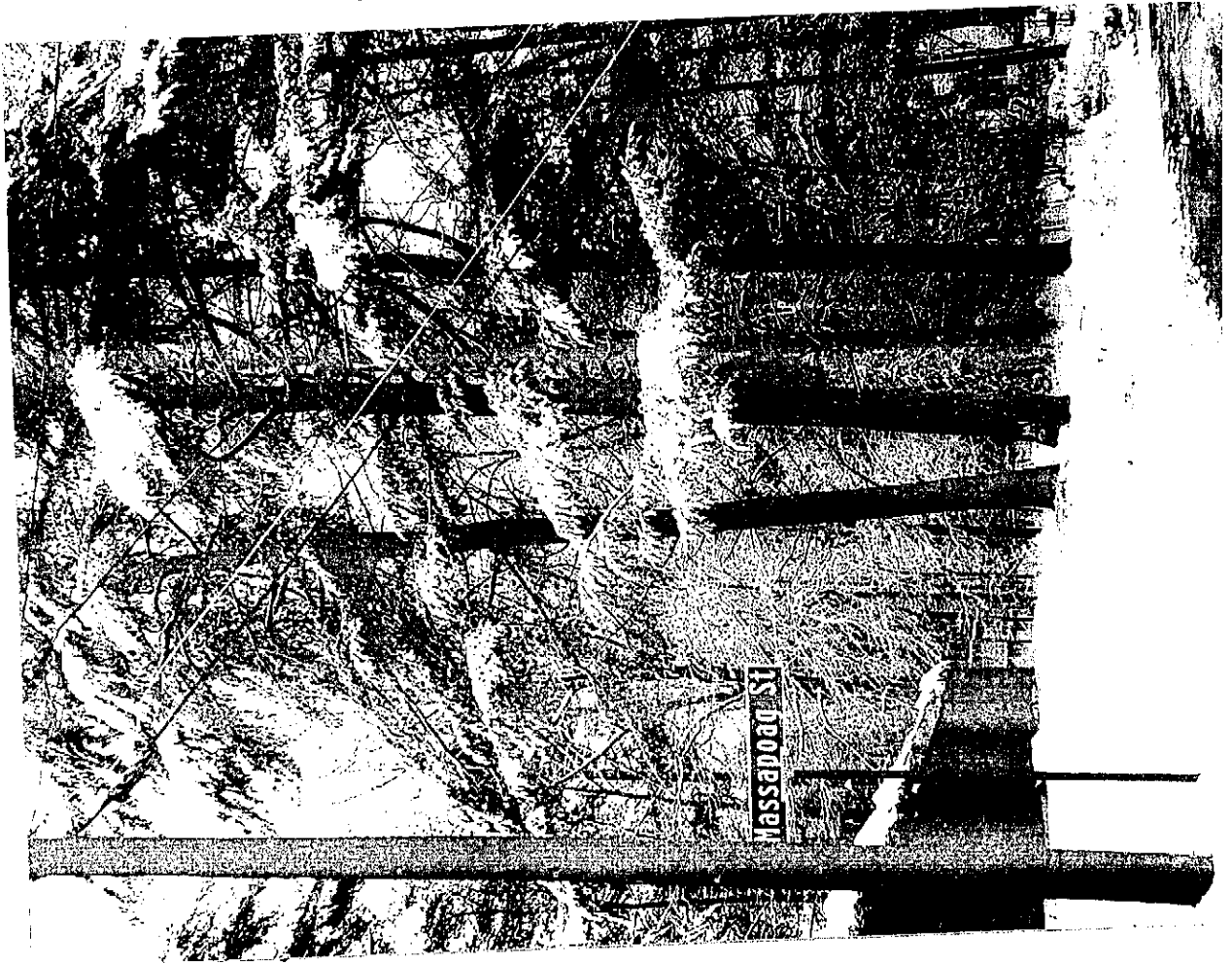












Susan Affleck-Childs

From: Kim Boultenhouse
Sent: Tuesday, November 16, 2010 12:08 PM
To: Susan Affleck-Childs
Cc: pgyorkis@aol.com
Subject: Neelon Lane Preliminary Review

Suzy, The Chief has reviewed the latest preliminary layout plan for Neelon Lane (dated 10/29/10) and has approved them as shown.

He has reviewed these plans with Paul Yorkis and given his approval.

Should you need any further information, please let me know.

Thank you,

*Kim Boultenhouse
Medway Fire Department
508.533.3211 phone
508.533.3254 fax*

Report of September 9, 2010 Site Visit – 6 Neelon Lane

The Medway Planning and Economic Development office scheduled a site walk of the property for the proposed Charles River Village residential development at 6 Neelon Lane to take place at 5:30 pm on Thursday, September 9, 2010. The gathering location was the end of Neelon Lane. The purpose of the site walk was to acquaint the members of the Medway Open Space Committee with the proposed open space parcels. The Planning and Economic Development Board had requested the Open Space Committee's input regarding the proposed open space for this development proposal. The site walk was NOT a continuation of the Planning and Economic Development Board's public hearing which had started 8-31-10.

The site visit was properly posted with the Medway Town Clerk as a meeting of the Open Space Committee. The notice of the site walk was also circulated to the allied Medway land use boards/committees which were invited to attend. The Medway Planning and Economic Development Coordinator contacted several adjacent abutters about the site walk as had been promised during the the first night of the public hearing on 8-31-10.

Present were:

- Open Space Committee members Jim Wickis, John Schroeder & Pat McHallam
- Planning and Economic Development Board members Andy Rodenhiser, Chan Rogers and Karyl Spiller-Walsh
- Charles River Village development team members John Claffey (applicant), Paul Yorkis (official representative), David Faist (engineer), Dan O'Driscoll (land surveyor) and Lowell Robinson (landscape architect).
- 12-15 abutters/neighbors including Beth McDonald, Richard and Susan Diulio, Elaina Kaplan
- Medway DPS Director Tom Holder
- Medway Engineering Consultant Dave Pellegri from Tetra Tech Rizzo
- Medway Conservation Agent Karon Skinner-Catrone

As the group was gathering, applicant John Claffey became concerned about the size of the group. Paul Yorkis asked who had the authority to invite non Town officials to the site walk. He asked Mr. Claffey if he would allow those not formally associated with the Town of Medway to walk the site. They were concerned about their liability due to the number of people and the heavily wooded nature of the site. Mr. Claffey determined that he would not permit non-Town personnel to enter the property to participate in the site walk.

The neighbors were upset and angry at not being allowed access to walk the property with Town officials. The abutters had many questions they wanted answered about Neelon Lane and associated access issues.

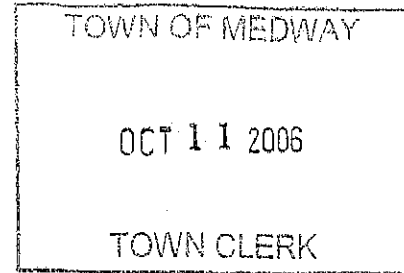
The Town officials and the development team walked south from the end of Neelon Lane toward the established cart path, turning right and traversing the property from east to west toward Massasoit Street. Where the property meets Massasoit, members of the Open Space Committee proceeded southerly along Massapoag to Riverview. Other walkers proceeded off site to Cherokee Lane where they were met by several abutters who owned property there including Barbara Ryan.

Topics discussed included parking options for public access to the open space, roadway connections, and other possible property improvements including the nature of the emergency access through Cherokee Lane. .

At the conclusion of the site walk, members of the Open Space Committee reconvened at the Medway Senior Center on Oakland Street to discuss the project further and to develop their recommendations to the Planning and Economic Development Board.



TOWN OF MEDWAY
Planning Board
155 Village Street
Medway, Massachusetts 02053



*Andy Rodenhiser, Chairman
Cranston (Chan) Rogers, P.E., Vice-Chairman
Karyl Spiller-Walsh
John Schroeder
Robert K. Tucker
Eric Alexander, Associate Member*

October 10, 2006

PLANNING BOARD DECISION
Charles River Acres Open Space Residential Development (OSRD)
OSRD Special Permit - GRANTED
OSRD Concept Plan - APPROVED

Name/Address of Applicant: KDEE Realty Trust, Inc.
54 Blackstone Street
Mendon, MA 01756

Name/Address of Property Owner: Michael Acquafresca
282 Purchase Street
Milford, MA 01757

Designer: Dunn McKenzie, Inc.
206 Dedham Street
Norfolk, MA 02056

Plan Dated: May 16, 2006, last revised August 1, 2006

Location: 6 Neelon Lane/accessed from Cherokee Lane
(off of Charles River Road)

Assessors' Reference: Map 1-7, Parcel 10/33

Zoning District: AR-II

Purpose: To construct an Open Space Residential Development (OSRD) with ten (10) dwelling units on a 7.727 acre site and permanently preserve 4.5 acres as open space, pursuant to SECTION V, Subsection T. of the Medway Zoning Bylaw.

PROJECT DESCRIPTION

The site under review totals 7.727 acres. The proposed development consists of six (6) single family detached homes and two (2) duplex buildings for a total of ten (10) residential dwelling units, construction of an approximately 553 foot long extension of Cherokee Lane, widening by approximately 3 feet the existing paved portion of Cherokee Lane (approximately 240 linear feet) easterly from Charles River Road, connection to Town sewer and water services, associated stormwater drainage facilities on a separate parcel to be conveyed to the Town of Medway, and 4.5 acres of permanently preserved open space, including trails, abutting the Charles River. The proposal also includes the construction of an

approximately 360 foot long emergency access/egress between the end of Neelon Lane and the cul de sac at the end of the extension to Cherokee Lane. It is the expectation that the extension of Cherokee Lane will become a public road, to be accepted by the Town of Medway.

PROCEDURAL BACKGROUND

In accordance with the provisions of Section V., Sub-Section T. of the Medway Zoning Bylaw and Section 9 of Chapter 40A of the Massachusetts General Laws, an application dated May 17, 2006 for an Open Space Residential Development (OSRD) special permit was filed by KDEE Realty Trust, Inc. with the Planning Board and the Town Clerk on May 17, 2006. The application package consisted of:

- an application and related materials for an OSRD special permit;
- a plan entitled "Charles River Acres Open Space Residential Development (OSRD) Concept Plan" dated May 16, 2006 prepared by Dunn McKenzie, Inc. of Norfolk, MA;
- OSRD Project Narratives dated May 16, 2006 prepared by David Berarducci Landscape Architecture and May 17, 2006 by John Parmentier of Dunn McKenzie;
- Development Impact Report dated May 17, 2006 prepared by John Parmentier of Dunn McKenzie;
- Soil Survey information dated May 15, 2006 from the USDA Natural Resources Conservation Service;
- Certified list of abutters within 300 feet of the site.

All matters of record were available for public review in the office of the Planning Board and the Town Clerk for all times relevant thereto. The public hearing was scheduled to begin on June 22, 2006, at which time comments would be received from the general public, municipal boards and/or departments and the Planning Board's consultants.

On June 1, 2006, a transmittal memo from the Planning Board soliciting comments on the application was circulated with the application and plan to the Board of Selectmen, Board of Assessors, Board of Health, Building Inspector/Zoning Enforcement Officer, Conservation Commission, Department of Public Services, Design Review Committee, Disability Commission, Fire Department, Police Department, Tree Warden and Water/Sewer Department, and the Town's consulting engineer and consulting planner. The memo noted that a public hearing was scheduled to begin on June 22, 2006 and requested comments by that date.

Notices of the public hearing were published in the *Milford Daily News* on June 7 and June 13, 2006. Notices were sent by certified mail to abutters and the Planning Boards of all adjacent towns on June 6, 2006. The Planning Board convened the hearing in the Sanford Room of Town Hall on June 22, 2006, and continued it to July 25 and August 22, 2006 at which time the public hearing was closed. All members voting on this Special Permit were present at all sessions. All persons in attendance were provided the opportunity to comment and present evidence.

PUBLIC HEARING TESTIMONY

Professional Commentary

John Parmentier, P.E., Dunn McKenzie Engineering, Norfolk, MA
Robert Babcock, Dunn McKenzie, Engineering, Norfolk, MA
David Bararducci, Landscape Architect, Boston, MA
Gino Carlucci, PGC Associates, Franklin, MA
Paul Carter, VHB, Inc., Watertown, MA

Applicant Comments

Karop (KIP) Dirazonian, Milford, MA

Review Letters

Paul Carter, P.E., VHB, Inc. – June 16, 2006 & August 18, 2006 (*for the Medway Planning Board*)
Gino Carlucci, PGC Associates – June 19, 2006 (*for the Medway Planning Board*)
David D'Amico, Medway DPS Director – July 13, 2006
Sgt. Jeffrey Watson, Medway Police Department – July 15, 2006
Mark Flaherty, Medway Water/Sewer Department – July 25, 2006
Ali M. Parand, P.E., AP Associates, Inc. – August 11, 2006 (*on behalf of the Medway Water/Sewer Board*)
Pallavi Kalie Mande, Charles River Watershed Association – August 14, 2006 letter

Citizen Comments

Richard and Susan DiIullo, 7 Massasoit Street, Medway, MA.
Judy Lefebvre, 10 King Philip Street, Medway, MA
Teresa Proctor, 8 Charles River Road, Medway, MA
Barbara & Frank Ryan, 5 Charles River Road, Medway, MA
Mary McDonald, 9 Neelon Lane, Medway, MA
Christine Kersananon, 2 Charles River Road, Medway, MA

Other Documents

8/21/06 letter from John Parmentier of Dunn McKenzie
8/22/06 letter from John Parmentier of Dunn McKenzie
8/29/06 Revised Open Space Calculations prepared by Dunn McKenzie

FINDINGS

To make its findings, conditions of approval and decision, the Board carefully reviewed the plan, as revised from time to time and last revised August 1, 2006, and all the materials, studies and documentation presented by the applicant, the Board's consultants, letters from Town officials and boards, together with the comments and correspondence of abutters and members of the public, and carefully analyzed the general purpose of the OSRD provision of the Zoning Bylaw and its specific requirements and standards, as well as the requirements of Section 9 of Chapter 40A of the Massachusetts General Laws specifically relating to Special Permits

As indicated above, based on the evidence and testimony presented at the public hearing sessions as documented in the Detailed Record of this Case, the Board, on September 26, 2006, made the following FINDINGS regarding this application in accordance with Section V. Sub-Section T. of the Zoning Bylaw:

1. Purpose and Intent – The Board finds that the proposed Charles River Acres OSRD meets the purpose and intent of Subsection T.1 of the Zoning Bylaw in that the development:
 - a) provides greater flexibility and creativity in design as the land plan protects the Charles River and the community's water supply by keeping development out of areas subject to erosion and preserving vegetated areas beyond the already protected wetlands.
 - b) minimizes the total disturbance on the site by utilizing smaller lot sizes and reduced road widths thus allowing more vegetated open space for preservation
 - c) results in the permanent preservation of 4.5 acres of open space including approximately 520 linear feet along the Charles River
 - d) discourages sprawl and encourages a more efficient form of development by using smaller lot sizes, thus reducing the extent of roadway and utility construction. Further, this form of development makes use of the gently sloped topographic parts of the site for housing and protects the steeply sloped part of the site through open space conservation.
 - e) furthers the goals of the community's open space plan by providing public access to open space bordering the Charles River.

- f) provides for a more economic and efficient manner of constructing the houses, streets, and utilities by accessing the site from Cherokee Lane and by using smaller lot sizes and reduced road widths, thus reducing development and future maintenance costs.
 - g) enhances community character by protecting the riverfront land from future private development and through the construction of a trail system in the open space area thus allowing residents to more readily enjoy the Charles River ecosystem for recreation and education. Subject to Condition # 5 below, the proposed housing to be developed will be designed in a fashion to be compatible with the character of the surrounding residential neighborhood.
 - h) does not impact agriculturally significant land.
 - i) enhances the real property values of the surrounding residential neighborhood because the neighborhood becomes strategically located adjacent to preserved and accessible open space on the Charles River.
2. Site Eligibility – The Board finds that the site meets the eligibility requirements of Subsection T. 2 as the property is comprised of a single parcel located within the AR-II district and proposes a mix of one and two-family homes as provided for in the bylaw.
 3. Permit Required – The Board finds that the requirement for a special permit is met since the applicant has submitted an application for an OSRD Special Permit.
 4. Pre-Application – The Board finds that the requirements of Subsection T. 4 are met. An informal, pre-application meeting occurred at the January 24, 2006 Planning Board meeting. Subsequently, two site visits occurred with the applicant, development team and abutting neighbors.
 5. Four-Step Design Process – The Board finds that the applicant has fulfilled the requirement of Subsection T. 5 for a Registered Landscape Architect to follow the specified four-step design process to design the site. Landscape Architect David Berarducci of Boston, MA was retained to function as part of the applicant's development team. Mr. Berarducci is a registered landscape architect in the Commonwealth of Massachusetts. The four-step design process is documented in his memorandum dated May 16, 2006.
 6. Procedures – The Board finds that, subject to the Conditions noted below, the required application procedures in subsection T. 6 have been followed and the application documents required to be submitted have been provided including a Site Context and Analysis Plan, a Concept Plan and a Yield Plan. Also submitted was a Narrative Statement describing how the proposed OSRD meets the general purposes and evaluation criteria of the bylaw and why it is in the best interests of the Town to allow an OSRD rather than a conventional subdivision on this site. The plan was distributed to town boards/departments for review and comment. Additionally, the application was reviewed by the Town's engineering and planning consultants.
 7. Maximum Number of Dwelling Units - Applying the Yield Plan formula as specified in Subsection T.7 to determine the maximum possible number of OSRD dwelling units for this site results in a maximum of eleven (11) units. The applicant proposes to construct six (6) detached single-family homes and two (2) duplex buildings for a total of ten (10) dwelling units in eight (8) structures on eight (8) lots. The Board finds that ten (10) dwelling units complies with this requirement and is an appropriate number for the site.
 8. Reduction of Dimensional Requirements – The Board finds that the eight (8) lots will meet the dimensional requirements as specified in Subsection T. 8 of the bylaw.
 - a) All eight (8) lots have frontage on a street that will be created through the Charles River Acres OSRD Definitive Subdivision Plan, those streets being the extension of Cherokee Lane and Neelon Lane (as required by Condition # 3g below).

- b) Each of the eight (8) lots has at least fifty feet (50') of frontage
- c) Building footprints are shown on the plan. Each lot has a front setback of at least 25 feet.
- d) All eight (8) lots have at least 11,225 sq. ft of area (50% of the minimum required for the ARII zone.)
- e) The building footprints are shown on the plan. No structure is closer than 30 feet from any other structure. Subject to Condition # 3b specified below, adequate landscaped buffers between structures will be provided.
- f) Subject to Condition # 3c specified below, no more than 50% of the garage doors will face the street from which the garage is accessed and those that do will be set back a minimum of five feet (5') from the front wall of the principle building.

9. Open Space Requirements – The Board finds that the open space requirements as specified in Subsection T. 9 are met. The minimum total open space required for this site is 166,114 sq. ft (3.81 acres), which is 50% of the total site area of 332,228 sq. ft. (7.627 acres). According to the 8/22/06 communication from Dunn McKenzie, the applicant proposes to designate 177,003 sq. ft (4.06 acres) as open space. The planned open space area constitutes 53.3% of the tract's total area. Of the entire site, 17,970 sq. ft is wetlands; this constitutes 5.41% of the site.

- a) The percentage of the minimum required open space that is wetlands shall not exceed the percentage of the total site that is wetlands.

$166,114 \times 0.0541 = 8,987$ sq. ft. (maximum amount of wetlands allowed in the minimum required open space). Since the entire 17,970 square feet of wetlands is proposed to be located within the open space, the total open space provided must exceed the minimum by at least 8,983 square feet ($17,970 - 8,987$) for a total of 175,101 sq. ft. As a total of 177,003 sq. ft. is proposed, the requirement is met.

- b) The open space as proposed is contiguous.
- c) The open space will include a walking trail accessible to the public from Neelon Lane, Cherokee Lane and Riverview Street. Subject to Condition # 3d noted below, the applicant will extend the trail/pathway through the unconstructed portion of the Massasoit Street public right of way (south of the Charles River Tennis Club) to connect with the paved portion of Massasoit Street. A small parking area shall be provided to facilitate public access to the walking trail/path system.
- d) The open space will include walking paths that will be accessible to the residents of the proposed development, the adjacent Charles River Road neighborhood, the community at large and the general public.
- e) Wastewater/sewer lines will be constructed under the extension to Cherokee Lane. The underground stormwater detention and treatment system shall be located on its own separate parcel that is adjacent to but not included in the designated open space area. However, a small portion of the open space area adjacent to parts of Lots 6, 7 and 8 will be used to install water main lines and to carry stormwater runoff to the underground detention area.
- f) Subject to Conditions #3d and #3i below, the open space parcel shall be permanently restricted for conservation purposes and shall be conveyed to a suitable entity in accordance with Subsection T. 9 f) to ensure its preservation.

10. General Design Standards – The Board finds that the general design standards of Subsection T. 10 are met.

- a) The development area is confined to 3.56 acres with the remaining 4.06 acres to be left in its natural state (*with the exception of development of a trail/pathway system*). Tree and soil removal is minimized by reducing the extent of cut and fill, reducing the road length, and
- b) The proposed street follows, as closely as is possible, the site's existing natural topography;
- c) A portion of the designated open space is situated as a buffer along the majority of the development's perimeter. Subject to Condition #3b below, suitable landscaping shall be provided where needed to screen and visually separate the new structures from the existing houses in the vicinity;
- d) The open space protects the primary visual amenity of the area, the Charles River, for public enjoyment.
- e) No historical, traditional or significant uses, structures or architectural elements will be removed during construction;
- f) Ten (10) dwelling units are proposed with six (6) detached single-family homes and two (2) duplex buildings for four (4) dwelling units. This provides for a variety of housing styles and types.
- g) The OSRD Definitive Subdivision Plan will show which dwelling units, if any, will have common/shared driveways.

DECISION/VOTE

After reviewing the application and all information gathered during the public hearing process, the Medway Planning Board, at a duly posted meeting on September 26, 2006, voted 4 to 0 to conditionally grant an Open Space Residential Development Special Permit to KDEE Realty Trust, Inc. for a 10-unit OSRD (*6 detached single family houses and 2 duplex buildings*) and to approve the Charles River Acres OSRD Concept Plan prepared by Dunn McKenzie, Inc. as last revised August 1, 2006 attached hereto as Exhibit A, subject to the CONDITIONS included herein. This approval is transferable to successors in title of the subject property, or assignees.

This decision is based on the following factors:

- (a) The OSRD achieves greater flexibility and creativity in the design of residential development than a conventional subdivision plan;
- (b) The OSRD as proposed results in the permanent preservation of 177,003 sq. ft (4.06 acres) as open space including forestry land, water bodies and wetlands.
- (c) The OSRD results in less sprawl and a more efficient form of development that consumes less open land and better conforms to existing topography and natural features than a conventional subdivision.
- (d) The OSRD disturbs 3.6 acres (47%) of a 7.627acre site.
- (e) The OSRD furthers the goals and policies of the Medway Open Space and Master Plan by preserving open space along the Charles River and providing for more compact development.
- (f) The OSRD facilitates the construction and maintenance of streets, utilities and public services in a more economical and efficient manner by minimizing the length of the street.
- (g) The OSRD Concept Plan and its supporting documentation comply with the Medway Zoning Bylaw.

Voting Planning Board Member

Grant/Not Grant

Andy Rodenhiser	Grant
Cranston (Chan) Rogers	Grant
John Schroeder	Grant
Robert K. Tucker	Grant

CONDITIONS OF APPROVAL

1. This special permit and the approved Charles River Acres OSRD Concept Plan are subject to the submission and approval of a Charles River Acres OSRD Definitive Subdivision Plan and compliance with all conditions of a Certificate of Planning Board Action approving the Charles River Acres OSRD Definitive Subdivision Plan under the Subdivision Control Law and the Medway Planning Board's *Rules and Regulations for the Review and Approval of Land Subdivisions* in effect at the time of subdivision application.
2. The Charles River Acres OSRD Definitive Subdivision Plan shall substantially comply with the approved Charles River Acres OSRD Concept Plan (*as specified in SECTION V., Subsection T. 6. (2) of the Zoning Bylaw*).
3. The Charles River Acres OSRD Definitive Subdivision Plan shall include the following items:
 - a. Construction details for a fourteen (14') wide emergency access/egress road between the ends of Cherokee Lane extension and Neelon Lane prepared to the satisfaction and subject to the approval of the Planning Board and Fire Chief Wayne Vinton. Pervious paving materials will be used.
 - b. A landscape plan prepared to the satisfaction of the Planning Board and subject to its approval. The landscaping plan shall include, but not be limited to:
 - (1) details for the required landscape buffers between houses;
 - (2) privacy landscaping on lots 6, 7, 8, 2, 3 and 4 adjacent to the open space trails;
 - (3) where needed, landscaping on the perimeter of lots 1, 2 and 8 to provide a privacy buffer with abutting properties;
 - (4) the cul de sac island which shall incorporate rain gardens and vegetated bio-retention areas
 - c. Architectural elevations prepared to the satisfaction of the Planning Board and subject to its approval. The elevations shall show the required building offsets. At least 50% of the dwelling units shall have garage doors that do NOT face the street.
 - d. Details for the proposed trail construction to the satisfaction of the Planning Board and subject to its approval. The applicant shall consult with Medway's Ad-Hoc Trail Committee/Jim Wieler on trail design ideas. The trail shall be laid out so as to connect with Massasoit and Riverview Streets and provide direct access to the Charles River. Trail design shall comply with standards of the Massachusetts Architectural Access Board and the Americans with Disabilities Act. A small parking area shall be provided toward the eastern end of Massasoit Street to provide public access to the trail.
 - e. The layout of the Cherokee Lane extension right of way shall be modified to connect to the McDonald property at 9 Neelon Lane (Map 1-7, Lot 1C/20) so as to permit future connections for roads and utilities. A parcel at least 40-feet wide shall be created between the end of the proposed Cherokee Lane right of way and the McDonald property. The parcel should be designated as future right-of-way and will be conveyed to the Town of Medway as part of the street conveyance. The area of this shall be deducted from the open space area.

- f. Off site improvements including:
- (1) repaving the existing Neelon Lane approximately 280 linear feet southerly from Village Street.
 - (2) widening to eighteen (18) feet (*from back of curb to back of curb*) the paved width of approximately 200 linear feet of existing Cherokee Lane easterly starting from Charles River Road. To the greatest extent possible, the road widening shall be to the south of the existing paved road within the 30 foot right of way so as to minimize any reduction in the lawn area on the Cherokee Lane side of the property owned by Francis and Barbara Ryan at 5 Charles River Road.
 - (3) constructing an 18' foot wide (*from back of curb to back of curb*) paved extension of Cherokee Lane, approximately 234 linear feet starting at the southeast corner of the property owned by Francis and Barbara Ryan at 5 Charles River Road to the project boundary and running easterly within the existing Cherokee Lane right of way between property owned on the south by the Charles River Tennis Club and Richard and Susan Diullio and on the north by Karen Nyquist of 3 Cherokee Lane.
 - (4) paving approximately 434 linear feet of Cherokee Lane easterly from Charles River Road to the project boundary.
 - (5) removal of certain trees and existing fencing and installation of new landscaping and fencing along the north side of the property owned by Richard and Susan Diullio at 7 Massasoit Street to the satisfaction of the Diulios which shall be documented in writing and provided to the Planning Board. This area shall be subject to a snow storage easement from the Diulios to the Town of Medway.
 - (6) Installing an 8-inch water main loop line along Cherokee Lane connecting the project area to Charles River Road and returning back through Massasoit.
- g. The 16-foot Neelon Lane right of way shall be extended southerly approximately 160 linear feet onto the OSRD parcel to provide sufficient frontage for Lot #4. A 14 foot wide paved extension of Neelon Lane shall be constructed to provide suitable access to and frontage for Lot #4. This area, presently shown as part of the OSRD open space, shall be removed from the open space area to be shown on the OSRD definitive subdivision plan.
- h. Lot # 4 shall be reconfigured (squared off) so that access and frontage shall only be from Neelon Lane. Lot #4 will not have any frontage on or access from Cherokee Lane.
- i. The designated open space area shall not include the emergency access/egress road. Instead, the emergency access/egress road shall become part of the Cherokee Lane right of way area.
- j. The plan shall be redrawn to reflect the above noted changes (3 g, h and i.) yet still meet the required minimum amount of designated open space.
- k. The two (2) duplex structures shall be located on Lots 1 & 8.
- l. Snow storage easement area shall be shown along the south side of Cherokee Lane (*north side of Diullio property at 7 Massasoit Street*)
4. The landscape plan, architectural elevations, and any designs for the retaining wall, drainage ditch and emergency gate access on Neelon Lane shall be submitted to the Design Review Committee for its review and recommendation to the Planning Board as part of the OSRD Definitive Subdivision Plan process and shall be to the satisfaction of the Planning Board and subject to its approval.

5. This special permit is limited to a maximum of ten residential dwelling units, 100% of the units shall have no more than 3 bedrooms; 40% of the units shall have no more than 2 bedrooms.
6. The open space shall be offered to the Town of Medway through its Conservation Commission or to a not-for-profit land preservation organization. If not accepted by either, the open space shall be conveyed to the Charles River Acres Homeowners Association. Any conveyance will include a deed restriction, to the satisfaction of the Planning Board, to ensure that the land remains as open space and accessible to the public in perpetuity. If conveyed to the Charles River Acres Homeowner's Association, the Association shall be responsible for the ongoing maintenance and upkeep of the open space and trail system.
7. Stormwater Drainage System - The planned stormwater management system for the new development shall be designed to also pick up surface runoff for about 140 feet of the 180 feet of the presently unimproved section of Cherokee Lane. The stormwater drainage system shall be designed to include appropriate Low Impact Development (LID) best management practice techniques including the use of permeable pavement/pavers; rain gardens; roof runoff collectors and other suitable techniques to minimize the project's impact on the Charles River, reduce stormwater discharge to the street, and maximize the recharge of stormwater into the ground. In preparing the OSRD Definitive Subdivision Plan application, the applicant shall address the review comments dated July 13, 2006 provided by David D'Amico, DPS Director.
8. The applicant shall prepare an easement document for Richard and Susan DiIulio of 7 Massasoit Street to grant an easement to the Town of Medway for snow storage along the north side of their property facing Cherokee Lane and secure said easement prior to the Planning Board approval of the definitive OSRD plan.
9. Affordable Housing – The applicant/developer shall offer for sale two (2) of the duplex residences, one in each building, on a right of first refusal basis to an entity involved in expanding the supply of affordable housing in Medway.
10. Water Conservation – As part of the OSRD Definitive Subdivision Plan application, the applicant shall propose specific water conservation measures that will be employed in the design of the residential dwellings, appliance selection, site landscaping, etc. in an effort to keep residential water use below 65 gallons per capita per day in accordance with DEP policy and the Town of Medway's water withdrawal permit.
11. Sewer Connections – In preparing the OSRD Definitive Subdivision Plan application, the applicant shall address the review comments dated August 11, 2006 provided by AP Associates, Inc., Environmental & Civil Engineering Services.
12. Scenic Road – In conjunction with the application for the Charles River Acres OSRD Definitive Subdivision Plan, the applicant shall make application to the Planning Board for a Scenic Road Work Permit regarding the roadway construction work in the Town's right-of-way on Charles River Road. Any mitigation requirements specified in a Scenic Road Work Permit will be incorporated into the Charles River ACRES OSRD Definitive Subdivision Plan Certificate of Action.
13. A Charles River Acres Homeowners Association shall be established and be responsible for the upkeep and maintenance of the landscaped island in the cul-de sac at the end of Cherokee Lane.
14. This special permit shall lapse in two years from the date hereof if substantial use thereof has not sooner commenced except for good cause, or in the case of a permit for construction, if construction has not begun except for good cause.

WAIVERS TO SUBDIVISION RULES AND REGULATIONS – During the course of the public hearing on the OSRD Special Permit, the applicant made known his intent to request waivers from the following sections of the *Subdivision Rules and Regulations* during the subsequent Charles River Acres OSRD Definitive Subdivision Plan phase of approval. These waivers include the following:

1. Section 5.7.6 – Applicant proposes to not locate freestanding trees with a diameter of 1 foot or greater, 24 inches above grade on the Existing Conditions Sheet.

2. Section 7.13.2 – Applicant proposes to NOT construct sidewalks on Cherokee Lane extension.
3. Section 7.6.2 g) – Applicant proposes to use overhead wires instead of underground utilities.
4. Section 7.9.4 a) - Applicant proposes a 40-foot ROW instead of 50-foot ROW for the extension of Cherokee Lane
5. Section 7.9.7 g) - Applicant proposes a pavement width of 22 feet instead 26 feet for the extension of Cherokee Lane. *(This is possible if the sidewalk is eliminated.)*
6. Section 7.9.6 b) - Applicant proposes a dead end street length of 1295 linear feet *(Charles River Road at Village Street southerly to Cherokee Lane and then easterly along Cherokee Lane to its end of the extension)* which exceeds the 600 foot maximum allowed.

Formal action on requests for waivers from the *Subdivision Rules and Regulations* cannot occur until the applicant applies for and the Planning Board acts on the Charles River Acres OSRD Definitive Subdivision Plan. During the course of that review, other waivers may be identified. In acting on any waiver request, the Board may impose conditions, safeguards and limitations in the best interest of the Town of Medway.

APPEAL - Appeals, if any, shall be pursuant to Section 17 of Chapter 40A of the Massachusetts General Laws, as amended, and shall be filed within twenty (20) days after the date of filing of this notice in the Office of the Town Clerk. A copy of this decision has been filed with the Town Clerk.

After the appeals period has expired, the applicant must obtain certified notice from the Town Clerk that no appeals have been made. Said notice must be filed at the Registry of Deeds with this special permit and the accompanying Charles River Acres OSRD Conceptual Plan. A copy of said recording must be returned to the Town Clerk and the Planning Board to complete the file.



Allen M. Tingley
Chief of Police

Medway Police Department

315 Village Street
Medway, MA 02053

Phone: 508-533-3212
FAX: 508-533-3216
Emergency: 911

November 16, 2010

To: Medway Planning and Economic Development Board

From: Jeffrey W. Watson
Sergeant/Safety Officer
Medway Police Department

Ref: "Charles River Village" Neelon Lane
Proposed Conditions Sketch

RECEIVED
NOV 16 2010

TOWN OF MEDWAY
PLANNING BOARD

I have looked at the Village Street – Neelon Lane proposed conditions sketch for the “Charles River Village” located off of Neelon lane. The drawing is dated 10-29-2010 and was prepared by Faist Engineering and O’Driscoll Lane Surveying. The sketch shows a change in the design to the entrance of Neelon Lane off of Village Street. The change would also eliminate the option for a sidewalk along Neelon Lane.

The proposed change would make it easier for vehicles and emergency vehicles to enter and exit Neelon Lane. If the Board accepts this plan the Medway Police Department would request the installation of a Stop sign along with a stop line painted on the pavement of Neelon Lane. We would also request the installation of “No Parking” signs to be placed on Neelon Lane 20 feet from the intersection with Village Street. All signs should adhere to the rules and regulations of the Medway Department of Public Services.

If the Board does not consider this plan and accepts the previous version of the plan that included the installation of a sidewalk on Neelon Lane, we would still request the installation of a Stop sign along with a stop line painted on the pavement of Neelon Lane. We would also request the installation of “No Parking” signs to be placed on Neelon Lane 20 feet from the intersection with Village Street.

The dimensions of the roadway in the Charles River Village Concept Plan dated 07/28/2010 would be the minimum needed for the access of vehicles and Emergency vehicles. The new roadway dimensions as shown on the 10-29-10 sketch would unfortunately remove the sidewalk. However, it would increase the safety of motorists entering and exiting Neelon Lane.

7 Independence Lane
Medway, MA 02053

September 29, 2010

Mary Jane White
Town Clerk
Town of Medway
155 Village Street
Medway, MA 02053

RECEIVED
OCT 28 2010

TOWN OF MEDWAY
PLANNING BOARD

RECEIVED

SEP 29 2010
TOWN CLERK

Dear Mary Jane:

I request that you place this letter in your public disclosure file.

Last night I appeared before the Town of Medway Planning and Economic Development Board on behalf of my client, John Claffey.

I have represented Mr. Claffey on many occasions before the Planning and Economic Development Board regarding different subdivisions.

At last evenings meeting a question was raised by an attorney representing an opponent of the project whether or not it was appropriate for me to be representing Mr. Claffey before the Planning and Economic Development Board since the Planning and Economic Development Board had appointed me to the Economic Development Committee which is an advisory committee to the Planning and Economic Development Board.

The members of the Planning and Economic Development Board indicated that they saw no conflict with me coming before them. They indicated that they and I did not always agree. They indicated that I have made substantial contributions to the community by providing advice on a variety of issues.

A video recording of this meeting exists.

The Economic Development Committee is an advisory group to the Planning and Economic Development Board. The Economic Development Committee has no approval authority.

For the record, at no time have I as a member of the Economic Development Committee represented a client before the Economic Development Committee. At no time as a member of the Economic Development Committee have I represented a client who had commercial or industrial interests before the Planning and Economic Development Board.

11/16/10

November 9, 2010

Planning & Economic Development Board
Town of Medway
155 Village Street
Medway, MA 02053

RE: Charles River Village OSRD proposal

Dear Planning Board:

We the Charles River Neighborhood Alliance respectfully submit the following list of questions to the Planning Board as to whether and how the proposed Charles River Village OSRD complies with several provisions of the Town of Medway Zoning By-Laws. In some cases, the By-law requires the Board make justifiable findings. We would like to know if, and if so, specifically how those findings can be made in favor of the proposal as submitted and modified at the last Planning Board meeting.

On the enclosed addendum to this letter, we have cut and pasted excerpts straight from the Town of Medway Zoning By-Law Section V, Subsection T, as well as excerpts from the Town of Medway Wetlands Protection By-Law and Conservation Commission Rules & Regulations, all found on the Town's website. In each case, the excerpts are shown in underline. They are listed in proper sequence. Our specific questions immediately follow the copied by-law text.

Also enclosed please find two conceptual conventional subdivision plans of the subject property labeled Exhibit A and Exhibit B. Exhibit A shows the simple geometry of a conventional subdivision under strict interpretation of the Zoning By-law and Subdivision Rules & Regulations. Exhibit B shows a conventional subdivision with certain waivers from the Subdivision Rules & Regulations having been granted by the Board. A hypothetical edge of clearing is shown on both plans. Our questions and comments occasionally refer to these conceptual plans. These exhibits are respectfully submitted only as a visual aid to assist the Planning Board in assessing the differences between filing conventional plans verses the current OSRD proposal.

We believe the applicant has chosen an OSRD filing simply to skirt the requirements of a conventional subdivision because, clearly, far fewer units could be permitted under conventional zoning. This is a bold statement on our part but it is a fact that the economic conditions we are under at this time appear to dictate smaller, more "affordable" condensed housing venues, but that alone does not justify the current proposal in question. We see just one public benefit to an OSRD filing, namely some deeded public access to the Charles River. However, such access could also be gained in return for certain necessary waivers under conventional zoning (See Exhibit B). Other than this benefit, nothing else appears of value to the Town of Medway.

It is our belief that the proposed OSRD is in direct violation of Section T Subsection 9 – Open Space Requirements - and is therefore not permissible at all. Furthermore, we believe any similar proposal which includes the same density serviced by Neelon Lane will have a tremendously negative impact on the surrounding properties and will create an unsafe traffic condition at the intersection of Neelon Lane and Village Street.

In our opinion, the detriments to this proposal certainly outweigh its benefits. It is our belief that far too many aspects of the proposed plan are in conflict with the intent of the OSRD By-law. We respectfully ask that the Planning Board take these observations into consideration as they assess the Charles River Village OSRD proposal.

It is not our intent to stop development of this property. Indeed, a well thought out, balanced development plan will truly enhance the parcel and surrounding neighborhood.

Sincerely,

Charles River Neighborhood Alliance

T. OPEN SPACE RESIDENTIAL DEVELOPMENT (OSRD)

1. Purpose and Intent - The primary purposes for OSRD are:

c) To minimize the total amount of disturbance on the site;

QUESTION 1: HOW CAN IT BE DETERMINED THAT DISTURBANCE HAS BEEN MINIMIZED? HAS THE APPLICANT CLEARLY SHOWN THAT THE PROPOSED PLAN MINIMIZES THE TOTAL AMOUNT OF DISTURBANCE? The applicant's proposal will disturb almost every square inch of the useable land contained in the parcel. Worse off, the proposal disturbs all of the area closest to the neighboring residences. It disturbs more area than even the conventional subdivision requiring waivers (See Exhibit B) would since the spacing of buildings in the proposal is so much tighter; all vegetation and trees between the buildings will have to be removed. Any conventional subdivision plan would require minimum lot frontages/widths and would therefore result in far fewer buildings thus allowing for greater vegetation retention within the same development area.

e) To discourage sprawl and encourage a more efficient form of development that consumes less open land and conforms more closely to existing topography and natural features than a conventional subdivision;

QUESTION 2: HOW DOES THE APPLICANT'S PROPOSAL DISCOURAGE SPRAWL, ENCOURAGE A MORE EFFICIENT FORM OF DEVELOPMENT AND CONSUME LESS OPEN LAND THAN A CONVENTIONAL SUBDIVISION? A conventional subdivision plan, based on the most liberal interpretation of the Zoning By-Law and Subdivision Regulations, would likely have to include a road that connects Cherokee Lane to Neelon Lane since both ways are less than adequate for access. (See Exhibit B) The applicant's proposal does not differ in any way from this; it proposes the same amount of road and consumes even more open land than that conventional subdivision would.

h) To preserve and enhance the community character;

QUESTION 3: IN WHAT WAYS DOES THE APPLICANT'S PROPOSAL PRESERVE AND ENHANCE THE COMMUNITY CHARACTER? The applicant proposes to radically alter the character of the private Neelon Lane by removing existing vegetation, widening the paved area and reducing the useable front yards of at least two of the residences thereon. The proposal calls for the demolition of a building of character. The proposal calls for density within the useable portions of the parcel substantially greater than that of the immediate area. The spacing of the proposed buildings is so close that no site line can be drawn straight through the proposed development area to actually see any open space. This is all a substantial departure from the character of the existing neighborhood.

7. Maximum Number of Dwelling Units/Yield Plan

b) The maximum number of OSRD dwelling units may not necessarily be the number of units the Planning Board approves in the OSRD Special Permit.

QUESTION 4: SPECIFICALLY HOW CAN IT BE JUSTIFIED TO PERMIT MAXIMUM OSRD DENSITY? When conventional zoning density yields less than half? When access roads are clearly less than up to minimum prescribed standards? When views will be essentially eradicated as a direct result of density? When proposed density is so much greater than that of existing neighborhood? The Planning Board is well within its right to permit a lesser density than what is proposed.

9. Open Space Requirements - A minimum of fifty percent (50%) of the tract shown on the development plan shall be open space. For purposes of this section, open space shall be considered to be land left in its natural state and/or land used for any of the purposes described in item (c) below. Open space is to be owned and managed as outlined in item (e) below. Any proposed open space, unless conveyed to the Town or its Conservation Commission, shall be subject to a recorded restriction enforceable by the Town, providing that such land shall be perpetually kept in an open state, that it shall be preserved exclusively for the purposes set forth herein, and that it shall be maintained in a manner which will ensure its suitability for its intended purposes.

a) In the minimum required open space area (equal to 50% of the total area of the proposed OSRD parcel), the percentage of land that is a resource area (as defined and regulated by the Medway General Wetlands Protection Bylaw (ARTICLE XXII) shall not exceed the percentage of the total tract that is a resource area; provided, however, that in any proposed open space beyond the minimum required, the applicant may include a greater percentage of resource area.

Below are two excerpts from the Town of Medway Wetlands By-laws (referred to in 9.a above) and Conservation Commission Rules, which define "resource area" as including buffer zones.

Section 21.2 Jurisdiction

(a) Except as permitted by the Conservation Commission, or as provided in this By-Law, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas: any freshwater wetlands, marshes, wet meadows, bogs, swamps, vernal pools, banks, reservoirs, lakes, ponds of any size, rivers, streams, creeks, land under waterbodies, lands subject to flooding or inundation by ground water or surface water, and lands within 100 feet of any of the above resource areas. Said resource areas shall be protected whether or not they border surface waters. To be afforded protection, Isolated Vegetated Wetlands (not including vernal pools) must encompass minimum surface areas of 5,000 square feet.

1.03. Jurisdiction

The Resource Areas protected by the By-Law are set forth in Section 2 of the By-Law and differ from those protected by the Massachusetts Wetlands Protection Act in that additional areas are protected by the By-Law. These include vernal pools (including those that have not been certified by any Massachusetts regulatory agency) and certain freshwater wetlands that may not meet the definition of bordering vegetated wetlands under the Massachusetts Wetlands Protection Act. The buffer zone surrounding a Resource area is itself deemed to be a Resource Area protected by the By-Law.

QUESTION 5: DOES THE APPLICANT'S PROPOSAL

COMPLY WITH OSRD OPEN SPACE REQUIREMENTS? It appears the applicant's calculation of the "resource area" does not include buffer zones. However buffer zones are clearly required by the definitions above. Assuming the resource area includes both the 100' buffer zone to wetlands and the 200' riparian zone, our calculations show the total "resource area" of the OSRD parcel to be approximately 2.25 acres, which is 29.6% of the total OSRD parcel area. The total upland area of the proposed open space parcel as shown on the plan dated July 28, 2010 would then be reduced by this 2.25 acres to 1.19 acres.

That said, the minimum amount of UPLAND open space required to comply with subsection 9.a. above should be calculated as follows:

Total Parcel Area:	7.61 ac
50% of Total Area:	3.81 ac

Min. Upland Area Required: $3.81 - 29.6\% = 2.68$ ac

We respectfully request the Board and its pier review consultants review the matter of required upland area in more depth using the applicant's latest revised and submitted plans and calculations.

g) The Planning Board shall make the final determination regarding the open space parcels. This shall include the location, size, shape and use of all proposed open space. If the land set aside for open space is excessively steep or wet, is not safely accessible, or is not dry for at least nine (9) months out of the year, the Board may consider this to be an inappropriate contribution of open space and may require additional land to satisfy this requirement. (Item 9. g) added May 14, 2007)

QUESTION #6: HOW CAN IT BE JUSTIFIED TO CONSIDER LAND WHERE THE MAJORITY OF IT CONTAINS SLOPE GRADIENTS BETWEEN 20% AND 30% TO BE AN APPROPRIATE CONTRIBUTION OF OPEN SPACE?

Obviously, the vast majority of the area proposed as open space is unbuildable due to excessive steepness, let alone environmental restrictions. And obviously, this is why the applicant proposes to "give it away." However, is the steep land at all useful as open space?

10. General Design Standards – The following General Design Standards shall apply to all OSRDs and shall govern the development and design process:

d) All open space (landscaped and usable) shall be designed to add to the visual amenities of the area by maximizing its visibility for persons passing the site or overlooking it from nearby properties.

QUESTION #7: HOW HAS THE APPLICANT MAXIMIZED THE VISIBILITY OF THE OPEN SPACE FOR PERSONS OVERLOOKING IT FROM NEARBY PROPERTIES? It appears the proposed dwellings will in fact completely block the proposed open space from most of the neighboring properties.

11. Decision of the Planning Board - The Planning Board may grant an OSRD Special Permit if it determines that a proposed OSRD has less detrimental impact on the tract than a conventional subdivision development proposed for the tract, after considering the following factors:

a) Whether the OSRD achieves greater flexibility and creativity in the design of residential development than a conventional plan;

QUESTION #8: HOW DOES THE APPLICANT'S PROPOSAL ACHIEVE GREATER FLEXIBILITY AND CREATIVITY SO AS TO HAVE A LESS DETRIMENTAL IMPACT ON THE TRACT THAN A CONVENTIONAL SUBDIVISION PLAN? The applicant's plan disturbs all the useable land within the tract. It proposes significantly more units on the tract and therefore creates significantly more impervious area than a conventional subdivision would. This, in turn required even more disturbed area to accommodate storm water management. Many more trees will be cut and many more yards of earth will be moved to create the proposed development as compared to a conventional subdivision.

c) Whether the OSRD promotes less sprawl and a more efficient form of development that consumes less open land and better conforms to existing topography and natural features than a conventional subdivision;

QUESTION #9: HOW DOES THE APPLICANT'S PLAN PROMOTE LESS SPRAWL, A MORE EFFICIENT FORM OF DEVELOPMENT, CONSUME LESS OPEN LAND AND BETTER CONFORM TO EXISTING TOPOGRAPHY AND NATURAL FEATURES OF THE TRACT THAN A CONVENTIONAL SUBDIVISION? It appears to consume the same amount of open land, if not more, and conform to the existing topography and natural features no differently from that of a conventional subdivision.

d) Whether the OSRD reduces the total amount of disturbance on the site;

QUESTION #10: DOES THE APPLICANT'S PLAN REDUCE THE TOTAL AMOUNT OF DISTURBANCE ON THE SITE FROM THAT OF A CONVENTIONAL SUBDIVISION? Clearly, the only useable development area of the tract is the area upgradient of the existing cart path. The applicant's plan simply stuffs more units into the same overall development area. The grading necessary to accomplish this will substantially eliminate a fair number of trees along the tract's borders with neighboring parcels and completely eliminate any potential for saving of trees between the dwelling units. A conventional subdivision would afford greater distance between dwellings within the development and would set the dwellings farther from several of the tract's borders, particularly those of Kramer and Lemmlers.

g) Whether the *Concept Plan* and its supporting narrative documentation complies with all sections of this Zoning By-Law.

QUESTION #11: DOES THE CONCEPT PLAN AND ITS SUPPORTING DOCUMENTATION COMPLY WITH ALL SECTIONS OF THE ZONING BY-LAW? Numerous points above indicate contradiction with the by-law. Additionally, the applicant has requested some **20+ waivers**.

i) Whether the OSRD is compatible or in harmony with the character of adjacent residential neighborhoods.

QUESTION #12: HOW IS THE OSRD PROPOSED COMPATIBLE OR IN HARMONY WITH THE CHARACTER OF THE ADJACENT RESIDENTIAL NEIGHBORHOOD? The density of the proposed OSRD is 1.7 units per acre, which includes its open space and the roadways within the OSRD. The density of the existing neighborhood within 200' of the boundaries of the proposed OSRD is 1.33 units per acre, not including public right of ways. The proposed OSRD is roughly 28.5% more dense than the surrounding neighborhood. Using the density of the existing neighborhood, just 10 units proposed would match. The OSRD's proposed density is clearly more detrimental to the tract and the existing neighborhood than that of a conventional subdivision.

j) Whether the OSRD will have a detrimental impact on abutting properties and residential neighborhoods.

QUESTION #13: HOW WILL THE PROPOSED OSRD NOT HAVE A DETRIMENTAL IMPACT ON ABUTTING PROPERTIES?
The proposed OSRD takes a small private lane servicing just 4 single

family residences and converts it to the main access road to a multi-unit condominium project. The proposed OSRD widens the same lane and cuts numerous desirable trees along it. By widening the same lane, at least two residences lose some front yard and driveway space. The proposed OSRD will increase the traffic count on that same private lane by 4 or 5 times, this is in increasing traffic by orders of magnitude, not by a small percentage. The proposed OSRD situates a high density layout in the areas closest to the abutting residences. The proposed OSRD is so dense that it completely removes views to existing open space and woods from those same residences. A conventional subdivision would have a far lesser impact in all aspects.

k) Whether the impact of the OSRD on abutting properties and residential neighborhoods has been adequately mitigated.

QUESTION #14: SPECIFICALLY WHAT MITIGATING MEASURES ON ABUTTING PROPERTIES ARE PROPOSED AND IF ANY ARE PROPOSED HOW CAN THEY BE DEEMED ADEQUATE? Numerous adverse affects and impacts have been raised above. It seems in order to adequately mitigate these impacts, the applicant should consider measures such as reducing the density, opening up site lines, spacing the buildings farther from each other and farther from abutting properties, retain some existing vegetation within the body of the development area, and altering any access road as little as is possible. In fact, the OSRD as proposed, takes the greatest leeway interpretable by the Zoning By-law and uses it to maximize its density, with no regard to the abutting properties.

Thomas J. Valkevich
Attorney at Law
99 Walnut Street, Suite G
Saugus, Massachusetts 01906
781-233-6812
Facsimile 781-231-5124
Email: tjvesq@netzero.com

November 16, 2010

✓ Town of Medway
Planning & Economic Development Board
155 Village Street
Medway, Massachusetts 02053

RE: Charles River Village Open Space Residential Development (OSRD)
Application for OSRD and Affordable Housing Special Permits
Hearing date November 16, 2010

Dear Board Members:

Please be advised that I again represent Mary E. McDonald of 9 Neelon Lane, Medway in the matter of the Application for OSRD and Affordable Housing Special Permits as to some issues raised by the plan as submitted. Ms. McDonald will also express some additional matters as to which she possesses personal knowledge as to site conditions, access issues, neighborhood matters and subsurface concerns at the meeting.

As a procedural matter, we still have concerns that the representative for the applicant is Mr. Paul Yorkis who, according to available records, is a member of the Economic Development Committee, and that the Planning and Economic Development Board is the appointing authority for members of that Committee. We have asked whether or not the Board has a public disclosure on file as to this relationship as to this matter, and the board responded that it did not. The board then proceeded to detail how much they have relied on and respected Mr. Yorkis' opinion. There was nothing to address the appearance of conflict by the appointing authority having a petitioner represented by the appointee on this matter.

Without reiterating all that has been presented before, I must address the material presented by Attorney F. Sydney Smithers who now has forwarded written a letter on applicant's behalf specifically discussing the Neelon Lane access issues. My questions/assertions are as follows:

1. The establishment of the statutory private way in 1863 for reasons stated previously is not the same as a private way. I pointed out numerous circumstances that demonstrate those differences, circumstances that, by analogy, limit a statutory private way from being considered the same as a public way for zoning purposes...and supporting the proposition that it's use in the within case clearly represents, given the "on

the ground" facts, a departure from standards applied in development projects in Medway.

2. No suggestion was made that prescriptive rights were acquired in the statutory private way. The original plan submitted which was referred to in my letter did not extend past or to the end of the barn on the Nealand property, and did not reflect the usage by the McDonalds for generations of the multiple access points used to access their parcel. It is also unclear on the revised plan if that is the case, since the revised plan it is unclear.

3. The width of Neelon Lane is described as 25 feet. The location of that 25 foot wide space on the ground is unclear. Even the applicant's surveyor had stated in a public meeting that where the additional footage over the approximate 18 to 21 feet could be that could be shown on the ground was uncertain, and that where it may be depended upon from which direction one started. See the letter from Guerriere and Halnon submitted describing the surveying and title issues raised by this discrepancy. This matter was brought to the board's attention at prior meetings (on two occasions). The letter submitted reiterating these matters bears signature and stamp of the engineer, addressing the Mr. Yorkis' concern that previous submissions were sketches. I note especially that Land Court determination would be needed to ascertain the exact location of such 25 foot space. To proceed without such determination risks inclusion of parcels owned by others in the proposed development, without any authority

4. Given the limitations of THIS statutory private way namely it's narrow "on the ground" dimension, its lack of sufficient radius for turning and lack of line of sight easements or other safety concern, even if twenty five feet wide, and the lack of actual experience data as to the impact of traffic trying to enter and exit onto and off Village Street, the safety issues have not been adequately addressed. Police and fire department letters do not address the day to day issues, and merely contain statements without factual back up. The Connelly Associates Report likewise focuses on the travel up and down the Lane, but does discuss turning radius issues with any engineering data.

Attorney Smithers and the petitioners are "confident" that the Town can manage traffic on the way. They do not demonstrate legal certainty, only confidence. Clearly, the traffic impact of 13 three-bedroom homes, with one or two cars, and multiple daily trips, with heavy usage during morning and evening commuting hours, and potentially hundreds of trips per week, together with delivery and service vehicles, including commercial trucks, create safety issues that warrant denial of any proposal that envisions Neelon Lane as its primary access. This is especially true given the fact that the parcel to be developed abuts Cherokee Lane on its westerly boundary, a thirty foot wide public way, which was obviously intended as future development access to the subject parcel, as was envisioned by prior boards. A traffic study should be required given the fact that the volume of traffic likely to be generated by the units, and the limited width of Neelon Lane, on their face, clearly demonstrate the inadequacy of Neelon Lane as safe and convenient access.

The answer that they are "confident" about regulation of parking, sidewalks etc does not address the fact that the usage of the way historically has permitted unlimited access by abutting owners over the entire length of their frontage on the way, and parking and

standing on the way as long as passage was not prevented. The proposal requires changes to the usage in a manner that is not just up to the developer, and beyond any of the Board to change. For the Town to impose such restrictions such as "no standing", "no parking" or curb cuts on a parcel, that is not part of the ownership parcel of the developer is beyond the Board's authority, and would require additional takings by the town, by statutorily prescribed means, of the rights of abutting owners, or their mutual consent.

The following matters are reiterated since the Board has not specifically addressed them in the past meetings:

The Town has considered development of parcels in this location in the past, but not approved development using Neelon Lane as access. The issues raised by using Neelon Lane as access militate against approval of the plans as submitted. At most, Neelon Lane's public use should be consistent with its limited access as historically and legally existing. For all the foregoing reasons, the proposed plan does not comply with the OSRD by-law in numerous respects, namely by not complying with all sections of the Zoning By-law, the access over Neelon Lane is not compatible or in harmony with the character of the adjacent residential neighborhoods, it will have a detrimental impact on abutting properties, and safe, convenient access over such a narrow, substandard route, cannot be demonstrated.

The proposal, as submitted fails to comply with the existing rights of parties on Neelon Lane, with accepted safety and traffic standards affecting the community at large and not just the abutters, the board's own standards for issuance of a special permit as stated in section 10 and sections 11 (g), (i), (j), and (k). The proposal clearly does not meet the standards set out in the purposes section of site plan review, sections C.1. (c) (3), (8), (9), (10) and (11).

The Board rules, at section 12 (d) of article T reference site plan review standards that shall be applied to the project which include protections of neighbors from noise fumes etc and safe access for emergency vehicles. The approval of this plan will destroy the character of the existing neighborhood

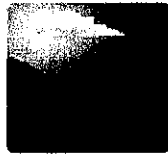
Finally, the revised plan STILL lays out a way and cul de sac which does about the McDonald parcel. There exists a gap between the layout on the developer's parcel and the McDonald parcel .. Leaving such a strip is certainly contrary to sound planning practices. I believe previous cases in other towns have given the nickname "spite strips" to this feature. Ms McDonald is concerned that, as drawn, this plan would adversely affect her property and possible development or changes.

To date the applicants have still failed to demonstrate that the current owner has the rights to make the improvements in the way, especially since ownership boundaries along the way have not and arguably cannot be determined without land Court involvement.

Any approval would have to be based upon proof of ownership of the adjoining parcels,
and establishment by a court of competent authority the boundaries of Neelon Lane.

A handwritten signature in black ink, appearing to read 'Thomas J. Valkevich', with a stylized, circular flourish at the end.

Thomas J. Valkevich
Attorney for Mary E. McDonald



November 12, 2010

Medway Planning Board
155 Village Street
Medway, MA 02053

On behalf of our client, Elizabeth McDonald of #9 Neelon Lane, Guerriere & Halnon, Inc. submits, for Planning Board review, the following information pertaining to the location, width and status of Neelon Lane:

Timeline

- 1851.Dec.10 **C.B. Whitney** acquires land east in reference to now Neelon Lane --- Deed Book 222 Page 44.
- 1856.Aug.05 **Neelan** (aka Neeland, Neelon) acquires land west and south in reference to now Neelon Lane --- Deed Book 289 Page 154.
- 1856.Oct.21 **Kearns** acquires one acre west in reference to now Neelon Lane --- Deed Book 250 Page 26.
- 1863.Apr.06 Town accepts 25 feet wide private way partly on
1. Land set apart for a way by J.W.B. Wilson (Deed Book 250 Page 26)
(at the time owned by Kearns)
 2. Land of Neeland
 3. Land of C.B. Whitney
- 1921.Dec Village Street laid out (Neelon Lane scales 16.5'+/- wide)
- 1950.Mar.25 Plan of Land by H.W. Whittier depicting Lots A & B (land of Kearns) on "Wilson's Lane" (Neelon Lane) recorded as Plan No. 335 of 1950 --- Deed Book 2903 Page 45.
- 1959.Oct.21 Plan of Land by Schofield depicting McDonald (C.B. Whitney) Lot recorded as Plan No. 1253 of 1959 --- Deed Book 3776 Page 530.

Summary of this timeline and all other information collected by this surveyor:

Since there are a number of ambiguous pieces to this puzzle and a lack of physical monuments on site, two or more competent surveyors could arrive at different solutions. The location of the properties and the location of Neelon Lane (a.k.a. Wilson Lane) as interpreted by Guerriere & Halnon, Inc are arrived at using the following rationale:

On April 5, 1863, the three properties owned by Kearns, Neelan and Whitney all abutted one another.

On April 6, 1863, the town accepted the 25' Wide Private Way partially over the land of all three extending southerly from what is now Village Street to a fence opposite the southerly side of the Neeland house (#6 Neelon Lane). It was not taken in fee.

Question for Title Attorney: What is the current status of the title in the 25' Wide Way? While it was referred to as a Private Way in 1863, subsequent deeds refer to "excepting the town road" (Deed Book 363 Page 210) and plans were created showing the land removed (Plan 335 of 1950). Guerriere & Halnon has not found written evidence that the Town of Medway has acquired the fee interest in Neelon Lane. If title is to the original lot lines lie within the 25' Wide Way, all parties with interest in The Way would need to agree on improvements.

In 1950, a plan of the land formerly owned by Kearns is recorded depicting H.W. Whittier's interpretation of what remained of the "one acre lot" (Deed Book 250 Page 26) after taking out the "land set apart by Wilson." Unfortunately, this plan does not close mathematically. Therefore, it must be closed using available evidence. G&H started at the corner of the original stone wall first described in 1856 as the border. Working away from there, a combination of angles from the 1950 plan and original deed distances was used to retrace the intent of Mr. Whittier. G&H believes that the resulting easterly line best sets up the westerly sideline of the 25' Wide Private Way, Neelon Lane.

In 1959, a plan of the land formerly owned by Whitney is recorded (Plan No. 1253 of 1959) depicting Schofield's interpretation of the westerly sideline of Whitney's land described in deed Book 222 Page 44 after the 25' Wide Private Way was accepted.

Regardless of the title status in the Way, and in conjunction with the possibility that the westerly line shown on the 1959 plan is questionable and may follow the existing wall more closely and the original deed calls in Deed Book 222 Page 44, G&H believes that the original boundary line between land formerly of Whitney (McDonald) and that of land formerly of Neeland and Wilson (Aquafresca and Lots A & B) would be somewhere inside the 25' Wide Way and would enter at the southerly end of the way somewhere in the middle, not along the easterly sideline as shown on the Plan of Land by Schofield done in 1959.

If our interpretation is correct, then the Way would be further east than that shown by the applicant's surveyor and the property line would enter the southerly end of the way leaving less than 25' on the Applicant's land.

Simply holding the plan done in 1959 on the Whitney (McDonald) lot and G&H's interpretation of the 1950 plan would result in remaining land for the way of 21.5' more or less at Village Street and 18.0' more or less at the southerly end of the Kearns lot (#2 Neelon Lane).

Guerriere & Halnon, Inc. believes that the uncertainties of the location, width and status of Neelon Lane should be resolved in the Land Court after submission by a land surveyor of all necessary plans, deeds, interpretations, survey, etc.

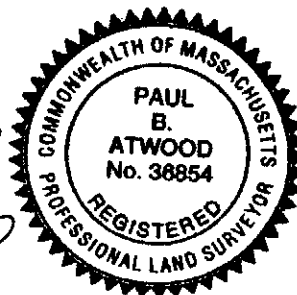
Furthermore, based on the issues raised above, it would be imprudent for The Town of Medway and the applicant before the Planning Board to propose improvements to Neelon Lane without first settling these issues. The risk of encroaching onto private land and infringing property rights of abutters should signal caution in this matter.

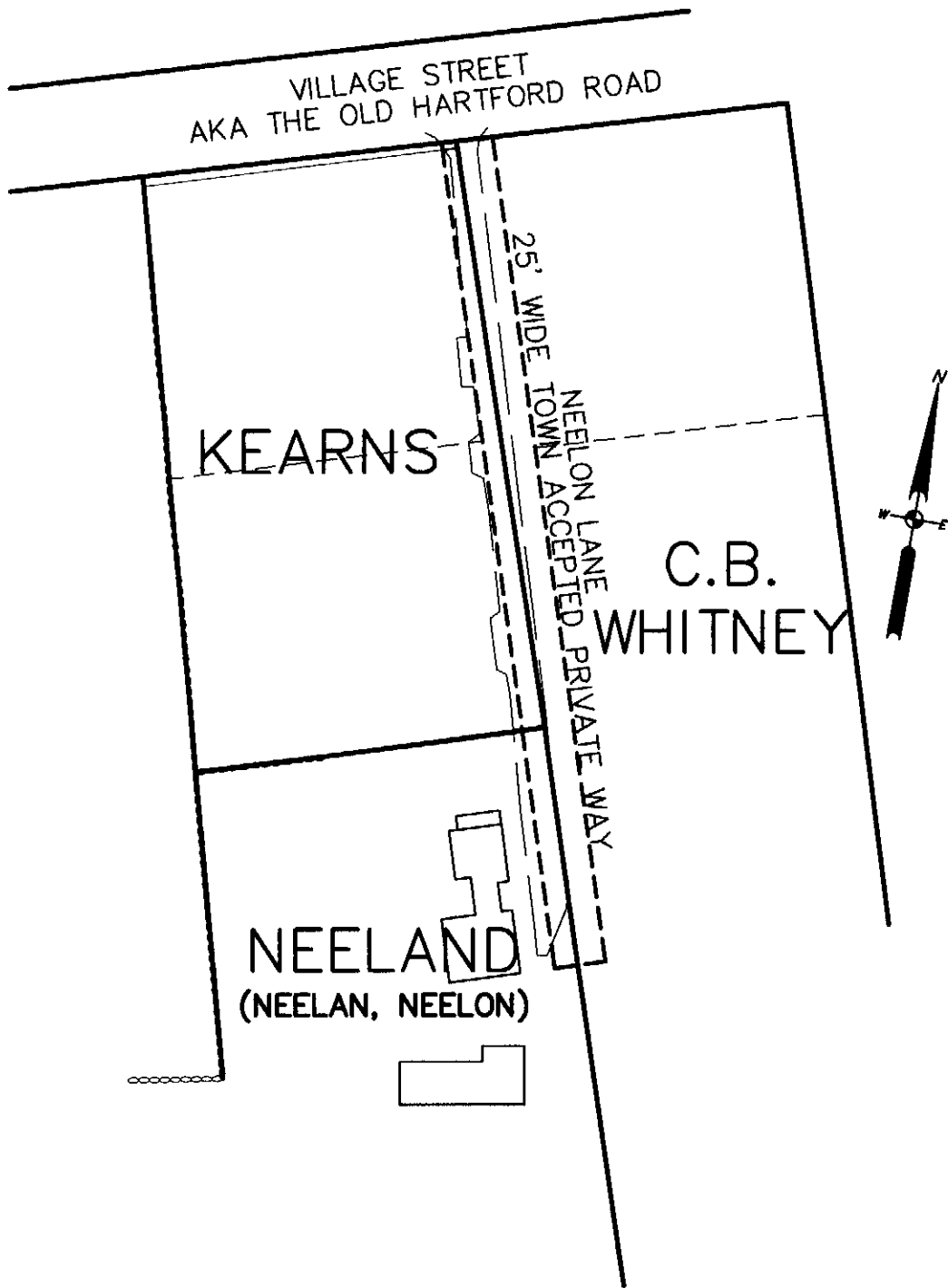
Sincerely,

Paul B. Atwood

Paul B. Atwood, PLS

11/16/10





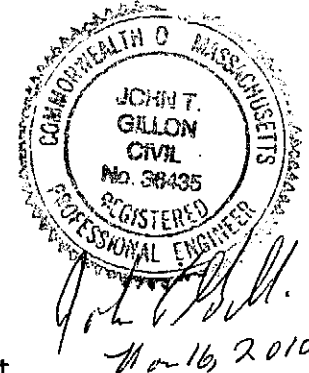


3 Old Farm Road
Norwood, MA 02062-5513
Tel./ Fax: (781) 762-8856
e-mail: jt.gillon@norwoodlight.com

November 15, 2010

Medway Planning Board
155 Village Street
Medway, MA 02053

Reference: Traffic Issues
Neelon Lane Roadway Layout



Dear Board Members:

On behalf of our client, Elizabeth McDonald, of #9 Neelon Lane, I have prepared this review for the Planning Board's consideration. I have reviewed the proposal plans, the Conley Associates Memorandum dated September 2, 2010, and I have visited the site. In addition, I have researched reference manuals regarding minimum paved travel way and sidewalk widths. The minimum widths provided do not appear adequate for a roadway open to the public.

The proposal before the Board involves providing a total paved two-way travel way of eighteen (18) feet on Neelon Lane, along with a paved four-foot wide sidewalk. Although the Conley Memorandum does show a copy of Exhibit 5-5 from the "Geometric Design of Highways and Street" (Green Book) published by the American Association of State Highway and Transportation Officials, the table shows 18 feet of travel way is the minimum "along" with a two-foot wide shoulder on each side of the road (middle of table) bringing the usable surface to **22-foot minimum**. Obviously the eighteen-foot wide paved roadway abutting the sidewalk does not afford a two-foot wide shoulder on that side. The Institute of Transportation Engineer's "Traffic Engineering Handbook" 6th Edition also shows this 22-foot minimum layout on Table 7-17, page 236. The MassDOT 2006 Edition of their "Project Development and Design Guideline" Manual suggests the clear width for a sidewalk is five feet excluding the width of the curb. (p. 5-14). Although this manual does not specify a minimum paved surface width for local roads, it does state "Local roads should Meet Municipal Standards". Although I presume this was adopted to retain the scenic quality of some local communities, the statement does not offer any leeway for reducing minimum Town-wide standards through waivers and variances.

The Americans with Disabilities Act (ADA) does allow for narrow sidewalks to serve wheelchairs at 36-inches. However, since two wheelchairs have to pass each other within a two hundred-foot section, all sidewalks **MUST** be widened to five-foot minimum every two hundred feet to allow for passage.

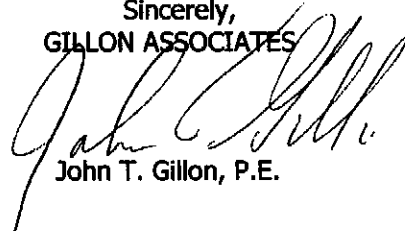
The narrow roadway pavement width coupled with a short turning radius at the Village Street Intersection will require the turning of large vehicles to travel over the center line of the roadway into the path of opposing traffic. Thus, the pavement width should be widened and a larger radii provided.

On another note, the National Center for Safe Routes to School has indicated the ADA 36-inch minimum sidewalk width was not a sidewalk recommendation. They recognize that 3-foot width does not allow for two-way travel and they recommend a five to six-foot sidewalk width to allow for children being socially active and to walk side by side comfortably.

Medway - Neelon Lane
November 15, 2010 p. 2

The Board should also consider the ramifications and implications of granting these proposed physical features. Once minimum widths are waived on one project, there will be other developments that cannot be built without waivers coming forward claiming similar hardships. Thank you for the opportunity to present these thoughts.

Sincerely,
GILLON ASSOCIATES

A handwritten signature in black ink, appearing to read "John T. Gillon", is written over the typed name below.

John T. Gillon, P.E.

Ken & Terri Bancewicz
223 Village Street
Medway, MA 02053

November 15, 2010

Mr. Andy Rodenhiser, Chairman
Planning and Economic Development Board
Town of Medway
155 Village Street
Medway, MA 02053

Re: Charles River Village – Neelon Lane
Proposal by John Claffey for Open Space Residential Development

Dear Mr. Rodenhiser,

I have concerns about the property boundary representation for 223 Village Street as shown on the proposed conditions sketch by O'Driscoll Land Surveying Co. issued on 10-19-2010. The boundary is in conflict with the description in my property deed and also the associated plot plan by H.W. Whittier C.E. dated May 15, 1952. The O'Driscoll sketch appears to show the east/west Village Street property border several feet short of the location described in my property deed.

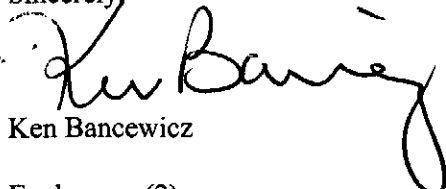
I have retained the services of GLM Engineering in Holliston, MA for a determination of my property borders and a review and opinion on the location of Neelon Lane as it relates to my property. I believe there is reasonable evidence to suggest that the Neelon Lane Statutory Private Way is actually located several feet east of where it is drawn on the O'Driscoll plan.

Regardless of the actual legal location of Neelon Lane, I ask the board to note that the proposed 20' widening to the beginning of the road favors the westerly edge of Neelon Lane. This was done as an attempt to avoid damage to trees located on the Kaplan property. In doing so, the shift and increased width causes considerable loss of my existing lawn and worsens an existing non-conforming building setback condition. I believe this is unfair hardship which could be mitigated by shifting the pavement to east in favor of the opposite extent of the Neelon Lane Statutory Right of way.

Please bear in mind that I have been forced into a defensive position regarding the location of my property line and that my opposition is not necessarily with the proposed development itself. It is imperative that no matter the outcome regarding the use of Neelon Lane, safety must be given the utmost consideration, and I am willing to work with all parties in that regard.

I appreciate the board's due consideration of the above mentioned matters.

Sincerely,



Ken Bancewicz

Enclosures (2)

Return to:

Kenneth and Terri Bancewicz
223 Village Street
Medway, MA 02053

Property Address:

223 Village Street
Medway, MA 02053

Do not write in this area

FIDUCIARY DEED

David J. Ryan, Executor of the Estate of John J. Ryan, Norfolk Probate Docket No. 08P1207AD, of Medway, Massachusetts, under license to sell dated December 5, 2008, granted by said court and every other power, for consideration paid, and in full consideration of ONE HUNDRED TWENTY THOUSAND DOLLARS (\$120,000.00) grants to

Kennth G. Bancewicz and Terri Bancewicz,

Husband and wife, as tenants by the entirety

having an address of:

223 Village Street, Medway, Massachusetts 02053

the land, at **223 Village Street, Medway**, Norfolk County, Massachusetts, together with any improvements thereon, described as follows:

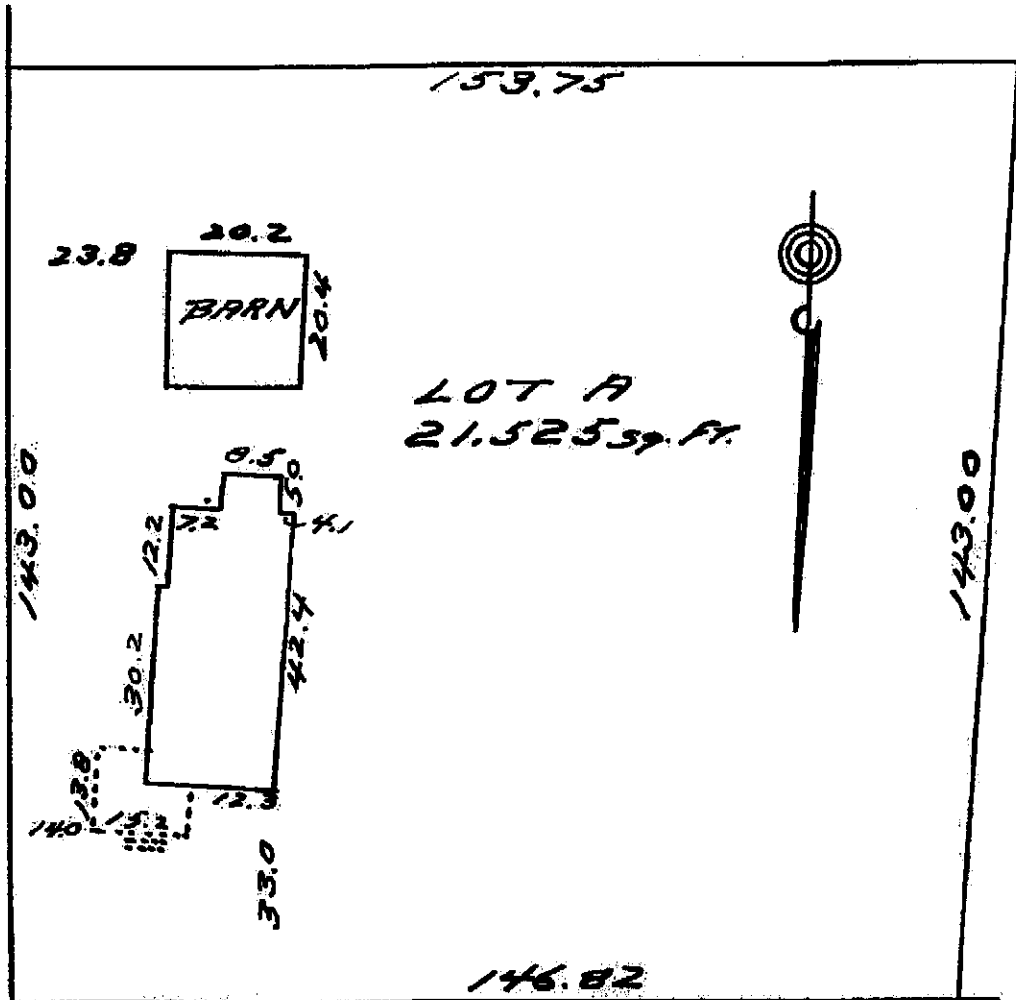
That certain parcel of land in Medway, together with the buildings thereon, situated on the Southerly side of Village Street and shown as Lot A on the plan entitled "Plan of Land in Medway, Mass., March 25, 1950, H.W.Whittier, C.E.", recorded with Norfolk County Registry of Deeds, Book 2903, Page 45, bounded and described as follows:

Beginning at a pipe on the Southerly side of Village Street at a private way formerly known as Neelon's Lane, but shown on said plan as Wilson's Lane; thence running Westerly, bounded Northerly by said Village Street, one hundred forty-six and 82/100 (146.82) feet to a pipe and wall at land now or formerly of Theresa Rogers: thence turning and running Southerly along said wall, bounded Westerly by said Rogers land, one hundred forty-three (143) feet to a spike in a tree; thence turning and running Easterly, bounded Southerly by Lot B as shown on said plan, one hundred fifty-three and 75/100 (153.75) feet to a pipe at said Wilson's Lane; and thence turning and running Northerly, bounded Easterly by said Wilson's Lane, one hundred forty-three (143) feet to the pipe and point of beginning.

The premises are conveyed subject to and with the benefit of all easements, restrictions, rights of way, takings, reservations, exceptions and covenants contained in the deed to the grantor herein and in all other instruments of record, to the extent said restrictions, reservations, exceptions and covenants have not terminated or expired.

Meaning and intending to convey the same premises conveyed to John J. Ryan and Isabel L. Ryan, a/k/a Isabelle L. Ryan by deed of Henry Rosen and Helen H. Rosen, dated June 12, 1952, recorded with the Norfolk County Registry of Deeds, in Book 3091, Page 121. Isabelle L. Ryan died December 18, 1968, see Inheritance Tax Real Estate Certificate recorded at Book 4623, Book 524, and Estate of John J. Ryan, Norfolk Docket No. 08P1207AD.

WILSON'S LANE



VILLAGE ST.

PLOT PLAN
IN
MEDWAY MASS.
SCALE 1 in. = 30 FT. MAY 15 1952
H. W. WHITTIER C.E.
APPLICANT JOHN J. RYAN