

CITY OF NEWBURYPORT
 OFFICE OF PLANNING AND DEVELOPMENT
 60 PLEASANT STREET • P.O. Box 550
 NEWBURYPORT, MA 01950
 (978) 465-4400
 WWW.CITYOFNEWBURYPORT.COM

REQUEST FOR MINOR MODIFICATION

Please attach a copy of revised plans and the recorded decision you are requesting to modify.

Property Address: 18 Boyd Drive & 5 Brown Avenue, Newburyport, MA 01950

Applicant: Evergreen Commons, LLC c/o Lisa Mead

Mead, Talerman & Costa LLC

30 Green Street, Newburyport, MA 01950

File #(s): 2016-SP-03a; 2017-DEF-01

Request: See attached memo.

Revised Drawings: See plans attached with memo.

For office use only:

- Board review/approval required.
- Exceeds minor modification. Hearing required.
- Staff-Level approval. Requested modifications as shown on the above referenced plans qualify as de minimis and do not affect the initial board approval and decision(s) as listed above.

JENNIFER BLANCHET
 Staff name (print)

Jennifer Blanchet
 Staff signature

9/10/21
 Date



Mead, Talerman & Costa, LLC
Attorneys at Law

30 Green Street
Newburyport, MA 01950
Phone 978.463.7700
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September 7, 2021

IN HAND

Bonnie Sontag, Chair
Planning Board
City of Newburyport
City Hall
60 Pleasant Street
Newburyport, Massachusetts 01950

RE: Evergreen Commons Minor Modification / Garrison Trail Connection and
Fence Installation

Dear Chair and Members of the Board;

Reference is made to the above-captioned matter. In that connection, as you are aware, the Applicant has been unsuccessful in obtaining MassDOT's approval of or cooperation with the connection of the trail inside the open space with the Garrison Trail. Further, on another front, the Mayor's Office and the Conservation Commission have requested a 6 foot chain link vinyl covered fence be installed on the property line which separates the Open Space area from the land to be deeded to the Water Department. Upon conversation with Director Port, it is suggested the fence be located just inside the to be deeded property. Indeed, a site visit occurred in early August with Director Port, the Water Superintendent and Conservation Agent to locate the best place to install the fence.

As to the trail, the Applicant attaches herewith a complete engineered plan of the proposed trail connection to MassDOT standards as requested by Director Port. Further, the Applicant will provide the attached easement to the City to allow for the completion of the trail should MassDOT change their perspective on this connection.

Given the above, first, the board can find that the request is minor in nature as it does not substantively change the design of the subdivision or OSRD Special Permit. The trail is still a part of the design and the fence is in response to a request by the City.

I would request that this matter be placed on your September 15, 2021 agenda for a discussion of same. I thank you in advance for your time and consideration.

Respectfully submitted
Evergreen Commons LLC
By Its Attorney

A handwritten signature in blue ink, appearing to read 'L. L. Mead'.

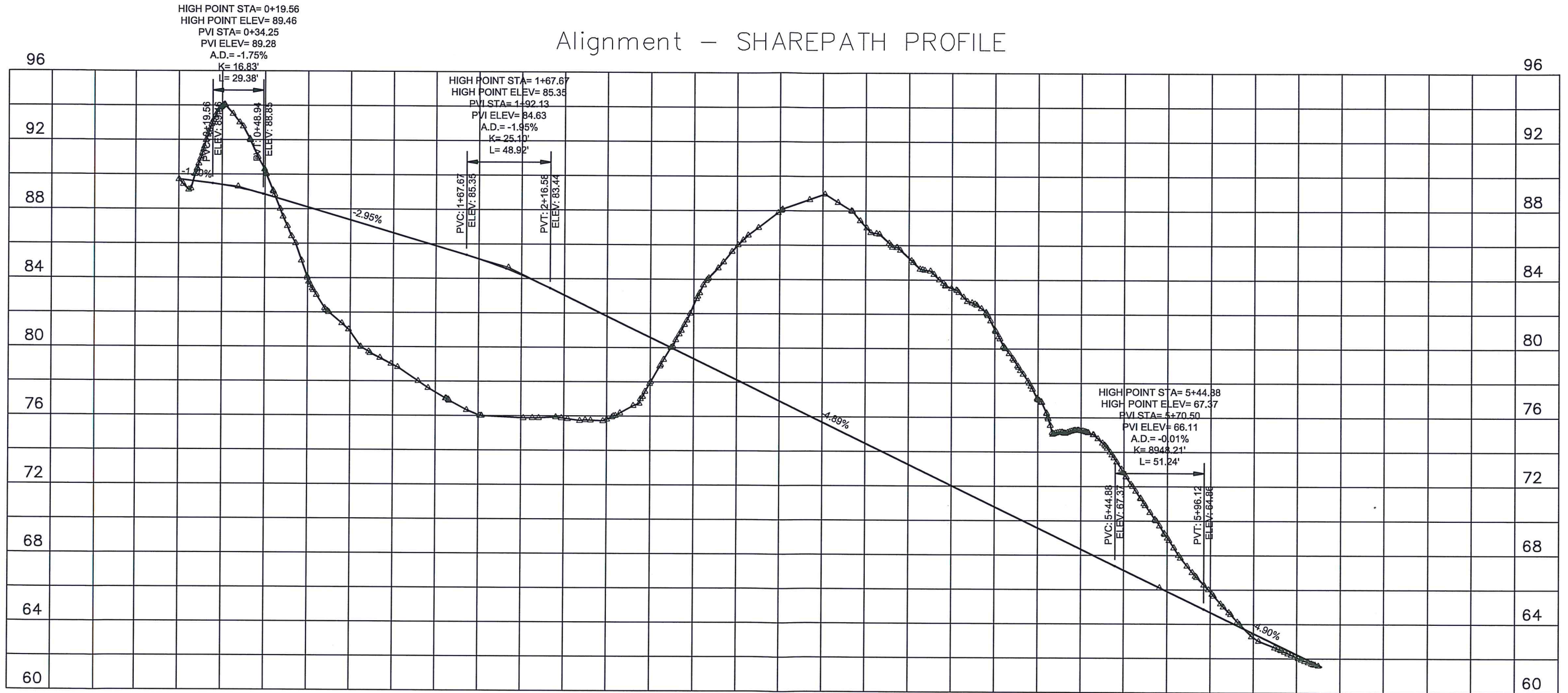
Lisa L. Mead

cc: Client

Millis Office

730 Main Street, Suite 1F
Millis, MA 02054
Phone 508.376.8400

Alignment – SHAREPATH PROFILE



NON- EXCLUSIVE CONSTRUCTION EASEMENT

This Non-Exclusive Construction Easement (the “Easement”) is granted this ___ day of _____, 2021 by Evergreen Commons, LLC, being duly authorized to do business in the Commonwealth of Massachusetts, and having a mailing address of ___ Storey Avenue, Essex County, Commonwealth of Massachusetts, 01950, a Limited Liability Corporation as declarant for the Port Place Home Owner’s Association, recorded in the Essex South Registry of Deeds Book ___ Page ___ as amended by that First Amendment recorded in said Registry at Book ___ and Page ___ (“Grantor”), as the owner of those parcels of land in Newburyport consisting of approximately 22.816 acres, and shown as “Open Space 1”, “Open Space 2” and “Open Space 3” on a plan recorded in said Registry at Plan Boo, 464 Plan 53 prepared by Design Consultants Inc., 68 Pleasant Street, Newburyport, MA 01950, dated May 22, 2017 (the “Grantor’s Property”), to the City of Newburyport, an municipal corporation duly organized under the laws of the Commonwealth of Massachusetts and located in Essex County, Massachusetts, located at 60 Pleasant Street, Newburyport, Massachusetts, 01950 (together with its successors and assigns, “Grantee”).

WHEREAS, Grantor is the owner of the Grantor’s Property;

WHEREAS, pursuant to a Newburyport Planning Board, XIV OSRD Special Permit, File No. 2016-SP-03a, recorded in the Essex South Registry of Deeds at Book 36573, Page 94 (“Special Permit”), for an Open Space Residential Development, Finding No. 8 specified that the Project would include 5,700 linear feet of bike and walking paths “that will connect to the City’s multi-use path that runs adjacent and parallel to Interstate 95” (the “Garrison Trail”);

WHEREAS, pursuant to Newburyport Conservation Commission Order of Conditions, DEP File Number 051-0973, dated February 6, 2018 and recorded in the Essex South Registry of Deeds at Book 36573, Page 141 (“Order”), allowing construction of a 38-home subdivision within a Zone II Wellhead Protection Area and anticipating connection to the Garrison trail (the “Bike Path Connection”);

WHEREAS, the Order of Conditions and Special Permit have been amended and no longer require the Grantor to construct a connection to the City’s multi-use path that runs adjacent to Interstate 95 however, require the creation of a plan to provide for said connection. (the “Easement Area”) said Easement Area shown on Exhibit A attached hereto and grant said easement to the Grantee.

WHEREAS, this Non-Exclusive Construction Easement is to authorize and enable the City of Newburyport to construct the bike path connection in the future, once permission is secured from all pertinent landowners, consistent with the path proposed and approved in the Order and Special Permit;

NOW THEREFORE, for nominal consideration the receipt and sufficiency of which is hereby acknowledged and for the promises set forth below, Grantor does hereby grant to Grantee the following rights and easement:

1. Grant of a Non-Exclusive Construction Easement. Grantor does hereby grant to Grantee the following non-exclusive construction easement to run with the land as follows:

(a) The right for the City of Newburyport, its assigns, contractors and successor, to construct a bike path connection consistent that that shown on Exhibit A in the Easement Area. This Construction Easement and conditions provided herein shall be perpetual and irrevocable and shall be deemed to be covenants running with the land and shall inure to the benefit of and be binding upon the Grantee and the Grantor and their respective successors and assigns.

2. Limitations and Restrictions. The rights and easements granted in Section 1 above shall become effective only if and when Grantor has recorded the Plan. The rights and easements granted in Section 1 hereof shall be limited to use of the Easement Area, including access thereto over the land of the Grantor's Open Space Area for construction of the bike path connection.

The rights and easements granted in Section 1 in no way curtail or nullify the rights granted to the City of Newburyport Conservation Commission in that certain Conservation Restriction dated ____ and recorded in said Registry at Book ____ - Page ____.

Nothing in this Grant of Easements shall limit the ability of the Grantor and Grantee to avail themselves of the protections provided by any applicable law affording immunity to either party including, to the extent applicable, M.G.L. c 21, §17C(a), the so-called "Recreational Use Statute". This Grant of Easements is made for the express purpose of permitting the Grantee to construct a bike path connection which will in turn enable members of the public to use such land for recreational purposes, at their own risk, without the imposition of a charge or fee therefor, and neither Grantor nor Grantee shall at any time impose a charge or fee on members of the public for the use of the public bike path to be created on the Easements or for any other purpose.

3. Maintenance.

(a) Maintenance of the Easement Area. Grantor shall be responsible for maintaining the Easement Area and improvements thereon at Grantor's sole cost and expense.

4. Insurance. Prior to exercising any rights under this Agreement, Grantee shall obtain, and thereafter shall maintain in effect, a policy of public liability insurance insuring against claims on account of loss of life, bodily injury or property damage that may arise from, or be occasioned by, the use and/or exercise of rights and/or obligations under this Agreement, including but not limited to use, construction of the bike bath connection and access to and from. Such insurance policy shall name Grantor (and following notice, any holders of mortgages on

Grantor's Land), as an additional insured. Said insurance shall be carried by a financially responsible insurance company or companies qualified to do business in the Commonwealth of Massachusetts and having a single limit for loss of life or bodily injury and for property damage of not less than \$3,000,000. Grantee shall furnish to Grantor a certificate of insurance evidencing the existence of the insurance required to be carried pursuant hereto. Such policy shall contain a provision that it shall not be cancelled or terminated without at least thirty (30) days advance written notice to each insured.

5. No Liability: The Grantor does not assume any responsibility to the Grantee, the general public, or anyone else in connection with its or their use of this Non-Exclusive Maintenance Easement which use shall be at its and their discretion and risk.

6. No Representations or Warranties. Grantor makes no representation or warranty, either express or implied, with respect to the condition of any portion of Grantor's Land or the improvements now or hereafter constructed thereon.

7. Compliance with Law. In the performance of its obligations hereunder, Grantee shall comply promptly with all laws, regulations and governmental permits and approvals and matters of record existing prior to the recording of this Agreement.

8. Amendment. Except as otherwise expressly set forth in this Agreement, no amendments or modifications of this Agreement shall be effective without the prior written consent of each party at the time of such amendment or modification.

9. Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be declared to be invalid or unenforceable, then the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

10. Governing Law. This Agreement shall be construed and interpreted under the laws of the Commonwealth of Massachusetts.

11. Notices. Unless otherwise specified herein, any notice to be given hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand, or (b) when mailed by registered or certified mail return receipt requested, or (c) when sent by overnight delivery (such as FedEx), or (d) when sent by daytime courier, addressed as follows:

If to Grantor: Trustee
 Port Place Homeowners Association Trust
 _ - Storey Ave.
 Newburyport MA 01950

If to Grantee: City of Newburyport
 Mayor

City Hall
60 Pleasant Street
Newburyport, MA 01950

Each party's notice address may change upon twenty (20) days prior written notice to the other party. Notices shall be deemed delivered on the date received or rejected or on the date noted that the addressee has refused delivery, or on the date that the notice is returned to sender due to the inability of the postal authorities to deliver.

Port Place Homeowners Association Trust
By Evergreen Commons LLC
Its Original Declarant

By: _____
Howard Johnstone Hall

COMMONWEALTH OF MASSACHUSETTS

_____, ss

On this ____ day of [Month], 2021, before me, the undersigned notary public, personally appeared Howard Johnstone Hall, proved to me through satisfactory evidence of identification, which were driver's licenses, to be the persons whose name is signed on the preceding or attached document, and acknowledged to me that he signed it in his capacity, and that by his signature on the instrument, the individual, or the person upon whose behalf of which the individual acted, executed the instrument voluntarily for its stated purpose.

Notary Public:
My Commission Expires:

GRANTEE: CITY OF NEWBURYPORT

By: _____
Donna Holaday, Mayor

COMMONWEALTH OF MASSACHUSETTS

_____ County, ss.

On this ____ day of _____, 2021, before me, the undersigned Notary Public, personally appeared the above-named Donna Holaday, proved to me by satisfactory evidence of identification, being (check whichever applies): driver's license or other state or federal governmental document bearing a photographic image, oath or affirmation of a credible witness known to me who knows the above signatory, or my own personal knowledge of the identity of the signatory, to be the person whose name is signed above, and acknowledged the foregoing to be signed by him voluntarily for its stated purpose.

(Print Name of Notary Public): _____
My commission expires: _____