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LISA L. MEAD
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By Hand

December 7 2016

James McCarthy, Chair
Planning Board
City of Newburyport
60 Pleasant Street
Newburyport, Massachusetts 01950

RE: 18 Boyd Drive – Application for Open Space Residential Development

Dear Mr. Chair and Members of the Planning Board;

Reference is made to the above captioned matter. In that connection as you are aware, the Applicant provided a revised plan including a through road to Brown Avenue from Boyd Drive. Given the number of meetings which have taken place as part of this application, I thought it would be helpful to provide a brief synopsis of the project and the commitments the Applicant has made to date to address some of the concerns raised by the Board, Board of Health, Water and Sewer Commission and the neighbors. To that end, I am providing an outline below. This letter is not meant to supplant the information already provided rather it is an effort in convenience and clarity.

Property: 18 Boyd Drive and 5 Brown Ave.
Size: 36.42 Acres
Preserved Public Open Space: 22.12 acres
Developable Area: 14.72 acres

Residential Lots: Yield Plan 43
Proposed 43

Zoning District: R-1 and Water Resource Protection Overlay Zone II

Access: Boyd Drive: Original plans included two roadway connections on Boyd Drive; one off of the cul de sac and one further to the north. The Applicant has eliminated the access off of the cul de sac and provided one access off of Boyd Drive.
Brown Ave: The Applicant initially proposed an emergency access off of Laurel Road. The Board then expressed a desire to have a full

through road through to Laurel Road. The Applicant is proposing the full through access run through to Brown Ave.

Open Space: The Open Space will include bike and walking trails. The current paved trails will remain paved and the new trails will include crushed stone. There will be a connection constructed to the new multi-model path adjacent to Route 95. There will also be a play-ground area.

Care and Oversight:

Prior to Any Excavation of Site:

- The Applicant will undertake the water quality and soil testing as set forth from Doug Gove, P.E. as set forth in Attachment A to form a baseline of information against which to compare future test results.
- The Applicant will use commercially reasonable best efforts to obtain liability insurance to cover an event of contamination to Well #2 which is caused during construction and which is caused by activities of the Applicant.¹

Home Owners Association: The Applicant proposes a HOA in accordance with the Ordinance. The HOA document will be reviewed and approved by the City/Planning Board and will be in place prior to the issuance of the first occupancy permit or sale of first lot which ever first occurs. This Association will include provisions to address the following:

- the care and upkeep of the Public Open Space
- requirements that all lawn and garden areas, including driveway and sidewalk snow removal will be carried out by the one properly licensed entity.
- requirements that only lawn care products which are used on the lawns are from an approved list.
- each deed out of the subdivision will cross reference the HOA document.
- mechanism for the city to enter upon and replace or repair any storm water feature which is not being maintained by the HOA such repair and/or replacement at the cost of the HOA.

¹ There was some discussion at the Water and Sewer Commission meeting for ongoing liability insurance. Such insurance is not available given the potential risk factors of the existing homes, public roadways including I95 and lack of control over the Well Head Protection area. (See attached letter.)

Storm water System and Home Design:

- All homes will be designed to have their foundation slab at least twelve (12) inches above the ILSF elevation or a minimum of two (2) feet above seasonal high ground water.
- The Storm water system will be designed to meet all the standards set forth in the Water Resource Protection District Ordinance and Zone II requirements from DEP.
- The run-off and storm water system off of Boyd Drive will be brought up to current Zone II water quality standards.

Water Quality Testing:

- The Applicant will agree to provide the following schedule of annual testing during construction:
 - Year 1 all water quality testing which occurred in the baseline testing. In the event the testing is the same or better.
 - Year 2 water quality testing for those items which were detected in Year 1 only.
- Year 3 water quality testing for those items which were detected in Year 2 only. The Applicant will agree to post a bond to provide for the foregoing testing during construction.
- All test results shall be provided to the City of Newburyport.
- In the event the City does not permit the Applicant or its successors and assigns to access Well #2 or the City Property, the Applicant will only be required to test the monitoring wells located on the property and on the northern property line of the property adjacent to the City's Well #2 protection area.

Infrastructure Work:

- The existing sewer pump station will be replaced to current standards.
- The water main from Boyd Drive will be looped at Brown Avenue.
- The end of Boyd Drive beginning at the property line of the Applicant to the cul de sac will be milled and over-layed.
- Sidewalks will be reconstructed and/or installed from the edge of the Applicant's property through the end of the cul de sac connecting to the bike and walking path.
- All new roads within the subdivision will be finished at 24 feet in width

**Water Resource
Protection District:**

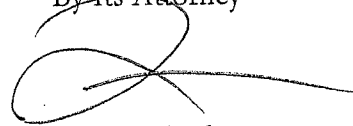
The Applicant will be filing with its definitive plan, a request for a special permit under the WRPD. As in noted in an email from the Planning Director dated November 3, 2016 to the City Council, among others, the WRPD special permit criteria, "they largely rely on expert testimony to substantiate these concerns as applied to the proposed project." The Applicants proposal triggers the Special Permit by the construction of drainage improvements and the creation of over 10,000 square feet of impervious surface see section XIX-I – 5 & 6 of the NZO.

The standard of review for a WRPD special permit for the two matters which will be sought are:

- a. In no way adversely affect the existing or potential quality or quantity of water that is available for on-site recharge in the water resource protection district, during or after construction.
- b. Be designed to avoid substantial disturbance of the soils, topography, drainage, vegetation, and other water related natural characteristics of the site to be developed, in adherence to the practices outlined in "Guidelines for Soil and Water Conservation in Urbanizing Areas of Massachusetts" (USDA Soil Conservation Services, October 1977).

We hope this helps to clarify and bring together all of the salient points that have been discussed and presented. We look forward to discussing the amended application at your next meeting.

Respectfully submitted
Evergreen Commons LLC
By Its Attorney



Lisa L. Mead

cc: Client



COLE HARRISON
Insurance Since 1882

November 14, 2016

Mr. Howard Hall
Cottage Advisors
487 Groton Rd. Suite A
Westford, MA 01886

Re: Pollution Coverage for Evergreen Commons

Dear Mr. Hall,

Thank you for your call to discuss insurance coverage for potential pollution to the Newburyport #2 Well in association with your proposed residential development project at 18 Boyd Drive in Newburyport. As I understand it there are two potential issues or concerns being raised and the question of availability of insurance or bonding coverage to address those concerns.

The initial concern for contamination during construction of the project can be covered through a pollution rider attached to the general liability policy for the duration of the construction project. More specific costs for this coverage can be obtained once a final plan has been adopted and approved.

The second issue of extending that same or similar coverage, once the project is complete, covering the homeowner's association, is a much more difficult risk to define and thus providing a liability policy or bond more problematic.

In reviewing the site plan for the proposed project, and its proximity to the #2 Well, as well as the residential development that already exists in this area, it is difficult to project, with any certainty, the potential risk factors that the new development would have on the well versus the existing residential uses that surround it already. Many of these properties are closer than the proposed development and would be more likely to be the potential cause for contamination than the proposed development is question. Determining the cause and thus the liability could prove difficult.

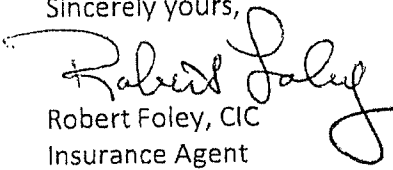
In discussing this with the risk managers of several of the insurance and bonding companies, they expressed their reluctance to provide any assurances that this coverage could or would be available once the project is completed. To provide coverage for a homeowner's association for

the potential contamination of this #2 Well and to be able to determine, in the event of a loss, which property in fact caused the damage would be difficult if not impossible to ascertain.

Based on these discussions I cannot provide you any guidance or assurance that coverage for the homeowners association can or would be available. My initial indications are that it would be unlikely that we could find such coverage.

I hope this information provides you the information you have requested. If I can be of further service please let me know.

Sincerely yours,


Robert Foley, CIC
Insurance Agent