



CITY OF NEWBURYPORT  
PLANNING BOARD  
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**SPECIAL PERMIT FINDINGS & DECISION**

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**DECISION DATE:** 3/1/2017

**APPLICATION DATE:** 11/2/2016

**FILE NO:** 2016-SP-03a

**APPLICANT/OWNER:** Evergreen Commons LLC

**APPLICANT ADDRESS:** c/o Lisa Mead, Esq., 30 Green Street, Newburyport, MA 01950

**SITE ADDRESS:** **18 Boyd Drive and 5 Brown Avenue**

**MAP/LOT:** 110-20 and 111-13

**BK/PAGE:** 29288-376 and 5304-173

**ZONING DISTRICT:** R1

**SECTION:** XIV OSRD

**BRIEF DESCRIPTION:** amend original application for a special permit for an Open Space Residential Development to provide access through Brown Avenue

**NEWSPAPER NOTICE:** 11/29/2016 and 12/6/2016

**PUBLIC HEARING:** A public hearing was held on the above application on 12/14/2016 and continued to 1/4/17, 1/18/17, 2/1/17, 2/13/17, 2/15/17, and 3/1/17.

**DECISION:** After the close of the public hearing the Planning Board, upon a motion made by member Andrew Shapiro and seconded by James Brugger, the Board voted to **APPROVE** the application for a Special Permit.

The motion having received the necessary two-thirds super majority vote of all the members of the Planning Board, in accordance with M.G.L. Chapter 40A Section 9, as amended, the petition for the Special Permit was therefore granted.

**RECORD OF VOTE:** The following members of the Planning Board voted as follows with respect to the petition for a Special Permit subject to the below-stated terms and conditions:

Jim McCarthy	<u>Yes</u>	Susan Grolnic	<u>2016</u>	James Brugger	<u>Yes</u>
Bonnie Sontag	<u>Yes</u>	Leah McGavern	<u>Yes</u>	Andrew Shapiro	<u>Yes</u>
Don Walters	<u>No</u>	M.J. Verde	<u>Yes</u>	Joe Lamb	<u>No</u>

## PLANS AND MATERIALS INCORPORATED INTO DECISION

1. This Special Permit application is accompanied and augmented by the following plans, drawings and submittals:
  - Application for Special Permit, submitted July 20, 2016, for Evergreen Commons, LLC containing the following plans and documents:
    - OSRD Four-Step Design Process: Addendum to the Special Permit Application
    - Architectural and Site Narrative, revised house styles dated 8/2/16
    - Soil Suitability Assessment Report for On-Site Stormwater Management, DEP Form
    - Applicant's letter dated 9/13/16 re: OSRD Special Permit Application / Additional Information
    - Yield Plan for 18 Boyd Drive, Design Consultants, Inc., 68 Pleasant Street, Newburyport, MA, revised date 10/18/16.
    - OSRD Sketch Plan for 18 Boyd Drive, Design Consultants, Inc., 68 Pleasant Street, Newburyport, MA, revised 8/17/16, 9/14/16, 10/18/16, 12/07/16, 1/12/17.
    - Existing Conditions Plan to Accompany ANRAD, Design Consultants, Inc., 68 Pleasant Street, Newburyport, MA, dated 1/18/16, revised 2/10/16, 3/10/16, 9/14/16.
    - Evergreen Commons Schematic Site Plan, KD Turner Design, 27 High Street, Newburyport, MA, dated 7/18/16
    - Renderings of Site Entrances
    - Proposed New Residences at The Evergreen Commons Development, Scott M. Brown, Architect, Newburyport, MA with Design Associates, Inc., Cambridge, MA, 12/21/16.
    - 'Clarification Memo' submitted by Attorney Lisa Mead, dated 12.7.16.
    - Evergreen Commons Drainage Design Memo and OSRD Sketch Plan Preliminary Profiles, Design Consultants, Inc., 68 Pleasant Street, Newburyport, MA, dated 12/07/16.
2. The plans and other submission material were reviewed by the Planning Board, its legal counsel and consulting engineer as follows:
  - Studies
    - Traffic Impact & Access Study for 18 Boyd Drive, prepared for Evergreen Commons, LLC, prepared by Design Consultants, Inc., dated July 2016, revised August 2016 and 9/16/16.
    - Endangered Species Report, prepared by Hughes Environmental Consulting, 44 Merrimac Street, Newburyport, MA, dated 9/16/16.
    - Water Resources Impact Evaluation Report, prepared for Evergreen Commons, LLC. Prepared by NGI Northeast Geoscience, Inc., 97 Walnut Street, Clinton, MA, September 2016.
    - Water Resources Impact Evaluation Report – Supplemental Comments, provided by NGI Northeast Geoscience, Inc., 97 Walnut Street, Clinton, MA, dated 10/12/16.
    - Nitrate Report from Well #2, Analysis from January 2014 to October 2016, downloaded from the Massachusetts Department of Environmental Protection –

- MA, September 2016.
- Water Resources Impact Evaluation Report – Supplemental Comments, provided by NGI Northeast Geoscience, Inc., 97 Walnut Street, Clinton, MA, dated 10/12/16.
  - Nitrate Report from Well #2, Analysis from January 2014 to October 2016, downloaded from the Massachusetts Department of Environmental Protection – Drinking Water Program.
  - Baseline Soil and Groundwater Quality Testing Plan, prepared for Evergreen Commons, LLC. Prepared by NGI Northeast Geoscience, Inc., 97 Walnut Street, Clinton, MA, December 14, 2016.
  - Water Quality Testing Results, City of Newburyport Property and Evergreen Commons, prepared by NGI Northeast Geoscience, Inc., 97 Walnut Street, Clinton, MA, January 25, 2017.
- Peer Reviews
    - Peer Review Comments from Christiansen & Sergi, Inc., 160 Summer Street, Haverhill, MA:
      - Peer Review of Special Permit, OSRD Application Package, dated 8/2/16.
      - Buffer Zones, dated 10/11/16.
      - Water Resource Protection District Regulations, dated 10/24/16.
    - Traffic Engineering Peer Review, Vanasse & Associates, Inc., 35 New England Business Center Drive, Suite 140, Andover, MA, dated 9/30/16.
    - Peer Review of Water Resources Impact Evaluation Report, AECOM, 250 Apollo Drive, Chelmsford, MA, dated 10/13/16.
    - NGI Geoscience Response to AECOM study, Geosphere study, and City Engineer comments, dated 10/19/16.
  - Legal Opinions
    - Legal Opinions from Jonathan D. Eichman, Esq., Kopelman & Paige, P.C., 101 Arch Street, Boston, MA:
      - Opinion on roadway length and water supply protection, dated 9/21/16.
      - Opinion on Section XIX-E of the Zoning Ordinance, dated 10/19/16.
    - Legal Opinions from Rubin and Rudman, LLP, 50 Rowes Wharf, Boston, MA:
      - Opinion on OSRD Application and Arguments Regarding Uniformity, from Glenn A. Wood, Esq., dated 10/19/16.
      - Response to Applicant's 11/19/16 response, from Michele Hunton, Esq., dated 10/26/16.
      - Response to CSI comments on the Water Resource Protection District Regulations, from Michele Hunton, Esq., dated 10/26/16.
    - Applicant's Response to Legal Opinion re: Roadway Length, dated 10/5/16.
    - Applicant's Response to Legal Opinion re: Traffic Issues, dated 10/12/16, revised date 10/18/16.
    - Applicant's Response to Mackie Shea and Rubin and Rudman, LLP Legal Opinions, dated 10/19/16.
  - Comments from Municipal Officials, City Departments, Boards, Commissions, and Committees:
    - Crispin Miller, Chair, Tree Commission, dated 7/25/16.

- Frank P. Giacalone, Director of Public Health, dated 9/6/16.
  - Christopher LeClaire, Chief, Fire Department, dated 10/4/16.
  - Julia Godtfredsen, Conservation Administrator, dated 10/11/16.
  - Jon-Eric White, City Engineer, dated 10/18/16 and 12/14/16.
  - Wayne Amaral, Deputy Director, Department of Public Services, dated 10/19/16.
  - Board of Health, dated 11/2/16.
  - Dr. Sam Merabi, member, Board of Health, dated 12/14/16.
  - Anthony Furnari, Director, Department of Public Services, dated 12/28/16.
  - Andrew R. Port, AICP, Planning Director, dated 1/17/17.
  - Board of Health, dated 1/20/17.
  - Donna D. Holaday, Mayor, dated 1/27/17.
3. Throughout its deliberations the Planning 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 hearing.

### ACRONYMS

Hereinafter:

- “BMP” shall mean Best Management Practices;
- “CSP” shall mean a Conventional Subdivision Plan;
- “DPS” shall mean the City of Newburyport Department of Public Services (DPS);
- “ISLF” shall mean Isolated Land Subject to Flooding;
- “LID” shall mean Low Impact Development;
- “NZO” shall refer to the Newburyport Zoning Ordinance;
- “OSRD” shall refer to the Open Space Residential Development (OSRD) project depicted on the above-referenced and approved plans;
- “OSRD-DSP” shall refer to the Definitive Subdivision Plan filed with the Planning Board in accordance with this Open Space Residential Development Special Permit (OSRD-SP);
- “Property” shall refer to the property at 18 Boyd Drive and 5 Brown Avenue as included on the OSRD application.
- “WRPD” shall refer to the Water Resource Protection District (WRPD), Section XIV of the NZO.

### FINDINGS

The Property, known as the Evergreen Golf Course consists of 36.84± acres of golf course landscaped and related water features. Additionally, the Property includes a single-family home lot located at 5 Brown Avenue.

The proposed OSRD development will yield no more than thirty-eight (38) proposed single-family residential units with accompanying roadways and infrastructure on 13.36± acres while preserving the remaining 22.12± acres. The proposed OSRD plan is based in part upon a 43-lot “yield” plan presented by the Applicant and reviewed by Christiansen & Sergi, Inc., the Board’s peer review engineer. CSIs initial review indicated that a 43 lot conventional subdivision may be built for the same site. The planning Board has not affirmed this CSP through the definitive subdivision process. Additionally, the Applicant proposes to deed 0.61± acres of land along the easterly property line to

the City, as indicated on the above-referenced and approved plans. This land will allow for greater flexibility in relocating the existing City water supply (Well # 2) if necessary in the future.

This site is of particular importance to the greater Newburyport community as it sits adjacent to City-owned property where 'Well 2', a public drinking water well and part of the City's public water supply, is located. The proposed stormwater treatment areas will be on the westerly side of the Property, away from the property line shared with the City of Newburyport Well # 2. The Applicant will provide fully engineered stormwater plans in the next stage of permitting for this proposed development (the OSRD-DSP) that must be designed to meet both state and local standards with regard to stormwater management in a Zone II WRPD. The Applicant proposes to employ LID techniques including bio-retention areas and constructed stormwater wetlands as well as more traditional techniques. All stormwater discharges into wetland resource areas shall meet all state and local stormwater discharge regulations.

Special conditions must be imposed on this OSRD project in order to protect the City's fragile and irreplaceable water supply (in particular adjacent Well #2) due to a combination of factors that make this site unique:

1. The site topography is bowl-shaped with no way for water to leave the site other than infiltration (which will ultimately reach groundwater); and
2. The site is in the Zone II WRPD as set forth in the NZO; and
3. The hydrology of the site and its subsurface groundwater flows toward the City's public water supply (Well # 2); and
4. Soils on the site are such that the subsurface transmissivity level is high; and
5. Groundwater obtained from Well #2 is untreated and is pumped directly into the City's water supply; and
6. According to the above referenced 1985 "Lally Report": "...Increased sodium, sulfate, chloride and specific conductance readings were recorded in the Spring of 1974 during when it is understood, that extensive filling of this abutting land took place with salt marsh dredging material from off-site locations." Further, according to an email from City Engineer, John-Eric White dated October 21, 2016, the contractor that had imported fill (salt marsh dredging material) from out of town, TL Norton, remembers importing the salty soils in 1968 and placing them near the water features in the southeast corner of the site. Although it took six years and direct causality has not been established, the Board finds the combination of these two items relevant criteria for a prudent site design, and
7. The #2 Well was closed some time thereafter due to excessive increases in sodium levels; and
8. The Board, based on public input and deliberation, finds that ability to monitor homeowner behavior and compliance with individual chemical handling unreliable, and
9. The results of recent City testing for approximately 250 chemicals in monitoring wells near City Well # 2 showed no significant contamination of the groundwater reaching Well # 2 from those chemicals tested.

Based on the above findings the Applicant must therefore utilize an overall site design in which proposed homes, BMPs and stormwater discharges are located as far as possible from any resource areas and ILSF (which may in turn provide direct transference of contamination to the groundwater/aquifer accessed by City Well # 2). The Board finds that the concept plan dated 10 January 2017 and amended 6 Feb 2017 is the best choice design (of those alternatives submitted by

the applicant) to mitigate the truly unique aspects of this property and project.

### Special Permit Criteria

The Planning Board grants this OSRD-SP subject to the Special Conditions set forth below:

The Board finds that this project fulfills the criteria required by NZO Section X-H.7, as follows:

- The single-family residential use is allowed on this parcel, which is zoned R1. It is also an allowed use in the WRPD, as listed in Section XIX-E of the Ordinance. The smaller lot sizes allow for greater open space conservation and are consistent with the purpose and intent of the City's OSRD ordinance.
- The proposed development will not create undue traffic congestion or impair pedestrian safety in the surrounding neighborhood. The Applicant is proposing two points of access into the new development – Boyd Drive and Brown Avenue. This will both promote neighborhood connections and better vehicular circulation while providing traffic calming due to the use of two existing 90-degree turns onto Laurel Ave and Briggs Ave.
- The proposed development will not overload public water, drainage or sewer systems, provided that certain conditions of approval are faithfully complied with by the Applicant and future home owners within the proposed OSRD. This project will improve water and sewer connections in the surrounding neighborhood through looping all of the water mains for safety and water quality and by replacing the sewer pump/lift station located at the bottom of Boyd Drive.
- The design of this OSRD is in harmony with the purpose and intent of the City's OSRD regulations in that the compact layout of the lots, the open space, the homes on the lots and the interplay of the lots and the open space are in compliance with the criteria of the NZO. The open space will include biking and walking trails with a connection to the new multi-modal path ("Garrison Trail") adjacent to I-95.

Additionally, Board finds that this Project fulfills the criteria required by NZO Section XIV-K as follows:

- The proposed development is consistent with the purposes and intent of the OSRD Ordinance as identified in Section XIV-A and has a less detrimental impact on the subject tract of land and advances the interests of the community further than a CSP. Indeed, the Planning Board has determined that the proposed OSRD plan is the most acceptable method of constructing a new residential neighborhood (of those alternatives submitted by the applicant) in this area of the City (within the Zone II WRPD).
- The proposed OSRD is consistent with the Newburyport Master Plan through consolidation of the "footprint" (magnitude and extent) of roadway and utility infrastructure required for this single family residential development.

- The proposed reduction of dimensional requirements, as shown on the above referenced and approved plans is consistent with the requirements for issuance of an OSRD-SP.
- The Applicant's "Yield Plan," based on a CSP layout, depicts forty-three (43) single family house lots, whereas the OSRD plan depicts thirty-eight (38) house lots in a more compact form with significantly less roadway and infrastructure required to serve the proposed house lots. This reduction in the horizontal spread of roadways, utilities and infrastructure will in turn minimize overall the level of site disturbance commonly referred to as "sprawl." The Planning Board finds that the alternative OSRD plan is preferable to the CSP. The OSRD Plan minimizes environmental and community impacts from the proposed residential development, including, but not limited to: preservation of open space and the promotion of more efficient land use in harmony with natural features; conservation of natural resources and scenic qualities; and variety in the development pattern of the community.
- The Applicant is providing roadway connections to existing streets within the surrounding neighborhoods, thereby creating better site and traffic circulation. The roadways shall be constructed with a sufficient width to ensure that first responders are able to efficiently access the new homes in the event of an emergency.
- This OSRD-SP will result in a project that is in harmony with the surrounding neighborhoods.
- This OSRD-SP promotes the preservation of open space and recreation in the City through the permanent conservation of the open space as depicted on the approved plans, as well as the creation of bike and walking trails, a connection to the multimodal path, which is proposed to traverse the Merrimac River, revitalization of a wetlands area, ponds that may be used for ice skating or other recreational activities, and a central green space and neighborhood gathering area.
- This OSRD-SP, as conditioned by this decision, addresses comments and concerns raised by other City departments, boards and commissions, as well as abutters and other interested parties.

## DECISION

In view of the foregoing, the Planning Board hereby decides to grant a XIV OSRD Special Permit in accordance with the terms and conditions stated below:

### *General Conditions*

1. The applicant shall file this Special Permit decision with the Southern Essex County Registry of Deeds (or Land Court if registered land) and a copy of the decision stamped with the recording information (Book/Page or Land Court document number) shall be included with the application for a Building Permit. The final site/construction plans shall also make reference to the decision date and conditions of approval.
2. Prior to the granting of a Building Permit, the applicant shall submit the written certification of a registered Architect or Civil Engineer to the Building Commissioner that the project will be constructed in accordance with the approved plans and conditions.

3. Prior to any construction, the applicant shall provide the Office of Planning & Development with one (1) copy of the entire approved plan set in both CAD and .pdf formats.
4. No building permit shall be issued unless all public utilities have been reviewed and approved by the respective utility departments and that the proposed utilities will be installed in accordance with plans submitted with the application. All utility work shall be done in compliance with regulations and instructions issued by the Department of Public Services, including (but not limited to) the installation of curbing, pavement, sidewalks, pavement markings, and other infrastructure.
5. All design and construction of all water utilities must meet Federal, State and local standards and the latest version of Newburyport Water Works Construction Guidelines and Construction Policies. Contractors are prohibited from operating or connecting to any part of the existing water system without written authorization and field oversight by the Department of Public Services Water Division.
6. All design and construction of all sewer utilities must meet Federal, State and Local standards and the latest version of Newburyport Sewer Department Construction Guidelines and Construction Policies. Contractors are prohibited from operating or connecting to any part of the existing sewer system without written authorization and field oversight by the Department of Public Services Sewer Division.
7. One hard copy and one .pdf copy of as-built plans stamped by a professional engineer showing new construction, renovation, or expansion shall be submitted to the Office of Planning and Development at the completion of the project. Said plans shall contain a certification, made by a registered architect or civil engineer, that what was constructed is consistent with approved plans and conditions set forth by the Planning Board as part of this Special Permit.
8. Any proposed material change to the use, size, configuration, footprint or height of the existing or proposed buildings shall require an amendment of this permit, this approval having been based on a review of the buildings and site design as presented to the board on the above referenced drawings.
9. This Special Permit is valid for two years from the date from filing with the City Clerk.

*Special Conditions:*

- Modifications to Approved Plans: The Applicant and property owner, and their successors or assigns, shall adhere to the above referenced and approved plans which are incorporated herein by reference. Should the Applicant and/or property owner determine that a plan (or plans) needs to be modified, they shall notify the Board of the proposed modifications in writing, and obtain approval from the Planning Board for such modifications prior to making any changes “in the field.” The Board shall then determine whether such modifications are minor or major in nature and shall subsequently schedule a public meeting or hearing, respectively, to review the proposed changes. While the OSRD-DSP shall be substantially in conformance with the above referenced and approved OSRD plan, the Board recognizes that the OSRD-DSP may include adjustments.



- Consistency of Definitive Filing with OSRD Approval: Any plans filed for Definitive Subdivision approval on the subject property shall comply with this decision and be substantially in conformance with the above referenced and approved plans. In accordance with this OSRD-SP the OSRD-DSP shall contain no more than thirty-eight (38) lots.
- Public Water Supply Protection: In order to ensure protection of the City’s public water supply, in particular the adjacent “Well # 2,” the Applicant and property owner shall comply with the following conditions:
  - The DPS Director shall be notified in writing (email will suffice) at least 36 hours before any parts of this section are initiated by the Applicant.
    - If the results of any of the chemical tests show: (a) concentrations of specific compounds in concentrations that exceed applicable standards established by the Environmental Protection Agency (EPA) or Massachusetts Department of Environmental Protection (DEP); or (b) any significant change in chemical concentrations which in the reasonable determination of the DPS Director could cause a threat to the public water supply, then the applicant shall repeat those tests forthwith to verify the results. In the event that the results are verified, construction may be ordered suspended by the Building Commissioner until the issue is resolved.
  - Installation of Boundary Monitoring Wells Prior to Construction: Prior to any on-site construction activities, including but not limited to site clearing, earth removal, fill or grading, the Applicant and/or owner shall:
    - Install a minimum of three (3) groundwater monitoring wells along the north-eastern property line that is shared with the adjacent City-owned land where Well 2 is located, as shown on the plan entitled “Groundwater Monitoring Wells” dated February 7, 2017. If the well at location B-6 is viable, it may be used. The new wells shall be located as shown on the plan. In the event refusal is met during drilling, a well will be located as close to the proposed location as is reasonably possible. Installation of these monitoring wells shall be in compliance with Massachusetts Department of Environmental Protection (DEP) Standard References for Monitoring Wells (WSC #91-310) and the DPS, Water Division (or its designated consultant), shall observe said installations.
    - Provide copies of fully executed and recorded easements granting access to the DPS Water Division for the purpose of accessing these wells for the purpose of ongoing monitoring of groundwater quality. The terms of said easements shall be subject to review and approval by the Planning Board as part of the OSRD-DSP process. The City shall indemnify and hold harmless the Applicant as part of the easements as well as provide the Applicant an annual Certificate of Insurance naming the Applicant, its assigns or devisees as a loss payee thereon. Any testing results received by the City shall be provided contemporaneously to the Applicant, its assigns or devisees.

- Baseline Testing at Boundary Monitoring Wells Prior to Construction: Prior to any on-site construction activities, including but not limited to site clearing, earth removal, fill or grading, the Applicant and/or owner shall undertake baseline groundwater quality tests in accordance with chemical and location specifications provided by the Newburyport Department of Public Services (DPS), Water Division and which are dated November 8, 2016 in an electronic mail from Doug Gove, P.E. of AECOM and which includes Table 1 and 2 and any chemicals recently added to the applicable DEP or EPA lists which the DPS or its designated consultant reasonably determine to be necessary (the “Testing Protocol”). The Applicant and/or owner shall undertake such testing under supervision of the DPS, Water Division or its designated consultant. Copies of the results of such testing shall be provided to the DPS, Water Division, Board of Health, Conservation Commission and Office of Planning & Development. (Since the DPS already undertook the 250 chemical test at locations B-4 and B-6, this should satisfy this requirement.)
- Baseline Site Protocol Testing Prior to Construction: Prior to any on-site construction activities, including but not limited to site clearing, earth removal, fill or grading, the Applicant and/or owner shall undertake the Testing Protocol. The Applicant and/or owner shall undertake such testing under supervision of the DPS, Water Division or its designated consultant. Copies of the results of such testing shall be provided to the DPS, Water Division, Board of Health, Conservation Commission and Office of Planning & Development.
- Protocol Testing During & After Construction: Every twelve (12) months during construction the Applicant and/or owner shall undertake additional protocol tests on the subject property utilizing the above referenced monitoring wells and at sites listed in the Testing Protocol. The Applicant and/or owner shall undertake such testing under supervision of the DPS, Water Division or its designated consultant. The Applicant shall provide a written report of the results to the DPS, Water Division, Board of Health, Conservation Commission and Office of Planning & Development comparing them to the baseline protocol testing. If after the first year the results do not differ from the baseline site protocol testing, the Planning Board may allow subsequent tests to be applied only at the boundary. Following the last round of testing by the applicant during construction, the Applicant shall be required to make a written report of the chemical findings for the entire project period. The applicant shall be responsible for hiring a consultant to propose a written report with a recommendation for ongoing testing protocols to the DPS.
- Easements to Monitoring Wells Prior to Construction: Prior to any construction activities on the site the applicant and/or owner shall provide the City with copies of fully executed and recorded easements granting access to the DPS Water Division for the purpose of accessing any and all monitoring wells within the designated Open Space areas for the purpose of monitoring groundwater quality and soil conditions during and after construction. The terms of said easements shall be subject to review and approval by the Planning Board as part of the OSRD-DSP process. The City shall indemnify and hold harmless the Applicant as part of the easements as well as provide the Applicant an annual Certificate of Insurance naming the Applicant, its assigns or devisees as a loss payee thereon. Any testing results received by the City shall be provided contemporaneously to the Applicant, its assigns or devisees.

- Insurance Policy During Construction: Prior to any on-site construction activities, including but not limited to site clearing, earth removal, fill or grading, the Applicant and/or owner shall provide to the City an insurance policy in the event of contamination to Well #2 which is caused by activities of the Applicant. The insurance policy shall provide a minimum of \$2 Million of coverage with the City named as an additional insured party. The Applicant and/or owner shall be responsible for paying any and all costs associated with maintaining said insurance policy throughout construction of the project until such time as the last house within the OSRD is built.
  
- Site Design Elements: With the filing of the OSRD-DSP, and prior to approval of the OSRD-DSP, the Owner shall demonstrate to the satisfaction of the Board that the proposed stormwater management system, utilities, roadway, and overall site design meets all of the stormwater management standards set forth by the Department of Environmental Protection and Local Stormwater Regulations. The Applicant shall employ the following measures and as shown on the OSRD sketch plan amended 6 Feb 2017 and to be further detailed in the OSRD-DSP:
  - Best Management Practices: Use of the most current available BMPs to treat site and roadway runoff. Priority shall be given to the use of LID techniques, such as constructed stormwater wetlands, vegetated bio-swales, rain gardens and bio-retention areas.
  
  - Underground Infrastructure: Underground infrastructure and utilities shall be located so as to minimize the likelihood of soil and ground water contamination.
  
  - Distance Between Stormwater Discharges & Wetland Resource Areas: The proposed stormwater discharges (outlets) and all proposed houses shall be located a minimum of one hundred (100) feet from any nearby wetland resource areas. Any Isolated Land Subject to Flooding (ILSF) on the site shall be reconfigured so as not to encroach upon any residential building lots. A minimum of two (2) feet vertical separation shall be provided between stormwater infiltration systems and discharges and seasonal high groundwater levels.
  
  - Roadway Drain Markings: Each road storm drain shall have a conspicuously placed inlay that reads “Well Water Area – No Dumping.”
  
  - Grading, Earth Removal & Fill: All plans for grading, earth removal and fill operations for this development shall be subject to final approval by the Planning Board during review of the OSRD-DSP. A bill of lading shall be provided to the DPS Water Division for any fill brought to the site (i.e. every truck load) during construction. Said bill of lading shall, in every instance, identify the source of such fill. All fill brought to the site shall be from a location that has been previously identified as a “clean fill” source.

- Conservation Commission Approval: The Applicant shall file a Notice of Intent (NOI), as required under the Wetlands Protection Act and Newburyport Wetlands Ordinance, with the Newburyport Conservation Commission for work in areas of jurisdiction. All such plans shall comply with the ordinance, regulations and any conditions of approval required by the Newburyport Conservation Commission. If there is any inconsistency between the submitted OSRD-DSP and plans approved by the Conservation Commission, the Applicant and/or owner shall submit an amended set of plans to the Planning Board for review and approval. Any amended plans shall be accompanied by a letter setting forth all changes from the original OSRD-DSP and shall include revised drainage calculations and an updated stormwater management report, as applicable.
- Homeowner's Association Documents, Deeds, Covenants & Restrictions: The OSRD-DSP filing shall include a complete draft of all Homeowner's Association Documents, Covenants and Restrictions for the property that, at a minimum, incorporates the following:
  - Prohibited Uses: A list of prohibited uses in both the residential and open space areas. This list shall include, but is not limited to prohibition of private wells and private septic systems, as well as all those uses and activities listed as "prohibited" within section XIX-G of the WRPD of the NZO.
  - Single Landscaping and Lawn Care Professional & Use of Chemicals: A mandate that the required Homeowner's Association must hire a single licensed landscaping and lawn care professional to establish a single program to maintain grass and vegetation on the residential lots and any relevant open space areas. Each year, on or before February 15, the designated landscaping and lawn care professional shall submit a written copy of the proposed maintenance program to the DPS, Water Division for review. The DPS Water Division may require modifications to the proposed maintenance program for the purposes of protecting the City's public water supply, including but not limited to limitations on the type and quantity of any lawn and landscape care products (including but not limited to herbicides, pesticides, fungicides and/or other chemicals/substances). Application of any such products shall be prohibited for the subsequent year until the DPS Water Division has approved the proposed maintenance program, which approval shall not be unreasonably withheld (revised as necessary) and a signed letter of commitment has been provided to the DPS Water Division that the landscaping and lawn care professional agrees to abide in every respect with the approved maintenance program.
  - Maintenance of Roadway Infrastructure: The Applicant and/or Homeowner's Association shall be responsible for ongoing maintenance of the roadways (including plowing), street lights, and street trees until such time as the proposed ways are accepted by the City of Newburyport. All such roadway and driveway maintenance within the OSRD shall comply with the terms of this decision.
  - Maintenance of Drainage System: The Applicant and/or Homeowner's Association shall be responsible for hiring a licensed professional to keep the drainage system in a clean and well-functioning condition as approved, and shall do nothing that would alter the drainage patterns or characteristics as indicated on approved plans. Upon acceptance of the proposed ways by the City of Newburyport, the Homeowners

Association responsibility shall be limited to those drainage systems and areas outside of the accepted layout (Right of Way).

- Zone II: The following language shall be included within the Homeowners Association documents: *“The subject property is located above the City of Newburyport’s public water supply (an underground aquifer). See Homeowners Association documents, Covenants and Restrictions, as well as the original OSRD Special Permit decision (on record at the Registry of Deeds) for additional information on uses and activities regulated or expressly prohibited in order to protect the public water supply. All activities of the homeowners shall be conducted in a manner which respects and protects the water resource protection district and public water supply.”*
- Maintenance Trash and Recycling: The Applicant and/or Homeowners Association shall be responsible for hiring a licensed trash removal company to service the homes within the proposed subdivision until such time as the proposed roadways are accepted by the City of Newburyport, with the exception of lots 1-3 on the above referenced plans, as they are already accessible from Boyd Drive, an existing public way. Upon written request by the Applicant and/or Homeowners Association, at the reasonable discretion of City officials trash and recycling may be collected by the City or its designated contractor(s) prior to street acceptance provided that a license is provided for physical access over such ways and for the purposes of limiting the City’s liability.
- Maintenance of Street Lights: The Applicant and/or Homeowners Association shall be responsible for the maintenance and upkeep of all street lights within the subdivision until acceptance of the proposed ways by the City of Newburyport.
- Language in Deeds: The following language shall be included directly within all subsequent deeds for properties within the boundaries of this OSRD Subdivision, and not indirectly by reference to another document: *“This property is part of the Evergreen Commons Open Space Residential Development (OSRD) Subdivision located above the City of Newburyport’s public water supply (an underground aquifer). See Homeowner’s Association Documents, Covenants and Restrictions, as well as the original OSRD Special Permit decision (on record at the Registry of Deeds) for additional information on uses and activities regulated or expressly prohibited in order to protect the public water supply.”*
- Enforceability: Clear language granting the City authority to adequately enforce, through liens or otherwise, all provisions of the Homeowners Association Documents, Covenants and Restrictions related to the above subject matters in the event the Homeowners Association is not enforcing same.
- Applicant responsibility during construction: The Applicant shall be responsible for ensuring compliance with all conditions herein applicable to the Homeowners Association until such time as the last home within this OSRD is built.

The draft terms of said Homeowner's Association documents, Covenants and Restrictions shall be included in and as a part of the OSRD-DSP filing and shall be subject to review and approval by the Planning Board.

- Roadways within the Subdivision: The plans accompanying the OSRD-DSP filing shall include the following roadway design details:
  - Roadway Width – Southern Loop: The loop road surrounding open space, located in the southern portion of the project, as well as the short connecting road from this loop road to Boyd Drive and the offshoot cul-de-sac to lots 9 through 14, shall be paved 24' wide. Parking shall only be permitted on one side of the loop road. The Applicant shall provide a sign detail and demarcate where 'no parking' signs will be located along the loop road.
  - Roadway Width – Connection to Brown Avenue: The Planning Board requires that the roadway connecting the southern loop to Brown Avenue be paved 22' wide. There shall be no parking permitted along either side of this roadway. The Applicant shall provide a sign detail and demarcate where 'no parking' signs will be located along the roadway. The Board recognizes the width is smaller than the typical 24 foot width required by the subdivision regulations, but the Board prefers, in this instance, a narrower roadway.
  - Street Acceptance: It shall be the sole responsibility of the Applicant to request and obtain public acceptance of, and maintenance for, the proposed ways within this OSRD from the Newburyport City Council. Grant of this OSRD-SP does not guarantee public acceptance for the maintenance of ways within the proposed OSRD. Until such time as the proposed ways are accepted by the City of Newburyport it shall be the responsibility of the Applicant or designated Homeowners Association to maintain all ways and related infrastructure within this development.
  - Maintenance of Roads within the Subdivision: No salting may be undertaken on roadways or driveways or sidewalks or walkways within this OSRD Subdivision (including those on residential lots) without prior written approval from the DPS Water Division as follows:

Each year, on or before September 15, until City acceptance of the proposed ways, the Homeowners Association or its designated consultant/contractor shall submit a written copy of the proposed snow and ice maintenance program to the DPS, Water Division for review and approval and which is consistent with the DPS standard practices for snow plowing and street treatment within Zone II areas. The DPS Water Division may require modifications to the proposed maintenance program for the purposes of protecting the City's public water supply, including but not limited to limitations on the type and quantity of any chemicals/substances to be applied so long as any limitations are consistent with the DPS standard practices for snow plowing and street treatment within Zone II areas. Application of any chemicals/substances shall be prohibited for the subsequent year until the DPS Water Division has approved the proposed maintenance program (revised as necessary) and a signed letter of commitment has been provided to the DPS Water Division that the

Homeowners Association or its designated consultant/contractor agrees to abide in every respect with the approved maintenance program.

- Street Trees: The Applicant and/or owner shall comply with the Subdivision Rules and Regulations with regard to the placement and installation of street trees.
- Maintenance of Street Trees: Street trees within the subdivision shall be drip-watered for two growing seasons following the completion of initial planting. Street trees that do not survive these first two seasons shall be replaced, in-kind, by the Applicant and/or owner. On-going maintenance of the street trees shall be the responsibility of the Homeowner's Association until City acceptance of the proposed ways.
- Upgrades to Boyd Drive: Prior to driving heavy equipment on Boyd Drive for the purposes of construction within this OSRD, the Applicant shall post a bond in the amount of \$47,000 to cover post construction road and sidewalk improvements on same. At the end of construction the Applicant shall mill and overlay the end of Boyd Drive beginning at the Property Line where the northern most Property line intersects with Boyd Drive to the existing circular cul-de-sac. The Owner shall replace the sidewalks along the same area on the west side of Boyd Drive. Additionally, prior to construction, the DPS shall inspect all roadways providing access to the site from Ferry Road and prepare baseline documentation of the existing road conditions. Prior to issuance of the last Occupancy Permit within the OSRD, the applicant shall meet with the Planning Board to determine (based upon documentation from the DPS) what repairs are needed to these roadways as a result of ongoing construction activities and heavy vehicles using these roadways during that time (normal wear and tear excluded). The Planning Board shall confirm the nature and extent of this work to the applicant in writing. The final Certificate of Occupancy in the OSRD shall be withheld until such time as the applicant has completed all such repairs to the satisfaction of the Planning Board.
- Water and Sewer Infrastructure: As part of the OSRD-DSP submittal, the Applicant/owner shall illustrate that all water mains are looped for safety and water quality. The Applicant/owner shall also submit plans to be reviewed, as part of the OSRD-DSP process, by the Board, DPS and the Board's Consultant Engineer, showing the proposed sewer pump station replacement at the bottom of Boyd Drive.
- Subsurface Utilities: All utilities within the OSRD, including electric service lines, shall be buried.
- Easement for Emergency Access: As part of the OSRD-DSP submittal, the Owner shall provide draft easement language granting the City of Newburyport access in and over any private roads and Open Space areas within the proposed subdivision for emergency maintenance access to proposed roadways and drainage systems.
- Open Space Program: As part of the OSRD-DSP submittal, the Applicant and/or owner shall submit a written report prepared by a registered Landscape Architect, addressing, at a minimum, the following aspects of the proposed open space areas:

- **Trails:** Construct a loop trail along the western side of the property that connects Boyd Drive to Brown Avenue including a minimum 6-foot width. Connect this pathway as illustrated on the OSRD Plan to the Route I-95 Garrison Trail in consultation with the Office of Planning & Development and Massachusetts Department of Transportation (MassDOT). Provide details and specifications for this work as part of the OSRD-DSP filing. Remove all other existing asphalt cart paths and replace them with stone dust paths or substitute material(s) approved by the Planning Board during the OSRD-DSP process.
- **Trees:** Ten 2" caliper trees shall be planted in the mowed space next to the trail. The list of trees shall be submitted to the Tree Commission for review.
- **Open Space Maintenance Plan:** A clear, concise Operation and Maintenance plan for the Homeowners Association and its designated licensed lawn and landscape maintenance professional. This plan shall address regular mowing of fields and/or "ecological succession" within the designated open space areas for the purposes of water supply protection, in consultation with the DPS Water Division. At a minimum the plan shall specify the following:
  - Regular mowing of a strip of grass at least 5 feet on each side of the above referenced loop trail; and
  - Regular mowing of the grass inside the loop road; and
  - Minimum mowing and maintenance standards for effective operation of the BMP's located within designated Open Space areas or elsewhere within the project.
- **Control over Open Space Areas:** In accordance with XIV-I (vii) of the NZO, the Applicant has proposed and the Board accepts that the Homeowners Association will hold the deed and conservation restriction for open space within the OSRD.
- **Land to be Deeded to Water Department:** The Applicant proposes to deed 0.61 acres of land along the easterly property line, as indicated on the above-referenced and approved plans, to the City. This land will allow for greater flexibility in relocating the existing City water supply (Well # 2) if necessary in the future. As part of the OSRD-DSP submittal the Applicant and/or owner shall submit a plan and draft deed for the transfer of this land to the City (under care custody and control of the DPS Water Division) for review.
- **Non-Structural Stormwater Features:** In accordance with the NZO, Section XIV-I (vi) any stormwater management features within the proposed open space areas shall be "soft" (non-structural) in nature. In accordance with input from the DPS Water Engineering and Divisions clay liners shall not be used in any drainage areas. Instead, direct infiltration of stormwater shall be permitted after treatment with vegetated BMPs and LID techniques.
- **Open Space Preservation:** As part of the OSRD-DSP submittal the Applicant and/or owner shall provide a draft Conservation Restriction for review by the City Solicitor and approval of



the Planning Board as part of the OSRD-DSP process. This Restriction shall protect the open space areas and shall comply with Section XIV-I(vii) of the NZO. A Conservation Restriction in accordance therewith shall be executed and recorded prior to the issuance of any Building Permit which said restriction shall permit the construction of the amenities as presented on the OSRD plan. The Applicant/owner shall include the required provisions of Section XIV-I(vii) of the NZO.

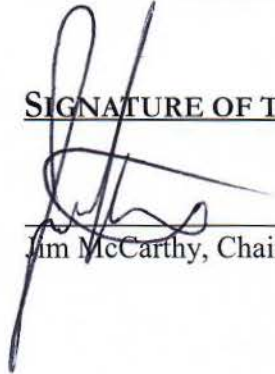
- Architectural Design & Structural Elements: As part of the OSRD-DSP permitting process, the applicant shall provide the most recent version of all elevations for all proposed house styles within the OSRD for review and approval. Houses built on lots 1-3 shall be consistent with the size, scale and massing of existing houses along Boyd Drive. Any substantive changes to the proposed house designs shall require review and approval by the Planning Board as a minor modification to this condition. As part of the OSRD-DSP submittal, the Owner shall provide architectural drawings that incorporate the following design elements for each of the proposed house styles:
  - Foundations:
    - Foundations, footings, basements and slabs shall be no less than two (2) feet above seasonal high groundwater and one (1) foot above ILSF;
    - Exposed vertical raw concrete exceeding one (1) foot shall be prohibited unless covered by: (a) brick or stone veneer; or (b) other similar finishes such as painting or parging, subject to review and approval by the Planning Board. Once a veneer is started, it should cover the perimeter of the foundation, regardless of exposure distance.
    - The bottom of the siding shall not be step-dropped to make the siding meet grade.
  - Elevations: The first floor elevations of houses on adjacent lots shall not be more than three (3) feet in vertical separation, with the exception of lots 23-27 along the proposed access road to Brown Ave.
  - Fencing: There shall be no chain link fences within the OSRD. Additionally, no privacy fencing shall be permitted forward of the front of houses (between the front of the houses and the street).
  - Garages: Garages, whether attached to the residential unit or detached, shall be placed so that they are recessed at least five (5) feet from the front building wall of the house. Side entry and detached garages are strongly encouraged.
- Escrow Accounts:
  - Project Review Fees: Prior to the issuance of any Building Permit, Project Review Fees shall be paid in full subject to MGL c44 Sec. 53G.

- Account Balance: The proposed construction will require regular inspection by the Office of Planning & Development, Planning Board's consultant engineers and the DPS, in order to ensure compliance with this decision. Such inspections are necessary to ensure that the proposed project is constructed in accordance with the approved plans, to summarize and estimate the cost of remaining work, and to immediately address any issues that may arise during the construction of the project. The cost of such review and inspections shall be borne by the Applicant. To cover the costs of these services, the Applicant shall replenish and maintain a Project Review Fee of \$3,000. Such funds shall be held by the Planning Board in an escrow account. Whenever notified that the funds in said escrow account have depleted to less than twenty-five (25) percent of the initial Project Review Fee, the Applicant shall immediately thereupon deposit sufficient funds to return the account to the initial balance. Said funds shall be in place prior to the commencement of any site disturbance or construction activities. Upon completion of the project, any remaining funds shall be returned to the Applicant.
  
- Initial Funding for Homeowner's Association Activities: Prior to issuance of any Occupancy Permits within the project the Applicant and/or owner shall provide written confirmation to the Office of Planning & Development that the following initial funds have been transferred into accounts to be managed by the Homeowner's Association:
  - Open Space Maintenance Fund: \$5,000
  - Stormwater Management Systems Maintenance Fund: \$6,000
  - Landscaping & Lawn Maintenance Fund: \$3,000
  
- Approval Subject to Compliance with WRPD Ordinance: It is anticipated that the proposed OSRD will require Special Permits under the WRPD (Section XIX of the NZO), particularly with respect to the installation of drainage and stormwater management systems. Approval of this OSRD-SP is subject to compliance with all provisions of the WRPD and grant of any special permits required thereunder.
  
- Hours of Construction: All construction and site work related to this OSRD shall be limited to between the hours of 7am – 7pm Monday through Thursday, 7am-5pm Fridays and 9am-5pm on Saturdays, including access of trucks and equipment to the site from surrounding streets connecting to Ferry Road.
  
- Dust Control: The Applicant shall be responsible for implementing dust control measures during all site work and construction related to this OSRD, including but not limited to wetting down soil piles throughout the project.
  
- Signoffs for Building & Occupancy Permits: No building permits or occupancy permits shall be granted by the Newburyport Building Commissioner within this project until the Newburyport Building Commissioner has first confirmed compliance with all applicable conditions of this decision.

**DATE OF FILING OF DECISION**

Filed with the Newburyport City Clerk on 3/15/2017 and sent registered mail to the applicant. Notice of decision is also sent by regular mail to the Parties in Interest and the abutting municipalities.

**SIGNATURE OF THE BOARD**

A handwritten signature in black ink, appearing to read 'Jim McCarthy', is written over a horizontal line. The signature is stylized and extends above and below the line.

Jim McCarthy, Chair, Newburyport Planning Board

3/15/2017  
Date

**NOTICE OF APPELLATE RIGHTS**

Appeals shall be made pursuant to M.G.L. Chapter 40A Section 17 and filed within twenty (20) days after the date of filing this decision in the Office of City Clerk.

**CITY CLERK CERTIFICATION OF APPEAL PERIOD EXPIRATION**

Certification of the City Clerk: I, \_\_\_\_\_, City Clerk of the City of Newburyport, hereby certify pursuant to M.G.L. Chapter 40A Section 17, that the decision for the property known as: **18 Boyd Drive and 5 Brown Avenue** was filed in the Office of the City Clerk on 3/15/2017.

Pursuant to M.G.L. Chapter 40A Section 11, this decision was also filed in the Office of Planning and Development on 3/15/2017 and twenty days have elapsed after the decision was filed and no appeal has been filed. Appeals shall be made pursuant to M.G.L. Chapter 40A Section 17 and made within twenty (20) days after the date of filing of this decision in the Office of the City Clerk.

\_\_\_\_\_  
Newburyport City Clerk

\_\_\_\_\_  
Date



CITY OF NEWBURYPORT  
PLANNING BOARD  
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**SPECIAL PERMIT  
NOTIFICATION OF DECISION**

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**NOTICE OF DECISION**

You are hereby notified of the decision of the Planning Board on the application filed by Evergreen Commons LLC for property located at **18 Boyd Drive and 5 Brown Avenue**, which was filed with the Board on 3/15/2017.

The Board held public hearings on the above referenced application on 12/14/2016, and continued to 1/4/17, 1/18/17, 2/1/17, 2/13/17, 2/15/17, and 3/1/17 and voted to approve the following request:

*amend original application for a special permit for an Open Space Residential Development to provide access through Brown Avenue*

**APPEALS**

An appeal of this decision shall be made pursuant to M.G.L. Chapter 40A Section 17 and filed with the Superior or District Court and the Office of the City Clerk within twenty (20) days after the filing of the above with the Office of the City Clerk. This decision was filed on 3/15/2017.

Copies of this decision and detailed records of proceedings of the Planning Board presented at the public hearing, which is being incorporated herein by reference and considered a part hereof, are on file with the Office of the City Clerk and the Office of Planning and Development.