

HEARINGS, MEETINGS, LICENSES

9/12/16

**Earth Removal Permit - Harju
Continued from August 29, 2016**

HEARINGS, MEETINGS, LICENSES

9/12/16

Please note at the end of the most recent correspondence I have drafted the Earth Removal Permit for review.

September 8, 2016

Middleborough Board of Selectmen
Town Hall
10 Nickerson Avenue
Middleborough, MA 02346 *(via email)*

Dear Board of Selectmen:

We wanted to re-state our position in writing in reference to our pending earth removal permit on Purchase Street that sits before you today. Due to the changing dynamics of the industry, particularly due to the growing market demand for large, wet harvested fruit, this bog property that we have purchased does not have sufficient water to carry out today's modern practices. The future for this bog rests with it being transitioned into a water harvest operation, which requires more water than is currently available on the site. We have had the water needs assessed through the proper channels, specifically a USDA Natural Resources Conservation Service approved conservation farm plan and subsequent engineered drawings. This earth removal project will be to construct a tailwater recovery pond to be used to collect and re-use in-season water. Tailwater ponds are an industry Best Management Practice, helping to conserve water while simultaneously increasing water quality. The USDA endorses the installation of tailwater ponds and they have become an important facet of conservation practices for many cranberry farms. The construction of this pond will help bring this old bog into modern times, as far as conservation, efficiency and production standards for the industry. As a tradeoff to installing tailwater recovery ponds, a large amount of earth is needed to be removed.

As you are aware, agriculture is afforded rights under Article 97 of the state Constitution and also, Chapter 40A Section 3 of the Massachusetts General Laws. We understand the laws and feel that we have provided all of the information to you in order to satisfy any questions or concerns with the project. The project has been vetted through the USDA farm planning process, adheres to industry best management practices, supports an existing agricultural operation and complies with state law regarding commercial agriculture. We are fourth generation cranberry farmers, our family has been farming for nearly 100 years. This project is part of making our farm sustainable for the next 100 years. We have been an integral part of the Massachusetts cranberry industry and this project will allow us to continue in that tradition.

This project is critical to the future success of our farm. We understand that sometimes the process can take longer than anyone anticipates. We have been as flexible as possible, providing information, conducting a peer review, having onsite meetings with neighbors and more. There is nothing more to our knowledge that we can do or provide to you that we have not already done. We would like you to consider all of the information provided herein into consideration in advance of Monday night's hearing.

Sincerely,

Dana and Derek Harju
D&D Harju Cranberries, LLC



165 East Grove Street
Middleborough, MA 02346
Tel # 508-946-9231 Fax # 508-947-8873
www.outback-eng.com

Civil Engineers † Land Surveyors † Wetland Scientists † Soils Laboratory
VIA EMAIL

August 25, 2016

Middleborough Board of Selectmen
Town Hall Building
10 Nickerson Avenue
Middleborough, MA 02347

**Subject: Purchase Street Tailwater Pond and Earth Removal Permit Plan Review
Job #OE-3041**

Dear Board Members,

Outback Engineering has reviewed the August 22, 2016 and August 25, 2016 Response Letters, along with the "Proposed Tailwater Pond and Earth Removal Plan" for D&D Harju Cranberries, LLC prepared by G.A.F. Engineering, Inc. dated 4/5/16 last revised 8/19/16.

Relative to our comments 2 and 9, we note that GAF indicates that a Special Permit relative to the WRPD Z4 Zoning Bylaw is not required to allow work within the 25' buffer zone to the wetland resource areas per MGL Ch. 40A, Section 3, and that a Stormwater Pollution Prevention Plan per US EPA NPDES is not required where the reservoir are not waters of the United States and excavation work will be conducted such that no point source stormwater discharges will be directed to the bogs or other wetlands.

Based on G.A.F.'s responses, the plan has been revised to reflect our other comments from our August 18, 2016 letter, and we have no further comments.

If you have any questions or comments, please contact me at (508) 946-9231 ext. 203.

Sincerely,
Outback Engineering, Inc.

James A. Pavlik
James Pavlik, P.E., Principal

cc: Brian Grady, GAF (via email only)



ENGINEERING,
INC.

ENGINEERS
SURVEYORS

266 MAIN ST.

WAREHAM, MA

02571

TEL 508.295.6600

FAX 508.295.6634

gaf@gaf-eng.com

August 25, 2016

Board of Selectmen
Town Hall Building
10 Nickerson Avenue
Middleborough, MA 02346

Re: Response to Outback Engineering Review Letter
Earth Removal Permit Application
D & D Harju Cranberries, LLC
G.A.F. Engineering, Inc. Job No. 16-8682

Honorable Selectmen,

This letter is to provide additional information regarding Comment 9 in the Outback Engineering review letter dated August 18, 2016. Mr. Pavlik, from Outback Engineering, requested additional clarification regarding the need for this project to prepare a Stormwater Pollution Prevention Plan per US EPA NPDES program. It is our opinion that this project does not need a NPDES permit for several reasons. A NPDES permit is necessary when a project disturbs greater than 1 acre of land and discharges to a "water of the United States". This project will be excavated in such a way that, at no time will a slope be created that is in excess of 1 acre, that would create a point source discharge to "waters of the United States". Secondly, any discharges that are created would be discharged to the existing agricultural reservoir located to the north of the proposed project. This reservoir is not considered a "waters of the United States". The Code of Federal Regulations, 40 CFR 122.2 defines "waters of the United States". It also defines what is not "waters of the United States". Per this regulation the following are not considered "waters of the United States":

- Artificially irrigated areas that would revert to dry land should application of water to that area cease
- Artificial, constructed lakes and ponds created in dry land such as farm and stock watering ponds, irrigation ponds, settling basins, fields flooded for rice growing, log cleaning ponds, or cooling ponds
- Water-filled depressions created in dry land incidental to mining or construction activity, including pits excavated for obtaining fill, sand, or gravel that fill with water

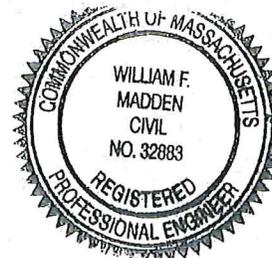
I hope this information is helpful. I have included a copy of the appropriate pages from 40 CFR 122.2 for your review. Please let me know if you have any additional questions or require more information.

Very truly yours,

Brian R. Grady
Brian R. Grady, R.S.

William F. Madden
William F. Madden, P.E.

BRG/mas
Cc: D & D Harju Cranberries, LLC
Outback Engineering
Enc.



(ii) All interstate waters, including interstate wetlands;

(iii) The territorial seas;

(iv) All impoundments of waters otherwise identified as waters of the United States under this section;

(v) All tributaries, as defined in paragraph (3)(iii) of this section, of waters identified in paragraphs (1)(i) through (iii) of this section;

(vi) All waters adjacent to a water identified in paragraphs (1)(i) through (v) of this definition, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters;

(vii) All waters in paragraphs (1)(vii)(A) through (E) of this definition where they are determined, on a case-specific basis, to have a significant nexus to a water identified in paragraphs (1)(i) through (iii) of this definition. The waters identified in each of paragraphs (1)(vii)(A) through (E) of this definition are similarly situated and shall be combined, for purposes of a significant nexus analysis, in the watershed that drains to the nearest water identified in paragraphs (1)(i) through (iii) of this definition. Waters identified in this paragraph shall not be combined with waters identified in paragraph (1)(vi) of this definition when performing a significant nexus analysis. If waters identified in this paragraph are also an adjacent water under paragraph (1)(vi), they are an adjacent water and no case-specific significant nexus analysis is required.

(A) *Prairie potholes.* Prairie potholes are a complex of glacially formed wetlands, usually occurring in depressions that lack permanent natural outlets, located in the upper Midwest.

(B) *Carolina bays and Delmarva bays.* Carolina bays and Delmarva bays are ponded, depressional wetlands that occur along the Atlantic coastal plain.

(C) *Pocosins.* Pocosins are evergreen shrub and tree dominated wetlands found predominantly along the Central Atlantic coastal plain.

(D) *Western vernal pools.* Western vernal pools are seasonal wetlands located in parts of California and associated with topographic depression, soils with poor drainage, mild, wet winters and hot, dry summers.

(E) *Texas coastal prairie wetlands.* Texas coastal prairie wetlands are freshwater wetlands that occur as a mosaic of depressions, ridges, intermound flats, and mima mound wetlands located along the Texas Gulf Coast.

(viii) All waters located within the 100-year floodplain of a water identified in paragraphs (1)(i) through (iii) of this definition and all waters located within 4,000 feet of the high tide line or ordinary high water mark of a water identified in paragraphs (1)(i) through (v) of this definition where they are determined on a case-specific basis to have a significant nexus to a water identified in paragraphs (1)(i) through (v) of this definition. For waters determined to have a significant nexus, the entire water is a water of the United States if a portion is located within the 100-year floodplain of a water identified in (1)(i) through (iii) of this definition or within 4,000 feet of the high tide line or ordinary high water mark. Waters identified in this paragraph shall not be combined with waters identified in paragraph (1)(vi) of this definition when performing a significant nexus analysis. If waters identified in this paragraph are also an adjacent water under paragraph (1)(vi), they are an adjacent water and no case-specific significant nexus analysis is required.

(2) The following are not "waters of the United States" even where they otherwise meet the terms of

paragraphs (1)(iv) through (viii) of this definition.

(i) Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the Clean Water Act. This exclusion applies only to manmade bodies of water which neither were originally created in waters of the United States (such as disposal area in wetlands) nor resulted from the impoundment of waters of the United States. [See Note 1 of this section.]

(ii) Prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other Federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

(iii) The following ditches:

(A) Ditches with ephemeral flow that are not a relocated tributary or excavated in a tributary.

(B) Ditches with intermittent flow that are not a relocated tributary, excavated in a tributary, or drain wetlands.

(C) Ditches that do not flow, either directly or through another water, into a water identified in paragraphs (1)(i) through (iii) of this definition.

(iv) The following features:

(A) Artificially irrigated areas that would revert to dry land should application of water to that area cease;

(B) Artificial, constructed lakes and ponds created in dry land such as farm and stock watering ponds, irrigation ponds, settling basins, fields flooded for rice growing, log cleaning ponds, or cooling ponds;

(C) Artificial reflecting pools or swimming pools created in dry land;

(D) Small ornamental waters created in dry land;

(E) Water-filled depressions created in dry land incidental to mining or construction activity, including pits excavated for obtaining fill, sand, or gravel that fill with water;

(F) Erosional features, including gullies, rills, and other ephemeral features that do not meet the definition of tributary, non-wetland swales, and lawfully constructed grassed waterways; and

(G) Puddles.

(v) Groundwater, including groundwater drained through subsurface drainage systems.

(vi) Stormwater control features constructed to convey, treat, or store stormwater that are created in dry land.

(vii) Wastewater recycling structures constructed in dry land; detention and retention basins built for wastewater recycling; groundwater recharge basins; percolation ponds built for wastewater recycling; and water distributary structures built for wastewater recycling.

(3) In this definition, the following terms apply:

From: Sandy Fell [mailto:Sandy@MalmbergTravel.com]
Sent: Wednesday, August 24, 2016 4:01 PM
To: Colleen Lieb
Subject: RE: Latest Harju Earth Removal Plans

Colleen,

Hi there. Thank you for sending the updated earth removal plans. I wondered if their application changed as well. A few of my concerns are as follows. Some of these concerns I have spoken to the Harju's at one of the offsite meetings that was conducted. These issues may have already been addressed but I am not sure as I was unable to attend the meeting last Monday. Here are a few of my concerns so the board is aware.

A few questions and comments on the project:

It is my understanding that the project calls for removal of 171,600 cubic yards of material in a 3 year period. I also recall seeing that the maximum amount of material that will be removed in a year is 56,000 cubic yards. If I am incorrect in these numbers please let me know. In speaking with the Harju's I asked how many cubic yards a truckload holds. The answer given if I recall correctly is between 30 and 40 cubic yards of material. In one of the meetings they stated that they plan on making 50-60 trips a day. Add up 50 truck loads a day at 30 cubic yards each equals 1500 cubic yards of material. This means that they would reach their yearly maximum within 50 work days during the year.

Given my example above on how many work days it would take to complete the yearly maximum I would like to ask that the hauling hours be adjusted so that they are not hauling during the time that the elementary school busses are on the road. My kids take the bus 9 and it stops in front of my house at 279 Purchase Street between 8:10AM and 8:15AM. Bus number 9 continues down Purchase Street to Captain Hall before reversing course and driving back down Purchase Street to Thomas Street. Bus number 5 comes up Rocky Meadow Street and turns Right onto Purchase Street and continues down Purchase Street to Thomas Street. I strongly feel that any transportation of material should not happen during this time frame. The Elementary and Kindergarten buses return to Purchase Street at approximately 3:40PM in the afternoon. I would propose to limit the trucks to operating between 8:30AM and 3:30PM. There will still be the middle school buses and high school buses on the roads during operating hours in the afternoon but those kids are older and have a better sense of safety than the younger ones.

I understand that the Harju's plan on using water to control dust. If the permit is approved I would like to ask that all trucks exit Right onto Purchase Street instead of Left. I am not sure where the material is being hauled to. The additional nuisance of dust would be limited then as the trucks would not be traveling in front of our home on Purchase Street and exposing us to additional dust in the transportation process. Is the proposed tree line of 50 feet the only barrier that is proposed to protect abutters from drifting sand in windy conditions?

Is there a plan for sand to be stockpiled for future farming use? If so where is the stockpile going to be located and can a dust control measure be implemented for it?

I will be home from vacation next week and will be able to attend the next meeting.

Sandy

Sandra Fell
Malmberg Travel
A Member of Tzell Travel Group
31 Saint James Ave. Ste 1010, Boston, MA



ENGINEERING,
INC.

ENGINEERS
SURVEYORS

August 22, 2016

Board of Selectmen
Town Hall Building
10 Nickerson Avenue
Middleborough, MA 02346

Re: Response to Outback Engineering Review Letter
Earth Removal Permit Application
D & D Harju Cranberries, LLC
G.A.F. Engineering, Inc. Job No. 16-8682

Honorable Selectmen,

Please find included herein a revised plan and responses to comments raised by Outback Engineering, in their letter dated August 18, 2016, with respect to the Earth Removal Permit Application Submitted on behalf of our client D & D Harju Cranberries, LLC.:

1. Per section 8.2.9 WRPD Z4 regulations of the town Zoning Bylaws and subsection 3.d. the "25' No Disturb Zone" is not correctly shown off all of the bogs and wetland resource areas. It appears that work is proposed within the "25' No Disturb Zone" (for instance, but not limited to, along west bogs where dike road is proposed, and adjacent to the small bog on the east side of the proposed pond). The zoning bylaw requires a registered land surveyor to certify wetland locations and the "25" No Disturb Zone" (plan is stamped by professional engineer only).

Response:

The 25' "No Disturb Zone" has been revised and shown on the plan. The revised plan has been stamped by a registered Land Surveyor.

2. The applicant should verify if a special permit per section 8.2.9,3.d. is required and permissible for work within the "25' No Disturb Zone" or all land disturbing activities should be moved 25' away from all bogs and wetlands.

Response:

Massachusetts General Laws Chapter 40A, Section 3 states that "No Zoning Ordinance or by-law shall...require a special permit for the use of land for the primary purpose of commercial agriculture". No special permit application is therefore required for this agricultural use. Section 8.2.9,1 of the Zoning Bylaw states "Permitted Uses: Except as specified in 8.2.9.2 Prohibited uses and 8.2.9.3 Special Permit Uses below, those principal and accessory uses authorized in the underlying district are permitted in WRPD Z4". Agriculture is an Exempt use in this district, as noted in the Use Regulations Table located in Section 3.1.B. The proposed use is therefore a permitted use in the WRPD Z4 district.

266 MAIN ST.

WAREHAM, MA

02571

TEL 508.295.6600

FAX 508.295.6634

gaf@gaf-eng.com

3. The monitoring wells proposed by the applicant for monitoring groundwater impacts on abutting wells during dewatering activities should be shown on the plan.

Response:

No monitoring wells are proposed. The proposed tailwater pond will be excavated in a wet condition. If dewatering is found to be necessary, the water will be pumped to the adjacent reservoir located 150 feet directly to the west. This water will then recharge to the water table and have no effect on abutting wells. Any water pumped from the excavation will not be lost from the area. The nearest well is approximately 600' feet away.

4. Siltation fence should be installed along the western side of the proposed pond to prevent sediment from entering the existing bog and reservoir areas.

Response:

Siltation fence has been added, as shown on the revised plan.

5. There is proposed clearing within the 100' property line setback near the isolated wetland to the north of the proposed pond. Silt fence should be on or outside of this setback to ensure no clearing within the buffer.

Response:

Siltation fence has been relocated as shown on the revised plan.

6. There is a section of the proposed tree line located to the north-east of the proposed pond which seems to be cleared further than necessary; the silt fence is approximately 25' in front of it. Tree line should be revised to limit clearing or silt fence should be moved to limit of work.

Response:

The tree line has been revised as shown on the revised plan.

7. 100' buffer line from the existing reservoir to the west of the proposed pond appears to be 90-95'. Line should be revised to accurately show the 100' buffer.

Response:

The 100' buffer zone line has been adjusted on the revised plan.

8. Distances from proposed pond to abutting properties should be shown per plan checklist.

Response:

Distances from the proposed pond to abutting property lines have been added on the revised plan.

9. It appears that a Stormwater Pollution Prevention Plan per US EPA NPDES is required for this project where more than 1 acre of land disturbing activities are proposed.

Special permit granting authority should make this a condition of approval and require submittal of the required documentation prior to commencing work. Items to consider:

Response:

A NPDES permit is not required for this project. The excavation will occur from west to east. At no time will slopes be created in excess of one (1) acre, that would create a point source discharge to the adjacent wetlands.

- a. Per applicant response to DPW dated 7/29/20165 erosion control notes should include a provision to monitor and clean the existing driveway off Purchase Street. If necessary, a 75' long 6" thick gravel tracking pad consisting of 2" crushed stone should be provided after the paved portion of the trucking route from Purchase Street.

Response:

Erosion control notes have been revised to include a provision to monitor and clean the existing access road as necessary. The first 200' ± of access road from Purchase Street is paved and in good condition and will be inspected and maintained throughout the project. We do not anticipate the need for an additional crushed stone tracking pad as the paved driveway performs the function of the tracking pad.

- b. Erosion control notes do not specify any control for the stockpile areas. A note should be added to the effect of the following: The soil stockpile areas shall be surrounded by silt fence and soil stockpiles & exposed soils to receive temporary hydroseed or tarp covering if they will be left unused for >14 days.

Response:

A note has been added regarding stockpile areas.

- c. A schedule should be provided for the erosion control measures.
Example: Purchase St. shall be inspected weekly for sediment and cleaned as needed.

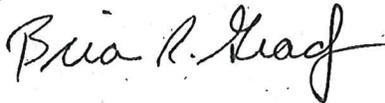
Response:

A schedule for inspection of the access road and Purchase Street has been added to the revised plan.

I trust these responses adequately address the comments raised by Outback Engineering, the review consultant. Should you require additional information please contact me directly.

Very truly yours,

Brian R. Grady



BRG/mas

Cc: D & D Harju Cranberries, LLC

Outback Engineering

Enc.



165 East Grove Street
Middleborough, MA 02346

Tel # 508-946-9231

Fax # 508-947-8873

www.outback-eng.com

Civil Engineers + Land Surveyors + Wetland Scientists + Soils Laboratory

August 18, 2016

Middleborough Board of Selectmen
Town Hall Building
10 Nickerson Avenue
Middleborough, MA 02347

Subject: Purchase Street Tailwater Pond and Earth Removal

Dear Board Members,

Outback Engineering has completed our initial engineering review of the plan entitled "Proposed Tailwater Pond and Earth Removal Plan" prepared by G.A.F. Engineering, Inc. dated 4/5/16 last revised 8/3/16 relative to a Special Permit request under the Earth Removal bylaw.

Other documents provided to us for reference:

- Earth Removal Permit Application, dated April 29, 2016
- Response to Department of Public Works Comments, dated July 29, 2016
- Conservation Farm Plan, dated February 2016

We have the following comments:

1. Per section 8.2.9 WRPD Z4 regulations of the town Zoning Bylaws and subsection 3.d. the "25' No Disturb Zone" is not correctly shown off all of the bogs and wetland resource areas. It appears that work is proposed within the "25' No Disturb Zone" (for instance, but not limited to, along west bogs where dike road is proposed, and adjacent to the small bog on the east side of the proposed pond). The zoning bylaw requires a registered land surveyor to certify wetland locations and the "25' No Disturb Zone" (plan is stamped by professional engineer only).
2. The applicant should verify if a special permit per section 8.2.9,3.d. is required and permissible for work within the "25' No Disturb Zone" or all land disturbing activities should be moved 25' away from all bogs and wetlands.
3. The monitoring wells proposed by the applicant for monitoring groundwater impacts on abutting wells during dewatering activities should be shown on the plan.
4. Siltation fence should be installed along the western side of the proposed pond to prevent sediment from entering the existing bog and reservoir areas.
5. There is proposed clearing within the 100' property line setback near the isolated wetland to the north of the proposed pond. Silt fence should be on or outside of this setback to ensure no clearing within the buffer.
6. There is a section of the proposed treeline located to the north-east of the proposed pond which seems to be cleared further than necessary; the silt fence is

approximately 25' in front of it. Treeline should be revised to limit clearing or silt fence should be moved to limit of work.

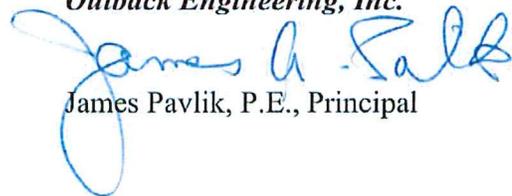
7. 100' buffer line from the existing reservoir to the west of the proposed pond appears to be 90-95'. Line should be revised to accurately show the 100' buffer.
8. Distances from proposed pond to abutting properties should be shown per plan checklist.
9. It appears that a Stormwater Pollution Prevention Plan per US EPA NPDES is required for this project where more than 1 acre of land disturbing activities are proposed. Special permit granting authority should make this a condition of approval and require submittal of the required documentation prior to commencing work.

Items to consider:

- a. Per applicant response to DPW dated 7/29/16 erosion control notes should include a provision to monitor and clean the existing driveway off Purchase Street. If necessary a 75' long 6" thick gravel tracking pad consisting of 2" crushed stone should be provided after the paved portion of the trucking route from Purchase Street.
- b. Erosion control notes do not specify any control for the stockpile areas. A note should be added to the effect of the following: The soil stockpile areas shall be surrounded by silt fence and soil stockpiles & exposed soils to receive temporary hydroseed or tarp covering if they will be left unused for >14 days.
- c. A schedule should be provided for the erosion control measures.
Example: Purchase St. shall be inspected weekly for sediment and cleaned as needed.

If you have any questions or comments, please contact me at (508) 946-9231 ext. 203.

Sincerely,
Outback Engineering, Inc.



James Pavlik, P.E., Principal



Massachusetts Department of Environmental Protection
 Bureau of Resource Protection - Wetlands
WPA Form 5 – Order of Conditions
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:
 SE220-1283
 MassDEP File #

eDEP Transaction #
 Middleborough
 City/Town

A. General Information (cont.)

6. Property recorded at the Registry of Deeds for (attach additional information if more than one parcel):
 Plymouth
 a. County Plymouth b. Certificate Number (if registered land) 300 & 50
 46080 & 41335
 c. Book 46080 & 41335 d. Page 300 & 50
7. Dates: 4/22/2016 6/2/2016 6/50/2016
 a. Date Notice of Intent Filed b. Date Public Hearing Closed c. Date of Issuance
8. Final Approved Plans and Other Documents (attach additional plan or document references as needed):
 Proposed Tailwater Pond & Earth Removal Plan (2 sheets)
 a. Plan Title Proposed Tailwater Pond & Earth Removal Plan (2 sheets)
 b. Prepared By G.A.F. Engineering, Inc. William F. Madden, Civil Registered Professional Engineer
5/25/2016 1"=50'
 d. Final Revision Date e. Scale
Stormwater Report by G.A.F. Engineering, Inc. 4-19-2016
 f. Additional Plan or Document Title g. Date

B. Findings

1. Findings pursuant to the Massachusetts Wetlands Protection Act:
 Following the review of the above-referenced Notice of Intent and based on the information provided in this application and presented at the public hearing, this Commission finds that the areas in which work is proposed is significant to the following interests of the Wetlands Protection Act (the Act). Check all that apply:
- a. Public Water Supply b. Land Containing Shellfish c. Prevention of Pollution
 d. Private Water Supply e. Fisheries f. Protection of Wildlife Habitat
 g. Groundwater Supply h. Storm Damage Prevention i. Flood Control
2. This Commission hereby finds the project, as proposed, is: (check one of the following boxes)

Approved subject to:

- a. the following conditions which are necessary in accordance with the performance standards set forth in the wetlands regulations. This Commission orders that all work shall be performed in accordance with the Notice of Intent referenced above, the following General Conditions, and any other special conditions attached to this Order. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Notice of Intent, these conditions shall control.



WPA Form 5 – Order of Conditions

B. Findings (cont.)

Denied because:

- b. the proposed work cannot be conditioned to meet the performance standards set forth in the wetland regulations. Therefore, work on this project may not go forward unless and until a new Notice of Intent is submitted which provides measures which are adequate to protect the interests of the Act, and a final Order of Conditions is issued. **A description of the performance standards which the proposed work cannot meet is attached to this Order.**
- c. the information submitted by the applicant is not sufficient to describe the site, the work, or the effect of the work on the interests identified in the Wetlands Protection Act. Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides sufficient information and includes measures which are adequate to protect the Act's interests, and a final Order of Conditions is issued. **A description of the specific information which is lacking and why it is necessary is attached to this Order as per 310 CMR 10.05(6)(c).**
- 3. Buffer Zone Impacts: Shortest distance between limit of project disturbance and the wetland resource area specified in 310 CMR 10.02(1)(a) 25-feet
a. linear feet

Inland Resource Area Impacts: Check all that apply below. (For Approvals Only)

Resource Area	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
4. <input type="checkbox"/> Bank	a. linear feet	b. linear feet	c. linear feet	d. linear feet
5. <input type="checkbox"/> Bordering Vegetated Wetland	a. square feet	b. square feet	c. square feet	d. square feet
6. <input type="checkbox"/> Land Under Waterbodies and Waterways	a. square feet e. c/y dredged	b. square feet f. c/y dredged	c. square feet	d. square feet
7. <input type="checkbox"/> Bordering Land Subject to Flooding	a. square feet	b. square feet	c. square feet	d. square feet
Cubic Feet Flood Storage	e. cubic feet	f. cubic feet	g. cubic feet	h. cubic feet
8. <input type="checkbox"/> Isolated Land Subject to Flooding	a. square feet	b. square feet		
Cubic Feet Flood Storage	c. cubic feet	d. cubic feet	e. cubic feet	f. cubic feet
9. <input type="checkbox"/> Riverfront Area	a. total sq. feet	b. total sq. feet		
Sq ft within 100 ft	c. square feet	d. square feet	e. square feet	f. square feet
Sq ft between 100-200 ft	g. square feet	h. square feet	i. square feet	j. square feet



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

WPA Form 5 – Order of Conditions

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:

SE220-1283

MassDEP File #

eDEP Transaction #

Middleborough

City/Town

B. Findings (cont.)

Coastal Resource Area Impacts: Check all that apply below. (For Approvals Only)

	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
10. <input type="checkbox"/> Designated Port Areas	Indicate size under Land Under the Ocean, below			
11. <input type="checkbox"/> Land Under the Ocean	a. square feet	b. square feet		
	c. c/y dredged	d. c/y dredged		
12. <input type="checkbox"/> Barrier Beaches	Indicate size under Coastal Beaches and/or Coastal Dunes below			
13. <input type="checkbox"/> Coastal Beaches	a. square feet	b. square feet	c. $\frac{\text{cu yd}}{\text{nourishment}}$	d. $\frac{\text{cu yd}}{\text{nourishment}}$
14. <input type="checkbox"/> Coastal Dunes	a. square feet	b. square feet	c. $\frac{\text{cu yd}}{\text{nourishment}}$	d. $\frac{\text{cu yd}}{\text{nourishment}}$
15. <input type="checkbox"/> Coastal Banks	a. linear feet	b. linear feet		
16. <input type="checkbox"/> Rocky Intertidal Shores	a. square feet	b. square feet		
17. <input type="checkbox"/> Salt Marshes	a. square feet	b. square feet	c. square feet	d. square feet
18. <input type="checkbox"/> Land Under Salt Ponds	a. square feet	b. square feet		
	c. c/y dredged	d. c/y dredged		
19. <input type="checkbox"/> Land Containing Shellfish	a. square feet	b. square feet	c. square feet	d. square feet
20. <input type="checkbox"/> Fish Runs	Indicate size under Coastal Banks, Inland Bank, Land Under the Ocean, and/or inland Land Under Waterbodies and Waterways, above			
	a. c/y dredged	b. c/y dredged		
21. <input type="checkbox"/> Land Subject to Coastal Storm Flowage	a. square feet	b. square feet		
22. <input type="checkbox"/> Riverfront Area	a. total sq. feet	b. total sq. feet		
Sq ft within 100 ft	c. square feet	d. square feet	e. square feet	f. square feet
Sq ft between 100-200 ft	g. square feet	h. square feet	i. square feet	j. square feet



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

WPA Form 5 – Order of Conditions

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:
SE220-1283

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B. Findings (cont.)

* #23. If the project is for the purpose of restoring or enhancing a wetland resource area in addition to the square footage that has been entered in Section B.5.c (BVW) or B.17.c (Salt Marsh) above, please enter the additional amount here.

23. Restoration/Enhancement *:

a. square feet of BVW

b. square feet of salt marsh

24. Stream Crossing(s):

a. number of new stream crossings

b. number of replacement stream crossings

C. General Conditions Under Massachusetts Wetlands Protection Act

The following conditions are only applicable to Approved projects.

1. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this Order.
2. The Order does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of private rights.
3. This Order does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state, or local statutes, ordinances, bylaws, or regulations.
4. The work authorized hereunder shall be completed within three years from the date of this Order unless either of the following apply:
 - a. The work is a maintenance dredging project as provided for in the Act; or
 - b. The time for completion has been extended to a specified date more than three years, but less than five years, from the date of issuance. If this Order is intended to be valid for more than three years, the extension date and the special circumstances warranting the extended time period are set forth as a special condition in this Order.
 - c. If the work is for a Test Project, this Order of Conditions shall be valid for no more than one year.
5. This Order may be extended by the issuing authority for one or more periods of up to three years each upon application to the issuing authority at least 30 days prior to the expiration date of the Order. An Order of Conditions for a Test Project may be extended for one additional year only upon written application by the applicant, subject to the provisions of 310 CMR 10.05(11)(f).
6. If this Order constitutes an Amended Order of Conditions, this Amended Order of Conditions does not extend the issuance date of the original Final Order of Conditions and the Order will expire on _____ unless extended in writing by the Department.
7. Any fill used in connection with this project shall be clean fill. Any fill shall contain no trash, refuse, rubbish, or debris, including but not limited to lumber, bricks, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, refrigerators, motor vehicles, or parts of any of the foregoing.



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C. General Conditions Under Massachusetts Wetlands Protection Act

8. This Order is not final until all administrative appeal periods from this Order have elapsed, or if such an appeal has been taken, until all proceedings before the Department have been completed.
9. No work shall be undertaken until the Order has become final and then has been recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land upon which the proposed work is to be done. In the case of the registered land, the Final Order shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is done. The recording information shall be submitted to the Conservation Commission on the form at the end of this Order, which form must be stamped by the Registry of Deeds, prior to the commencement of work.
10. A sign shall be displayed at the site not less than two square feet or more than three square feet in size bearing the words,

"Massachusetts Department of Environmental Protection" [or, "MassDEP"]
"File Number SE220-1283 "
11. Where the Department of Environmental Protection is requested to issue a Superseding Order, the Conservation Commission shall be a party to all agency proceedings and hearings before MassDEP.
12. Upon completion of the work described herein, the applicant shall submit a Request for Certificate of Compliance (WPA Form 8A) to the Conservation Commission.
13. The work shall conform to the plans and special conditions referenced in this order.
14. Any change to the plans identified in Condition #13 above shall require the applicant to inquire of the Conservation Commission in writing whether the change is significant enough to require the filing of a new Notice of Intent.
15. The Agent or members of the Conservation Commission and the Department of Environmental Protection shall have the right to enter and inspect the area subject to this Order at reasonable hours to evaluate compliance with the conditions stated in this Order, and may require the submittal of any data deemed necessary by the Conservation Commission or Department for that evaluation.
16. This Order of Conditions shall apply to any successor in interest or successor in control of the property subject to this Order and to any contractor or other person performing work conditioned by this Order.



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C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)

17. Prior to the start of work, and if the project involves work adjacent to a Bordering Vegetated Wetland, the boundary of the wetland in the vicinity of the proposed work area shall be marked by wooden stakes or flagging. Once in place, the wetland boundary markers shall be maintained until a Certificate of Compliance has been issued by the Conservation Commission.
18. All sedimentation barriers shall be maintained in good repair until all disturbed areas have been fully stabilized with vegetation or other means. At no time shall sediments be deposited in a wetland or water body. During construction, the applicant or his/her designee shall inspect the erosion controls on a daily basis and shall remove accumulated sediments as needed. The applicant shall immediately control any erosion problems that occur at the site and shall also immediately notify the Conservation Commission, which reserves the right to require additional erosion and/or damage prevention controls it may deem necessary. Sedimentation barriers shall serve as the limit of work unless another limit of work line has been approved by this Order.
19. The work associated with this Order (the "Project")
- (1) is subject to the Massachusetts Stormwater Standards
- (2) is NOT subject to the Massachusetts Stormwater Standards

If the work is subject to the Stormwater Standards, then the project is subject to the following conditions:

- a) All work, including site preparation, land disturbance, construction and redevelopment, shall be implemented in accordance with the construction period pollution prevention and erosion and sedimentation control plan and, if applicable, the Stormwater Pollution Prevention Plan required by the National Pollution Discharge Elimination System Construction General Permit as required by Stormwater Condition 8. Construction period erosion, sedimentation and pollution control measures and best management practices (BMPs) shall remain in place until the site is fully stabilized.
- b) No stormwater runoff may be discharged to the post-construction stormwater BMPs unless and until a Registered Professional Engineer provides a Certification that:
- i.* all construction period BMPs have been removed or will be removed by a date certain specified in the Certification. For any construction period BMPs intended to be converted to post construction operation for stormwater attenuation, recharge, and/or treatment, the conversion is allowed by the MassDEP Stormwater Handbook BMP specifications and that the BMP has been properly cleaned or prepared for post construction operation, including removal of all construction period sediment trapped in inlet and outlet control structures;
- ii.* as-built final construction BMP plans are included, signed and stamped by a Registered Professional Engineer, certifying the site is fully stabilized;
- iii.* any illicit discharges to the stormwater management system have been removed, as per the requirements of Stormwater Standard 10;



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C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)

- iv. all post-construction stormwater BMPs are installed in accordance with the plans (including all planting plans) approved by the issuing authority, and have been inspected to ensure that they are not damaged and that they are in proper working condition;
- v. any vegetation associated with post-construction BMPs is suitably established to withstand erosion.
- c) The landowner is responsible for BMP maintenance until the issuing authority is notified that another party has legally assumed responsibility for BMP maintenance. Prior to requesting a Certificate of Compliance, or Partial Certificate of Compliance, the responsible party (defined in General Condition 18(e)) shall execute and submit to the issuing authority an Operation and Maintenance Compliance Statement ("O&M Statement") for the Stormwater BMPs identifying the party responsible for implementing the stormwater BMP Operation and Maintenance Plan ("O&M Plan") and certifying the following:
- i.) the O&M Plan is complete and will be implemented upon receipt of the Certificate of Compliance, and
 - ii.) the future responsible parties shall be notified in writing of their ongoing legal responsibility to operate and maintain the stormwater management BMPs and implement the Stormwater Pollution Prevention Plan.
- d) Post-construction pollution prevention and source control shall be implemented in accordance with the long-term pollution prevention plan section of the approved Stormwater Report and, if applicable, the Stormwater Pollution Prevention Plan required by the National Pollution Discharge Elimination System Multi-Sector General Permit.
- e) Unless and until another party accepts responsibility, the landowner, or owner of any drainage easement, assumes responsibility for maintaining each BMP. To overcome this presumption, the landowner of the property must submit to the issuing authority a legally binding agreement of record, acceptable to the issuing authority, evidencing that another entity has accepted responsibility for maintaining the BMP, and that the proposed responsible party shall be treated as a permittee for purposes of implementing the requirements of Conditions 18(f) through 18(k) with respect to that BMP. Any failure of the proposed responsible party to implement the requirements of Conditions 18(f) through 18(k) with respect to that BMP shall be a violation of the Order of Conditions or Certificate of Compliance. In the case of stormwater BMPs that are serving more than one lot, the legally binding agreement shall also identify the lots that will be serviced by the stormwater BMPs. A plan and easement deed that grants the responsible party access to perform the required operation and maintenance must be submitted along with the legally binding agreement.
- f) The responsible party shall operate and maintain all stormwater BMPs in accordance with the design plans, the O&M Plan, and the requirements of the Massachusetts Stormwater Handbook.



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C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)

- g) The responsible party shall:
1. Maintain an operation and maintenance log for the last three (3) consecutive calendar years of inspections, repairs, maintenance and/or replacement of the stormwater management system or any part thereof, and disposal (for disposal the log shall indicate the type of material and the disposal location);
 2. Make the maintenance log available to MassDEP and the Conservation Commission ("Commission") upon request; and
 3. Allow members and agents of the MassDEP and the Commission to enter and inspect the site to evaluate and ensure that the responsible party is in compliance with the requirements for each BMP established in the O&M Plan approved by the issuing authority.
- h) All sediment or other contaminants removed from stormwater BMPs shall be disposed of in accordance with all applicable federal, state, and local laws and regulations.
- i) Illicit discharges to the stormwater management system as defined in 310 CMR 10.04 are prohibited.
- j) The stormwater management system approved in the Order of Conditions shall not be changed without the prior written approval of the issuing authority.
- k) Areas designated as qualifying pervious areas for the purpose of the Low Impact Site Design Credit (as defined in the MassDEP Stormwater Handbook, Volume 3, Chapter 1, Low Impact Development Site Design Credits) shall not be altered without the prior written approval of the issuing authority.
- l) Access for maintenance, repair, and/or replacement of BMPs shall not be withheld. Any fencing constructed around stormwater BMPs shall include access gates and shall be at least six inches above grade to allow for wildlife passage.

Special Conditions (if you need more space for additional conditions, please attach a text document):

See attached Standard Conditions

Special Condition: 1) Submit a copies of the Quarterly Inspection Reports by the Department of Public Works

-
20. For Test Projects subject to 310 CMR 10.05(11), the applicant shall also implement the monitoring plan and the restoration plan submitted with the Notice of Intent. If the conservation commission or Department determines that the Test Project threatens the public health, safety or the environment, the applicant shall implement the removal plan submitted with the Notice of Intent or modify the project as directed by the conservation commission or the Department.

Standard Conditions

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**Applicant: Dana & Derek Harju, D & D Harju
Cranberries, LLC**

1. A member of the Conservation Commission or its agent may enter and inspect the property and the activity that are the subjects of this Order of Conditions (OOC) at all reasonable times, with or without probable cause or prior notice, and until a Certificate of Compliance (COC) is issued, for the limited purpose of evaluating compliance with this OOC.
2. The term "applicant" as used in this OOC shall refer to the owner, any successor in interest or successor in control of the property referenced in the Notice of Intent, supporting documents and this OOC. The Commission shall be notified in writing within 30 days of all transfers of title of any portion of property that take place prior to the issuance of the COC.
3. This document shall be included by reference in all contracts, plans and specifications dealing with the activity that is the subject of this OOC, and that are created or modified after the issuance date of this OOC, along with a statement that this OOC shall supersede any conflicting contractual arrangements, plans or specifications.
4. The applicant shall provide a copy of this OOC to the person or persons supervising the activity that is the subject of this OOC, and will be responsible for ensuring that all persons performing the permitted activity are fully aware of the terms and conditions of this OOC.
5. If any change is made in the above-described plan(s) which may or will alter an area subject to protection under the Wetlands Protection Act, 310 CMR 10.00, the applicant shall inquire from this Commission or its agent, prior to implementing the change in the field, whether the change is significant enough to require the filing of a new Notice of Intent. Any errors in the plans or information submitted by the applicant shall be considered changes and the above procedures shall be followed.
6. It is the responsibility of the applicant to complete any review required by all agencies with jurisdiction over the activity that is the subject of this OOC, and to procure all required permits or approvals before any work commences. These reviews, permits and approvals may include but are not limited to the following:
 - a. Review by the U.S. Army Corps of Engineers for any Category 2 or Individual Permit activity, and procurement of any permits or approvals identified by the Corps;
 - b. Review by the Department of Environmental Protection (DEP) and procurement of any permits or approvals identified by DEP;

Standard Conditions

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**Applicant: Dana & Derek Harju, D & D Harju
Cranberries, LLC**

- c. Review by the Massachusetts Natural Heritage and Endangered Species Program for any projects within estimated and/or priority habitat and any permits or approvals identified by the Program;
 - d. Review by local planning boards, boards of health, zoning boards, and building inspectors, and procurement of any permits or approvals required by these boards or agencies.
7. All construction materials, earth stockpiles, landscaping materials, slurry pits, waste products, refuse, debris, stumps, slash, or excavate may only be stockpiled or collected in areas as shown and labeled on the approved plan(s), or if no such areas are shown must be placed or stored outside all resource areas and associated buffer zones (unless authorized to do so) under cover and surrounded by a double-staked row of hay bales to prevent contact with rain water.
8. No material of any kind may be buried, placed or dispersed in areas within the jurisdiction of the Commission by activities that are the subject of this OOC, except as are expressly permitted by this OOC or the plans approved herein.
9. There shall be no pumping of water from wetland resource areas.
10. All waste products, grubbed stumps, slash, construction materials, etc. shall be deposited at least 100 feet from wetland resource areas unless specified in this OOC.
11. No fuel, oil, or other pollutants shall be stored in any resource area or the buffer zone thereto, unless specified in this OOC or expressly authorized by the Commission or their agent.
12. Any material placed in wetland resource areas by the applicant without express authorization under this OOC shall be removed by the applicant upon demand by the Conservation Commission or its agent.
13. There shall be no underground storage of fuel or other hazardous substance in areas within the jurisdiction of the Conservation Commission.
14. Removal and storage of hazardous waste, if in an area subject to protection under the Wetlands Protection Act shall be as follows:
- a. Removal and storage shall be conducted only when approved and directed by DEP, the U.S. Environmental Protection Agency (EPA) or other applicable state or federal agency under which remedial activities are

Standard Conditions

DEP File #: SE220-1283

**Applicant: Dana & Derek Harju, D & D Harju
Cranberries, LLC**

- b. directed and shall be conducted in the manner specified in the Notice of Intent and appropriate agency directives.
 - c. All hazardous materials, products and waste produced, stored or removed must be handled, treated and disposed of in accordance with local, state and federal law regulating such materials and must be located outside of the buffer zone to wetland resource areas, unless specifically authorized by the OOC and appropriate state and federal licensing and permitting agencies.
 - d. No hazardous waste shall be introduced or discharged into or toward wetland resource areas.
 - e. No hazardous waste shall be introduced or discharged into the sanitary or sewage systems in such a manner which will result in an impact to wetland resource areas unless approved by the Conservation Commission, board of health, DEP and/or EPA.
 - f. Identification of all types of hazardous materials used, produced or stored shall be submitted to the Conservation Commission in writing.
15. No trash dumpsters will be allowed within 100 feet of areas subject to protection under the Wetlands Protection Act unless authorized by the OOC.
16. This OOC shall pertain to the roadways, utilities within the roadway layout, and associated drainage facilities. Individual lot construction, including driveways, lot utilities, sewage and water, if under the Commission's jurisdiction, shall require individual Notices of Intent and/or Requests for Determination.
17. This OOC authorizes only the activity described on the approved plans(s) and approved documents referenced in this OOC. Any other or additional activity in areas within the jurisdiction of the Commission will require separate review and approval by the Commission or its agent.

Strict compliance with these Standard Conditions may be waived when in the judgment of the Conservation Commission such action is in the public interest and not inconsistent with the Wetlands Protection Act.



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WPA Form 5 – Order of Conditions
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

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D. Findings Under Municipal Wetlands Bylaw or Ordinance

1. Is a municipal wetlands bylaw or ordinance applicable? Yes No
2. The _____ hereby finds (check one that applies):
 Conservation Commission
- a. that the proposed work cannot be conditioned to meet the standards set forth in a municipal ordinance or bylaw, specifically:

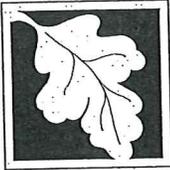
1. Municipal Ordinance or Bylaw _____ 2. Citation _____

Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides measures which are adequate to meet these standards, and a final Order of Conditions is issued.

- b. that the following additional conditions are necessary to comply with a municipal ordinance or bylaw:

1. Municipal Ordinance or Bylaw _____ 2. Citation _____

3. The Commission orders that all work shall be performed in accordance with the following conditions and with the Notice of Intent referenced above. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Notice of Intent, the conditions shall control.
- The special conditions relating to municipal ordinance or bylaw are as follows (if you need more space for additional conditions, attach a text document):



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eDEP Transaction #
Middleborough
 City/Town

E. Signatures

This Order is valid for three years, unless otherwise specified as a special condition pursuant to General Conditions #4, from the date of issuance.

Please indicate the number of members who will sign this form.
 This Order must be signed by a majority of the Conservation Commission.

The Order must be mailed by certified mail (return receipt requested) or hand delivered to the applicant. A copy also must be mailed or hand delivered at the same time to the appropriate Department of Environmental Protection Regional Office, if not filing electronically, and the property owner, if different from applicant.

6/50/2014
 1. Date of Issuance
51X
 2. Number of Signers

Signatures:

Adam Guaraldi <u>[Signature]</u>	John Neely <u>[Signature]</u>
John Medeiros <u>[Signature]</u>	Jacqueline Schmidt <u>[Signature]</u>
Janet Miller <u>[Signature]</u>	Diane C. Stewart <u>[Signature]</u>
	Steven Ventresca _____

by hand delivery on
6/50/2014
 Date

by certified mail, return receipt requested, on

 Date

F. Appeals

The applicant, the owner, any person aggrieved by this Order, any owner of land abutting the land subject to this Order, or any ten residents of the city or town in which such land is located, are hereby notified of their right to request the appropriate MassDEP Regional Office to issue a Superseding Order of Conditions. The request must be made by certified mail or hand delivery to the Department, with the appropriate filing fee and a completed Request of Departmental Action Fee Transmittal Form, as provided in 310 CMR 10.03(7) within ten business days from the date of issuance of this Order. A copy of the request shall at the same time be sent by certified mail or hand delivery to the Conservation Commission and to the applicant, if he/she is not the appellant.

Any appellants seeking to appeal the Department's Superseding Order associated with this appeal will be required to demonstrate prior participation in the review of this project. Previous participation in the permit proceeding means the submission of written information to the Conservation Commission prior to the close of the public hearing, requesting a Superseding Order, or providing written information to the Department prior to issuance of a Superseding Order.

The request shall state clearly and concisely the objections to the Order which is being appealed and how the Order does not contribute to the protection of the interests identified in the Massachusetts Wetlands Protection Act (M.G.L. c. 131, § 40), and is inconsistent with the wetlands regulations (310 CMR 10.00). To the extent that the Order is based on a municipal ordinance or bylaw, and not on the Massachusetts Wetlands Protection Act or regulations, the Department has no appellate jurisdiction.



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G. Recording Information

Prior to commencement of work, this Order of Conditions must be recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land subject to the Order. In the case of registered land, this Order shall also be noted on the Land Court Certificate of Title of the owner of the land subject to the Order of Conditions. The recording information on this page shall be submitted to the Conservation Commission listed below.

Middleborough
 Conservation Commission

Detach on dotted line, have stamped by the Registry of Deeds and submit to the Conservation Commission.

To:

Middleborough
 Conservation Commission

Please be advised that the Order of Conditions for the Project at:

Purchase Street (Maps 63 & 62, Lots 3453 & 2411) SE220-1283
 MassDEP File Number

Has been recorded at the Registry of Deeds of:

Plymouth _____ _____
 County Book Page

for: Property Owner

and has been noted in the chain of title of the affected property in:

46080 & 41335 300 & 50
 Book Page

In accordance with the Order of Conditions issued on:

 Date

If recorded land, the instrument number identifying this transaction is:

 Instrument Number

If registered land, the document number identifying this transaction is:

 Document Number

 Signature of Applicant

Draft Earth Removal Permit - Harju

 **DRAFT**

D&D Harju Cranberries, LLC
Permit No. 16-3

Final Conditions for Earth Removal Permit
September 12, 2016

Name	D&D Harju Cranberries, LLC	
Street	Purchase Street, Middleborough, MA	
New Earth Removal Permit No.	Permit No. 16-3	
Zoning Map Description	Map 062, Lot 2411 Map 063, Lot 3453	
Other Permits	Middleborough Conservation Commission Review Completed	
Proposed Volume	Total	178,790 cubic yards

ORDER OF CONDITIONS

BOARD OF SELECTMEN

General Information

The time line and proposed work for the D&D Harju Cranberries, LLC, Project shall be as outlined in the **Project Plan** required under this permit, and approved by the Town's Agent. The Project Plan outline can be found in Appendix A of the Earth Removal Application Package.

The Project Plan outlines the proposed construction sequence and time lines for the project. The project plan shall be updated annually for approval by the Board of Selectmen or their designated 'Agent' (Town's Agent).

The Earth Removal Permit holder shall submit to the Town's Agent for review and approval - a **Project Plan** that will outline the planned activities and goals for each quarter of the phased construction work for each year of the permit. The following sections are applicable under this permit:

- a. General Conditions
- b. Standard Conditions and Site Requirements
- c. Special Conditions
- d. Inspection Fees and Bonding

A. General Conditions

1. All phased construction work consisting of regrading shall be completed and required plantings shall be 'growing' prior to any application for a future earth removal permit or opening of new phases. No cutting, clearing or grubbing of areas not included under the Project Plan as 'phased' work shall be performed at the site.

If any aforesaid described work is done in unpermitted areas - without the written permission of the Town's Agent future earth removal requests may be forfeited.

The Town of Middleborough's Earth Removal Bylaw - as amended - should be reviewed by the project proponent to ensure that compliance requirements are met.

2. This permit is valid for **three (3) years** - or - for a lesser time approved by the Board of Selectmen at the time of application and hearing - and may be renewed for up to one (1) year thereafter at the discretion of the Board of Selectmen.

3. Hours of operation are limited from 7:30 A.M. to 4:30 P.M. Operation is allowed Monday through Friday. Motors of earth removal equipment, including trucks hauling material to and from the site, are not to be started or run until before 7:30 A.M and after 4:30 pm.
4. No operation at the site is allowed on Saturday, Sunday or Town Hall observed holidays, which are as follows:

New Year's Day	Labor Day
Martin Luther King Day	Columbus Day
Presidents Day	Veteran's Day
Patriots Day	Thanksgiving Day
Memorial Day	Christmas Day
Independence Day	

5. All excavated areas not part of the bogs will be topsoiled and planted per the specification on the approved plan or at the direction of the Town's Agent. All top and subsoil shall be stripped from the operation area and stockpiled for use in restoring the area after the removal operation has ceased. A minimum of four inches of topsoil must be put back in place.
6. The permit holder is not permitted to spot excavate to remove better material here and there on the site. The project will be excavated in phases, as provided on the approved plan. Phases shall be planted, prior to excavation of the next phase. The Town's agent may allow partial excavation into the next phase provided that planting is performed during the growing season.
7. Excessive erosion is to be controlled as determined by the Board of Selectmen's Agent - working with the Town's Conservation Commission's Agent. During non construction periods, stockpiled materials may be required to be covered to prevent erosion from the site
8. No refining or screening of material is allowed on the permitted property except the screening of sand and loam to be used for on-site cranberry bogs, gravel for on-site roadways and loam for final on-site grading and seeding.

Any utilized screening plant shall be no larger than 150 to 200 yards per hour.

The permit holder shall provide a written description, time frame and proposed volume of material to be screened for approval by the Town's Agent.

9. Existing tree lines, natural land topography and vegetative buffer zones shall be maintained, a minimum of fifty feet (50 ft.) from all property lines. In the absence of tree lines on the property, then the natural vegetated buffer shall be maintained for the same distances and trees planted in order to screen the site.

B. Standard Conditions and Site Requirements

1. Standard highway signs warning of heavy trucks entering the street shall be erected as directed by the Town's Agent and be in place prior to commencement of removal operations.
2. The Board of Selectmen, Conservation Commission, Town Manager or their Agents shall be free to inspect the premises at any time during normal working hours with or without prior notice to the permit holder.
3. The permit holder shall adhere to all State laws pertaining to covering loads and weight loads.
4. Any spillage on public ways or private property shall be cleaned up immediately by the permit holder or its agent.
5. The Board of Selectmen may, following a public hearing, revoke the permit, modify or revise the conditions of the permit and/or impose a fine if they find that the permittee, or any agent of the permittee violates any condition of this permit.
6. The Town Manager or designee is authorized to act as the Board of Selectmen's Agent in the administration and enforcement of this permit.
7. All loaded vehicles must be covered to prevent dust and contents from spilling or blowing from the property.
8. The haul road and loading area must be watered regularly to keep dust from blowing from the property. Gravel may be required to be added to the haul road by the Town's Agent to assist in dust control.
9. This permit is not transferable, except by vote of the Board of Selectmen. Notice of a pending sale or transfer must be provided to the Board of Selectmen. The Board of Selectmen will hold a public hearing to consider the transfer of this permit to the prospective buyer of the property.
10. During operations, where the excavation working face will have a depth of more than 15 feet with a slope in excess of 1:1, a fence at least three (3) feet high shall be erected to limit access to that excavation.

11. No area shall be excavated so as to cause accumulation of freestanding water, except in conjunction with a storage pond for cranberry bogs and temporary stormwater management basins as shown on the plans. Permanent drainage shall be provided as needed in accordance with good conservation practices. Drainage shall not lead directly into or from streams or ponds, except as specifically approved by the Town's Agents and as allowed by state statute or regulation.
12. No excavation shall be closer than 200 feet to an existing public way unless specifically permitted by the Board of Selectmen at a publicly scheduled hearing. Natural vegetation shall be left and maintained on the undisturbed land for screening and noise reduction purposes.
13. Bog pumps will be powered electrically, or in the alternative, mufflers will be installed on pumps to reduce noise.
14. Gates will be installed on the haul road to prevent unauthorized access to the property.
15. Two by Three foot signs will be erected every 500' along the property line. The signs will display the permit number, the name and phone number of the permit holder's agent and the name and phone number of the Town's Agent, together with the words "NO TRESPASSING-EARTH REMOVAL IN PROGRESS".
16. All trucks hauling from the site must display a sign on the rear of the truck in an area that will be unobstructed and clearly in view displaying the words "TOWN OF MIDDLEBOROUGH **PERMIT No. 16-3**."
17. A copy of this Earth Removal Order of Conditions shall be filed with the Registry of Deeds by the Permit holder as a notice to all that these conditions restrict work on the lot under the permit.
18. A Certificate of Compliance will be issued by the Board of Selectmen when the project is completed. The Certificate of Compliance will operate to release the lot from the conditions of the permit and terminate the permit. The Certificate of Compliance must also be filed with the Registry of Deeds by the permit holder.
19. The approved plan shall be modified to include the general location (no survey required) of any monitoring wells on the site.
20. No standing trees are to be cut, trimmed or removed from the site, except for those areas shown on the approved plan. Violation shall result in a fine being imposed, in accordance with Earth Removal Bylaw §6, and/or revocation of this Permit.

If any tree needs to be trimmed, cut or removed, prior approval shall be provided by the Town's Agent.

21. No rock crushing is authorized. Any proposed rock crushing may be authorized by the Board of Selectmen following a public hearing on a request for an Earth Removal Permit modification.
22. Excessive noise levels, as determined by the Town's Agent, shall result in onsite equipment modification within one (1) week of notification.
23. De-watering operation plans shall be provided through a modification to the submitted Project Plan for review and acceptance by the Town's Agent.. De-watering may be limited during the summer months. Siltation barriers will be provided as required by the Town's Agent.

C. Special Conditions

1. Blasting on the site is discouraged. Special permission may be provided by the Board of Selectmen after a public hearing - prior to application of a blasting permit to the Town Fire Department.
2. A dewatering system, if required will be outlined in a modified Project Plan, for review and approval by the Town's Agent.
3. Monitoring wells may be required to determine groundwater levels that could impact adjacent residential overburden and bedrock wells.

If neighboring overburden wells are determined to be potentially affected by the dewatering operation, work will cease, monitoring wells shall be installed, and an evaluation made from a qualified hydrologist on the dewatering operation, prior to commencement of work. The Town's Agent shall determine if work will continue at the site - after consultation with the Board of Selectmen during a public meeting.

4. Monitoring well(s) for water levels, if required, are to be measured every seven (7) days, and the results kept in a daily log.
5. Conditions from the Middleborough Conservation Commission is made a part of these conditions.
6. The site shall be evaluated for storm water drainage, and discharges, if permitted shall be approved by the Town's Agent.
7. Trucks will not idle on Purchase Street at any time.

10. The permit holder will follow the presented Farm Plan as presented in the application.

D. Inspection Fees and Bonding

Inspection Fees

1. An initial review to confirm compliance with permit conditions and restrictions must be performed by the Board of Selectmen's Agent before the commencement of any earth removal activities.

The fee for this review is **\$ 600.00**, due and payable at the time the permit holder notifies the Board of Selectmen's Agent that all requirements of the permit which must be done prior to commencement of work have been accomplished, and the permit holder is ready for the Agent to perform the initial review.

2. Quarterly reviews must be performed by the Board of Selectmen's Agent every three months following commencement of earth removal work. These reviews will include a field review and plan review to determine on-going compliance with the permit.
 - a. The fee for each such review is **\$ 600.00**, due and payable to the Town three months after the commencement of earth removal on the lot and every three months thereafter for the duration of the permitted project.
 - b. This report, along with **the Project Plan** will be made available to the public at the Town Manager's Office, upon request.
 - c. The Board's Agent will include with the quarterly review a written assessment and update of actual activities and goals that were provided under **the Project Plan**.
 - d. The Boards' Agent will determine **if the Project Plan** is meeting the proposed activities and goals. **If the Project Plan** activities and goals are not met for three (3) consecutive quarters, the project permit shall be suspended and a hearing with the Board of Selectmen shall be held to determine if the permit shall be reissued.

Bond Requirements

- 1. A bond, or acceptable alternative surety, in the amount of **\$50,000.00** will be required to indemnify the Town for damage to private or Town property and for use by the Town for site closure in the event of abandonment of the project.

Diane C. Stewart, Chairman
BOARD OF SELECTMEN

Date

Commonwealth of Massachusetts
County of Plymouth

On this ____ day of _____, 2016, before me the undersigned Notary Public, personally appeared _____, proved to me through satisfactory evidence of identification which was/were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose(s).

Signature of Notary

(Seal)
My commission expires

WRPD – Fuller Street

HEARINGS, MEETINGS, LICENSES

9/12/16

*****This is a new hearing, please read the legal notice*****

* New Hearing *



The Board of Selectmen will hold a public hearing in the Selectmen's Meeting Room at the Town Hall, 10 Nickerson Avenue, Middleborough, MA on **Monday, September 12, 2016 at 7:30 PM**, for the purpose of discussing an application filed by **Pilling Engineering Group, Inc. on behalf of Keith J. McLaughlin Trustee for a Special Permit** under the Water Resource Protection District By-law to allow for 1000 sq ft of wetland filling for a proposed driveway access to a new single family house and propose 2000 sq ft of wetland replication. **This property is shown as Assessors Map 25, Lot 1026, Zoning District - Residence Rural, WRPD District Z4.** Anyone wishing to be heard on this matter should appear at the time and place designated.

Diane C. Stewart
Allin Frawley
Leilani Dalpe
John M. Knowlton
Stephen J. McKinnon
BOARD OF SELECTMEN
August 25 & September 1, 2016
The Middleboro Gazette Newspaper



Town of Middleborough
20 Centre Street, Second Floor
Middleborough, Massachusetts 02346

Robert J. Whalen
Building Commissioner
Tel. 508-946-2426
Fax 508-946-2305

August 31, 2016

Middleborough Board of Selectmen
Middleborough Town Offices
10 Nickerson Ave
Middleborough, MA 02346

RE: W.R.P.D. Application for Keith McLaughlin for a Special Permit located on Fuller Street, Assessor's Map: 025 Lot: 1026, Zoning District Residence Rural, WRPD District Z4.

Honorable Board,

I have reviewed the plan submitted for Keith McLaughlin designed by Todd Pilling of Pilling Engineering Inc for a W.R.P.D. application for the lot located on Fuller Street. This application is for a Special Permit under the Water Resource Protection District By-Law to allow the construction of a driveway for a single family dwelling within the twenty-five (25) feet of a fresh water wetland area.

This use would be allowed under 310 CMR 10.53 (e) limited projects.

Respectfully submitted,

Robert J. Whalen
Building Commissioner
Zoning Enforcement Officer

RJW/d

Todd M. Pilling, P.E.
Professional Engineer

Bruce R. Pilling, P.L.S.
Professional Land Surveyor

Pilling Engineering Group, Inc.
105R Depot Street
South Easton, MA 02375
(508) 297-1289

March 15, 2016

Middleboro Selectmen
Town Hall
10 Nickerson Avenue
Middleboro, MA 02346

RE: Project Narrative - Fuller Street
Special Permit for Wetland Filling

Dear Selectmen,

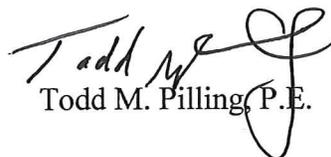
In 2006, Lots 1 and 2 were created. Notices of Intent were filed for both Lots with the Middleboro Conservation Commission and the Natural Heritage Endangered Species Program. Permits for Work were issued by both agencies.

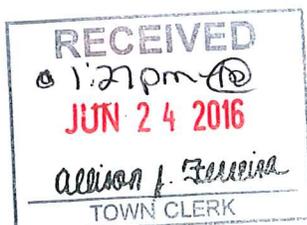
Lot 1 requires filling approximately 1,000 square feet of wetlands for construction of a driveway to a proposed single family home. The site is located in a WRPD Zone Z4. This is considered a limited project under the Wetlands Protection act 10.53(3)(e), as the driveway is being constructed to provide access to the uplands on the lot. This may be permitted by Special Permit.

The project complies with the WRPD bylaws and regulations, as the project involves a conservation restriction on 11.8 acres of the 13.5 acre lot, thereby minimizing large scale disturbances. The project will not remove soils within 4 feet of the water table, as the driveway will be elevated above the wetlands by the filling. The 1,000 s.f. of wetlands being filled will be replicated at a 2:1 ratio, and erosion controls will be installed.

We trust the foregoing address the Board's concerns regarding the application for the Special Permit. If you have any questions or concerns, please do not hesitate to contact the office.

Sincerely,


Todd M. Pilling, P.E.



PROJECTNARRATIVE

RECEIVED
 @ 1:21 pm
 JUN 24 2016
 Allison J. Ferreira
 TOWN CLERK

PETITION APPLICATION FOR A WRPD SPECIAL PERMIT

Five (5) complete paper sets of the petition application, including **all required documents**, such as engineering plans, must be filed with the Town Clerk at 20 Centre Street (former Eastern Bank building), 1st floor, Middleborough, MA. The Town Clerk's office will forward all petitions for a Special Permit to the Board of Selectmen's office.

I/We hereby petition your Board for a public hearing for a Special Permit, which is subject to Board of Selectmen approval under the **Water Resource Protection District By-law**.

A. Location of property in question:

Street address: Fuller Street
 Map & Lot 25/1026
 Zoning District Residence Rural
(General Use, Business, Industrial, Residence A, Residence B, or Residence Rural)
 WRPD District Z4
(Z1, Z2, Z3, Z4)

B. To allow for:

1,000 s.f. of wetland filling for a proposed driveway access to new single family house. Proposed 2,000 s.f. wetland replication.

(As shown on the attached plan)

Example: To allow for an addition of 12' x 20' to the building at 1234 Nickerson Avenue, Map #, Zoning district, WRPD District (A or B), presently used as a residence for the purpose of a dental office by the owner occupant. There will be a maximum of three employees.

C. Submitted by:

<u>Keith J McLaughlin, trustee</u>	<u>Pilling Engineering Group. Inc.</u>
Printed full name (Individual)	Printed company name/engineering firm
<u>Keith J McLaughlin, trustee</u>	<u>Todd M. Pilling</u>
Signature (Individual)	Signature (company/engineering rep.)
<u>323 Manley St., West Bridgewater</u>	<u>pillling@comcast.net</u>
Address <u>MA 02379</u>	Email address
<u>(508) 509-3861</u>	
Daytime telephone	

Keith McLaughlin
 Fuller Street
 Middleboro, MA

CHECKLIST FOR SITE PLANS

(Applicant must initial each item or the application/petition will not be accepted.)

No.	Description	Initial	N/A
1.	One (1) electronic version of the site plans must be filed with the Board of Selectmen's office via email at jshanley@middleborough.com .	<u>KJM</u>	_____
2.	Five (5) paper copies of the site plan must be filed with the Town Clerk's office, along with five (5) paper sets of the petition application (see top of "Petition Application" form).	<u>KJM</u>	_____
	a. Show locus to reasonable scale (use corner of the site plan page).	<u>KJM</u>	_____
	b. Show existing and proposed street lines, number & name.	<u>KJM</u>	_____
	c. Show existing and/or proposed building, including accessory buildings.	<u>KJM</u>	_____
	d. Show driveway and driveway openings.	<u>KJM</u>	_____
	e. Show natural waterways (if any).	_____	<u>KJM</u>
	f. Show distance from structure to wetlands.	<u>KJM</u>	_____
	g. Show the location of all wetlands, which must be determined by a wetland's specialist, i.e., flagged on site plans, the area which is within twenty-five (25) feet of the wetland, the total area and location of the portion of any lot within one hundred (100) feet of any wetland and the land disturbing activity or activities proposed within the one hundred (100) and twenty-five (25) foot zones.	_____	_____
	h. Show setback dimensions or distances from street and abutters.	<u>KJM</u>	_____
	i. Show the footage for all lines of the property and the total area (either in square footage or acreage).	<u>KJM</u>	_____
	j. Show topography, wetland delineations, local storm water discharge points, on site drainage systems and septic systems.	<u>KJM</u>	_____
	k. Show details for work done or proposed for any component outlined in No. 1(j) (above).	<u>KJM</u>	_____
	l. The plan is stamped by BOTH a registered Land Surveyor and a Civil Professional Engineer.	<u>KJM</u>	_____

Note: If the site has no approval required other than a home lot, then a Land Surveyor stamp will be accepted.

Keith McLaughlin
Fuller Street
Middleboro, MA

CHECKLIST FOR PROJECT WRITTEN NARRATIVE

No.	Description	Initial	N/A
1.	Provide a written narrative explaining how you see the project complying with the WRPD bylaws and regulations.	<u>KJM</u>	_____
2.	The submittal contains a Certified Abutter's list obtained from the Assessor's office, Town Hall, 10 Nickerson Ave.	<u>KJM</u>	_____
3.	If your petition requests alterations or additions to a building, or structure, you should bring detailed plans which show the proposed alterations or additions.	_____	<u>KJM</u>
4.	The submittal contains calculations for any proposed on-site stormwater retainage, storage tanks and spill containment, on site drainage and recharge.	_____	<u>KJM</u>
5.	The submittal contains a statement that the project has been designed to minimize large scale lot disturbances and has implemented methods to encourage infiltration of site runoff and preservation of groundcover.	_____	<u>KJM</u>
6.	The submittal contains a statement that there will be no removal of soil closer than four (4) feet to the groundwater table, as determined through Title 5 Soil Evaluation methods.	<u>KJM</u>	_____
7.	The submittal contains a statement that if there is to be storage of hazardous wastes, sludges, deicing chemicals, fertilizers, or oil, that the appropriate methods have been provided to contain any spillage.	_____	<u>KJM</u>
8.	The submittal contains a statement that outside stored material will have no impact to the groundwater.	_____	<u>KJM</u>

Keith McLaughlin
 Fuller Street
 Middleboro, MA

CHECKLIST FOR SITE PLANS

(Applicant must initial each item or the application/petition will not be accepted.)

No.	Description	Initial	N/A
1.	One (1) electronic version of the site plans must be filed with the Board of Selectmen's office via email at jshanley@middleborough.com .	<u>KJM</u>	_____
2.	Five (5) paper copies of the site plan must be filed with the Town Clerk's office, along with five (5) paper sets of the petition application (see top of "Petition Application" form).	<u>KJM</u>	_____
a.	Show locus to reasonable scale (use corner of the site plan page).	<u>KJM</u>	_____
b.	Show existing and proposed street lines, number & name.	<u>KJM</u>	_____
c.	Show existing and/or proposed building, including accessory buildings.	<u>KJM</u>	_____
d.	Show driveway and driveway openings.	<u>KJM</u>	_____
e.	Show natural waterways (if any).	_____	<u>KJM</u>
f.	Show distance from structure to wetlands.	<u>KJM</u>	_____
g.	Show the location of all wetlands, which must be determined by a wetland's specialist, i.e., flagged on site plans, the area which is within twenty-five (25) feet of the wetland, the total area and location of the portion of any lot within one hundred (100) feet of any wetland and the land disturbing activity or activities proposed within the one hundred (100) and twenty-five (25) foot zones.	_____	_____
h.	Show setback dimensions or distances from street and abutters.	<u>KJM</u>	_____
i.	Show the footage for all lines of the property and the total area (either in square footage or acreage).	<u>KJM</u>	_____
j.	Show topography, wetland delineations, local storm water discharge points, on site drainage systems and septic systems.	<u>KJM</u>	_____
k.	Show details for work done or proposed for any component outlined in No. 1(j) (above).	<u>KJM</u>	_____
l.	The plan is stamped by BOTH a registered Land Surveyor and a Civil Professional Engineer.	<u>KJM</u>	_____

Note: If the site has no approval required other than a home lot, then a Land Surveyor stamp will be accepted.

Keith McLaughlin
 Fuller Street
 Middleboro, MA

CHECKLIST FOR PROJECT WRITTEN NARRATIVE

No.	Description	Initial	N/A
1.	Provide a written narrative explaining how you see the project complying with the WRPD bylaws and regulations.	<u>KJM</u>	_____
2.	The submittal contains a Certified Abutter's list obtained from the Assessor's office, Town Hall, 10 Nickerson Ave.	<u>KJM</u>	_____
3.	If your petition requests alterations or additions to a building, or structure, you should bring detailed plans which show the proposed alterations or additions.	_____	<u>KJM</u>
4.	The submittal contains calculations for any proposed on-site stormwater retainage, storage tanks and spill containment, on site drainage and recharge.	_____	<u>KJM</u>
5.	The submittal contains a statement that the project has been designed to minimize large scale lot disturbances and has implemented methods to encourage infiltration of site runoff and preservation of groundcover.	_____	<u>KJM</u>
6.	The submittal contains a statement that there will be no removal of soil closer than four (4) feet to the groundwater table, as determined through Title 5 Soil Evaluation methods.	<u>KJM</u>	_____
7.	The submittal contains a statement that if there is to be storage of hazardous wastes, sludges, deicing chemicals, fertilizers, or oil, that the appropriate methods have been provided to contain any spillage.	_____	<u>KJM</u>
8.	The submittal contains a statement that outside stored material will have no impact to the groundwater.	_____	<u>KJM</u>

**Hearing - Roadway Acceptance –
Eastwood Estates**

HEARINGS, MEETINGS, LICENSES

9/12/16

This hearing was continued from 8/22/16.
Attached is the report from the Planning Board



The Board of Selectmen will hold a public hearing in the Selectmen's Meeting Room at the Town Hall, 10 Nickerson Avenue, Middleborough, MA, on **Monday, August 22, 2016 at 7:40 PM to accept the layout of Captain Hall road, Augustus Way, Hayden Way and Leland Way in Middleborough, MA**, on such terms as the Selectmen shall determine for the purposes of a Town way, such property being shown on four (4) sheets and entitled "Roadway Acceptance Plan - Captain Hall Road (Sheet 1) - Augustus Way (Sheet 2) - Hayden Way (Sheet 3) - Leland Way (Sheet 4), prepared by Prime Engineering, Inc., which plan is dated February 4, 2016 (Sheets 1 and 2) and January 4, 2016 (Sheets 3 and 4), please are on file with the Town Clerk's Office. Anyone desiring to be heard on this matter should attend.

Diane Stewart, Chairman
Leilani Dalpe
Allin Frawley
John M. Knowlton
Stephen J. McKinnon
BOARD OF SELECTMEN
August 11, 2016
The Middleboro Gazette Newspaper

MIDDLEBOROUGH PLANNING DEPARTMENT

TRANSMITTAL SHEET

TO: Atty. Diane Stewart,
Chairwoman, Board of Selectmen

DATE: 9/1/16

ADDRESS:
Board of Selectmen
10 Nickerson Avenue
Middleborough, MA 02346

PROJECT:
Eastwood Estates
Report of Planning Board on Public
Layout

FROM:
Lori Rutherford
Senior Clerk

ATTACHED:
Letter to Atty. Diane Stewart and the
Board of Selectmen, dated 8/30/16,
with attached supporting documents

NOTES/COMMENTS:

By





Town of Middleborough

Massachusetts

Planning Board

PLANNING DIRECTOR
Ruth McCawley Geoffroy

Telephone (508) 946-2425
Fax (508) 946-1991

August 30, 2016

Atty. Diane Stewart, Chairwoman
Middleborough Board of Selectmen
Town Hall
10 Nickerson Ave.
Middleborough, MA 02346

Re: Eastwood Estates – Report of Planning Board on Public Layout

Dear Chairwoman Stewart and Honorable Board:

The Planning Board is in receipt of your request dated July 26, 2016, that the Planning Board provide a recommendation on the layout and acceptance of Captain Hall Road, Augustus Way, Hayden Way and Leland Road pursuant to the Massachusetts Subdivision Control Law MGL Ch. 41 Section 81I. The Planning Board is aware that these roads were approved by the Middleborough Zoning Board of Appeals under MGL Chapter 40B Sections 20-23. Additionally, the ZBA with the assistance of Amory Engineering, their project review engineer, and the DPW Director oversaw the construction and completion of these ways and associated infrastructure.

On August 25, 2016, the Planning Board received a legal opinion dated June 23, 2016 from Ruberto, Israel and Weiner, P.C., on behalf of the Eastwood Estates developer, Greystone Realty, LLC., stating that it is their opinion that in the case of a 40B approved subdivision, the ZBA not the Planning Board would have jurisdiction in reporting to the Board of Selectmen pursuant to Ch. 41 s. 81I. This letter was sent to Town Counsel, Daniel F. Murray for review and comment. It should be noted that the Planning Board, in the past, has been the Board who made the Ch. 41 s. 81I reports on the layout and acceptance of Greystone Estates, Greystone Way and Granite Road; and, Tispaquin Farms, Silo Lane, the two 40B subdivisions previously completed in the Town of Middleborough.

The Planning Board and Planning Department had been involved in reviewing and commenting on the construction of Eastwood Estates, at the request of the Marcus Baptiste, the project developer, and authorized by the ZBA, in late 2013. As a result, the Planning Department issued an observation report dated December 17, 2013, to the ZBA. However on January 12, 2015, it appears that Marcus Baptiste had a change of heart and wrote a lengthy letter to the Residents of Eastwood Estates, complaining that if the Planning Department and the Planning Board were to be involved in the review of the Eastwood Estates subdivision and reporting on it to the Board of Selectmen prior the layout and acceptance of its

Ms. Diane Stewart, Chairwoman
August 30, 2016
Page 2

roads pursuant to Ch. S. 81I. 41 he would not complete its construction. The Planning Board, with the assistance of Town Counsel Daniel F. Murray, responded to this complaint by letter dated January 20, 2015 demanding a retraction of the allegations made and included a full annotated rebuttal of the allegations. A rebuttal of much of the complaint was submitted to the Town of Middleborough on February 6, 2015.

Planning Department staff was informed in April 2016, by a representative of the developer that the Planning Board and Planning Department would not be allowed to walk on the Eastwood Estates property for purposes of making a report to the Board of Selectmen, however it was later confirmed that only the 5 members of the Planning Board would be allowed to view the site.

As a result of the Planning Board ~~having been impeded in its right to review the completed roadways and their infrastructure with our professional Planning Department staff~~, the Board does not have the information required to make a factual recommendation on these roads as required under State Law, therefore the Board defers to the Zoning Board of Appeals, and makes no recommendation.

WBG
having not reviewed the project
mk
TM

Should you have any questions regarding this, please do not hesitate to contact Adam M. Bond, Esq., Middleborough Planning Board Chairman.



Adam Bond

Gary Marcelli

William B. Fuccese

Middleborough Planning Board

Attachments

cc: Christopher Peck, Director of Public Works
Robert G. Nunes, Town Manager
Robert J. Mather, Esq.

Eastwood Estates List of Documents

1. **Eastwood Estates** – Planning Board Construction Review Letter to ZBA dated 12/17/13
2. **Eastwood Estates** – Greystone Realty, Inc., Letter to Eastwood Estates Homeowners 1/12/15
3. **Eastwood Estates** – Planning Board Letter to Marcus Baptiste dated 1/20/15
4. **Eastwood Estates** – Greystone Realty, Inc., Letter to Planning Board dated 2/6/15
5. **Eastwood Estates** - Memorandum from Ruberto, Israel & Weiner, P.C. to Greystone Realty dated 6/23/16
6. **MGL Ch. 41 s.81I**
7. **Eastwood Estates** –Board of Selectmen referral dated 7/26/16 of 6/22/16 Robert J. Mather, Esq. Public Layout Request, made on behalf of Greystone Realty, Inc.
8. **Eastwood Estates** –Town Counsel Email Review of RIW 6/23/16 Memo, dated 8/30/16

1



Town of Middleborough
Massachusetts

PLANNING DIRECTOR
Ruth McCawley Geoffroy

Planning Board

Telephone (508) 946-2425
Fax (508) 946-1991

December 17, 2013

Mr. Bruce Atwood, Chairman
Zoning Board of Appeals
20 Center Street
Middleborough, MA 0202346

Re: **Eastwood Estates** – Planning Board Construction Review

Dear Chairman Atwood;

The Planning Board was recently notified by Tammy Mendes that the Zoning Board of Appeals requested that the Planning Department commence with review of the completion of construction of Eastwood Estates 40B Project (Captain Hill Road, Augustus Way, Hayden Way and Leland Way). Pursuant to this request, a site observation was performed on December 3, 2013 with Christopher Peck the Director of Public Works, David Blanton the DPW Foreman, and Marcus Baptiste the developer. On December 10, 2013, the Planning Department walked the site during a rainstorm and took photos of puddles located within the roadways.

The Planning Board reviewed the following plans:

- “Drainage As-Built Plan, ‘Eastwood Estates’, Middleborough, Massachusetts”, dated November 1, 2013, consisting of 2 sheets, prepared by Prime Engineering and received on November 1, 2013.
- “Eastwood Estates, Residential Subdivision Design Plans’, Purchase Street, Middleborough, Massachusetts”, dated March 20, 2006 and revised May 17, 2006, consisting of 21 sheets, prepared by Prime Engineering and received on December 2, 2013.

The Planning Board has the following comments:

1. A roadway as-built plan should be submitted to facilitate review of the roadway infrastructure. The Comprehensive Permit for Eastwood Estates under:
 - a. Section IX.B.2. states that *“The Applicant shall comply with all local rules and regulations of the Town of Middleborough and its boards and commissions unless expressly waived herein or as otherwise addressed in these conditions.”*
 - b. Section IX.C.4. states *“As-Built Survey and Plans: Prior to the final occupancy of each phase of the project, or use of any new building constituting a part of the Project, the Applicant shall submit to the ZBA an ‘As-Built Plan’ showing all pavement, buildings, drainage structures, and other infrastructure as they exist on the*

- Many castings in the sidewalk need to be raised to finish grade prior to the placement of the top course of pavement. Gas gates that are not straight will need to be straightened by the gas company.
 - All castings should be brought to finish grade prior to the placement of the top course of pavement.
 - The drain manhole castings on Hayden Way may need to be raised another ½" or so to provide a proper crown and 2% cross slope.
- g. Several concrete collars were damaged from vehicular traffic and need to be cold planed prior to the placement of the top course of pavement.
- h. All areas that puddle within the roadway pavement need to be adjusted prior to the placement of the top course of pavement.
- Captain Hall Road:
 - The gutter-lines 15 to 30 ft. north of CB-1 & 2 appear to be low.
 - Augustus Way:
 - The gutter-line along the north side of the intersection between Captain Hall Road and Augustus Way is low and needs to be raised. The surface runoff should be forced to the gutter-line of Captain Hall Road.
 - The cul-de-sac puddles throughout. The entire inner gutter-line of the cul-de-sac should be raised to force the surface runoff to the outer gutter-line.
 - A small area of pavement located slightly north of CB-9 between the gutter-line and the center of roadway should be raised.
 - Hayden Way:
 - The crown of the roadway should be raised to provide a cross slope of 2% minimum, this should eliminate most of the puddles.
 - A small area of pavement located slightly east of CB-10 between the gutter-line and the center of roadway at station 0+25± should be raised.
 - Small areas slightly east of CB-7 & 8 located between the gutter-lines and the center of road at station 2+05± should be raised.
 - The gutter-line on both sides of CB-14 at station 5+00 should be raised.
 - The southeast corner of Hayden Way at the end along the gutter-line puddles and should be raised slightly.
 - Leland Way:
 - The gutter-line located at the end of the sidewalk along the left side puddles and should be raised slightly.
- i. The pavement turnout located at the end of Hayden Way was not installed. This office was informed that the future development into Carver will not occur and that the turnout is no longer necessary.
- j. Sidewalks and Driveways:
- It was discussed during the site walk that the sidewalks and the entire driveways will be paved at the same time after the roadway top course of pavement is placed. The roadway berm to be reduced in height at the driveway entrances. No berm to be placed in front of the sidewalk ramps. The driveway at Lot 8 was finished with a top course and will need to be cut back approximately 2 ft. back from the outer edge of the sidewalk and removed and replaced.
 - The sidewalks appear to exceed the maximum cross slope of 2%; the Planning Dept. recommends that the design engineer check the cross slopes throughout to verify compliance prior to the placement of the top course of pavement.

- Filtration Berm: Does not appear to be constructed.
 - Main Basin: Bottom elevation is higher than the required elevation 101.5.
 - Berm Elevation: Is lower than the required elevation of 105.0.
 - Emergency Spillway: The stone does not extend to contour 102 as required by the ASP.
- e. Drainage Basin #2:
- The inlet invert at the headwall is not provided on the ASP; however the drainage as-built plan indicates that the invert elevation is 101.52. Please note that the design and installation of the basin is based on the inlet invert elevation.
 - Fore-Bay: The bottom elevation is at least 2' higher than the required elevation of 99.1±.
 - Berm Elevation: Is lower than the required elevation of 105.0.
- f. Drainage Basin #3:
- Fore-Bay: The bottom elevation is 6" higher than the required elevation of 100.7.
 - Filtration Berm: Is not shown clearly on the drainage as-built plan.
 - Main Basin: Bottom elevation is higher than the required elevation 102.6.
 - Chain-Link-Fence:
 - Was not installed approximately 14' from the top of the berm of the pond and doesn't encompass the basin as required and should be moved to the proper location.
 - It appears that an access gate was not provided on the ASP, a gate should be provided to access the basin from the street.
 - The basin extends beyond the drainage easement into the side of Lot #14 and the rear of Lot #13 and needs to be shifted east.
 - A large shed appears to be located within the drainage easement and may need to be moved; the location of the shed should be shown on the plan.
- g. Drainage Basin #4:
- Fore-Bay: The bottom elevation is 9" higher than the required elevation of 102.1.
 - Filtration Berm: Is not shown clearly on the drainage as-built plan.
 - Main Basin: Bottom elevation appears to comply with the ASP's plan view; however the detail indicates that the elevation should be 6" lower.
 - The ASP did not provide adequate space between the inlet headwall and both the roadway sidewalk and street tree. The developer agreed to construct a concrete retaining wall to extend from the east wing of the headwall parallel to the sidewalk to a sufficient height to reduce the slope to 3:1. An additional semicircular wall will be needed around the street tree. A plan should be prepared by the design engineer and submitted for approval.
 - The basin extends beyond the drainage easement into the side of Lot #17 and should be shifted south.
 - Emergency Spillway was located within the fore-bay; however standard practice is to place the spillway at the farthest point in the main basin area.
 - Chain-Link-Fence: The fence was extended around the pond across the emergency spillway for safety. The Planning Dept. recommends that a gate be installed within the drainage easement to access the drainage easement along the pond.
- h. Drainage Basin #5:

Mr. Bruce Atwood, Chairman
December 17, 2013
Page 7

- a. Redi-Rock Blocks were placed across the end of Hayden Way instead of the required guardrail.
- b. The locations of all the utility casting within the right-of-ways should be located and placed on the roadway as-built plan prior to the placement of the top course of pavement.
- c. Signage: Some street signs are missing, many are faded and the "Stop" signs do not comply and will need to be replaced. Some of the anchor posts extend more than 6" above finish grade and should be lowered. The posts will need to be painted.
- d. The wetland replication areas were not constructed as required; it is recommended that the Conservation Commission should review for compliance.
- e. A sewer gate located approximately 10 ft. north of the east retaining wall is set too high and should be lowered.
- f. Loam & Seed: It doesn't appear that there is sufficient loam in place to facilitate the growth of grass throughout the subdivision. The ASP's Typical Road Cross Section indicates that 6" of loam should have been placed. The Planning Dept. recommends verifying the thickness of pavement throughout the subdivision.

If you have any questions or wish to discuss this matter further, please do not hesitate to contact me or the Planning Department.

Respectfully,



Michael J. Labonte, Chairman
Middleborough Planning Board

Cc: Chris Peck, Public Works Director
Pat Brennan, P.E., Amory Engineers, P.C.
Stephen McKinnon, Board of Selectmen
Charles Cristello, Town Manager
Jane Kudcey, OECD
Robert Whalen, Building Commissioner

2

Greystone Realty, Inc.
3 Chester Avenue
Berkley, MA 02779

January 12, 2015

Dear Homeowners of Eastwood Estates:

I am writing to you in regards to the completion of the subdivision. Before I begin, let me explain the permitting and road acceptance procedures.

Eastwood Estates was permitted under Chapter 40b, the Comprehensive Permit Law. The Zoning Board of Appeals (ZBA) grants Comprehensive Permits. The ZBA reviews comments from other Boards, including the Planning Board, but the other Boards have no authority. The ZBA makes the final decisions. We applied for a permit and the ZBA held several hearings. After the hearings and deliberations, they issued a permit. The ZBA then had an engineering firm, Amory Engineering, review the project during construction.

There is a quirk in the rules for road acceptance. The Planning Board has to make the recommendation for road acceptance to the Board of Selectmen, even though in our case, a Comprehensive Permit, the Planning Board had no official role during the permitting or construction of the project.

We will not be finishing the subdivision if we have to deal with the Planning Department.

We have dealt with the Planning Department for fifteen years and it has been a very unpleasant experience from day one. We put up with their behavior, as we were always working on another project in Town and were afraid of retaliation. After building approximately one hundred homes in Middleborough, I recently made the decision to not work in the Town anymore, due to the Planning Department staff and their behavior.

Below is a summary of some of our dealings with the Planning Department. There are many more instances of unprofessionalism, but I am only writing of events that have documentation or witnesses.

My history with the Town Planner, Ruth McCawley Geoffroy, started in the year 2000. My partner and I had only been in business for a few years. Our engineer drew a preliminary subdivision plan for a small subdivision off of Raven Street called Raven Estates. We had a preliminary meeting with Ms. Geoffroy in her office to review the plans. She did not identify any major issues, so we told her we would continue to definitive plans and submit our application. My partner and I spent every dime we had

make the road recommendation. She watched us for several months go through the whole procedure, and then on the final night, she ambushed us at the Selectmen's meeting. I realize that Ms. Geoffroy had no obligation to inform us of the quirk, but if she had any decency, she would have spoken to us in advance.

Below are several issues that we had during the Tispaquin Farms road acceptance.

No notification of meetings

The Planning Department held at least two meetings about us and did not notify us of either one. In an October 28, 2008 letter from the Planning Department it says, "We have reviewed the matter of the proposed layout of Silo Lane as a Town way. Please be advised that the Planning Board voted at their regularly scheduled meeting held on October 28, 2008 to recommend unfavorable action on the road layout as proposed to the Board of Selectmen....". I was not notified of this meeting nor that there was going to be a vote regarding our subdivision. I was not given the opportunity to have my engineer or attorney there to present our side of the situation before the vote. Tispaquin Farms was discussed on at least one other occasion, without notification to us. There is a ten page memo from the Planning Department dated March 19, 2009, that says, "Please note that the Planning Board during their public hearing on March 24, 2009 reviewed and approved this report with minor changes". I know the memo date precedes the meeting date, that's the way it is. They reviewed a twenty-nine item, ten page memo that was all about Tispaquin Farms and nobody thought that we should be there. How was I not notified of this meeting so that I could be there with my engineer and attorney?

While thinking about the lack of notification to me from the Planning Department for the two meetings, I decided to look online at minutes from other Planning Board meetings to see if there were other road acceptance hearings. I wanted to know if the developers for other road acceptance hearings were notified. I reviewed all of the Planning Board minutes for the year 2013. On 4/16/13, there was a meeting for Fernway Estates. In the minutes, it says, "Chairman Labonte expressed his disappointment that neither the developer Cavallo nor his attorney or engineer is present for the meeting; "not cool"". And then at the end of the minutes it says, "Chairman Labonte again expressed his disappointment that developer Cavallo is not present...". So, if other developers are not present for hearings, they are "disappointed" and it is "not cool", but I do not even get notified that there is a meeting.

Riser Rings

There are two ways to raise the metal structures in the roadway, just prior to the top pavement being installed. One of the ways is by using a "Riser Ring". In the 29-item memo from the Planning Department it says, "It should be noted that riser rings **have never been approved** by the Town of Middleborough or the Massachusetts Highway Department and therefore should not be used on any town or State project." They are everywhere in Town. I have a list of numerous roads that have been issued a Certificate

fences. While going for road acceptance, the Planning Board wanted the basins fenced in and asked the Zoning Board to reconsider. The Zoning Board again voted to not have fences around the basins. The basins are all located on private property, and none of the property owners wanted fences around the basins. The Planning Department continued to try to force fences. In a 3/15/12 email from Ms. Geoffroy, it says, "The Planning Board requires fencing if the slopes are steeper than 5:1". In an 8/12/09 letter from the Chairman of the Planning Board, it says, "The drainage basins are not surrounded by fence which is typically required for slopes greater than 3:1".

What is it 3:1 or 5:1? Again, is someone not telling the truth or do they not know the standard? Either way, they have not enforced either one. I measured (with a digital level) all subdivisions that were issued a Certificate of Completion by the Planning Board in the last decade that do not have fencing around their basins and found slopes steeper than 3:1 in all of them – many had slopes of 2:1-2.5:1, one had slopes as steep as 1.5:1. None of the basins have 5:1 slopes, which Ms. Geoffrey says is required; none of them are even close.

After several stressful years, we finally got a signoff from the Planning Board for Tispaquin Farms. I believe this only happened because of the support we received from the Zoning Board of Appeals. If they had not intervened and backed us, I do not think the Planning Board would have ever signed off

Eastwood

After finally finishing Tispaquin Farms, it was time to start working on completing Eastwood Estates. On November 1st, 2013, a letter was hand delivered by Prime Engineering to the Planning Department requesting a pre-paving meeting on November 12th, 2013. The letter stated that we wanted a pre-paving meeting on November 12th and that we intended to pave in 2013. The Planning Department did not respond to the letter. Rich Rheume from Prime Engineering called the Planning Department several times to check on the status of the meeting. No calls were returned.

At the end of November, I decided that I couldn't wait any longer for the Planning Department to respond and I decided to pave. I notified the paving contractor to go ahead. On Monday, December 2nd, the paving contractor received a call from the Planning Board saying that paving season ended and that they couldn't pave. The phone call was made the Monday after the paving season ended. I do not believe that after a month of no response, it was coincidental that we received a call the day after the paving season ended.

I went in on Monday, after hearing about the no-pave phone call, to the Planning Department and confronted Ms. Geoffroy and her assistant, Paul Fellini. They admitted that they received the letter on November 1st. They denied receiving any phone calls from Prime. They said that they were not authorized by the Zoning Board of Appeals to review the project and that's why they didn't call us back. They blamed the lack of authorization on the Senior Clerk of Zoning Board of Appeals. I told them that I had

project, why was Mr. Fellini there several times reviewing the tree installation? They can't have it both ways – authorized and not authorized. Mr. Fellini also went to the nursery with the landscaper and approved all of the trees prior to planting – before the letter was handed in.

Another day, I went to speak with Mr. Peck on another issue and he asks, “have you seen the letter from Paul (Mr. Fellini)”, I say no. I see Pat Brennan, the ZBA's review engineer, later that night, and he asks if I've seen the letter, I say no. I obtained a copy of the letter. The letter, which is about Eastwood, was not cc'd to my engineer, attorney or me. It was cc'd to several other people (including the Office of Economic & Community Development that had nothing to do with this project) but it did not go to me. It only got forwarded to me when I brought this to the Zoning Board's attention and they told Mr. Fellini to forward it.

There were several issues brought up in Mr. Fellini's letter, but one caught my attention. Number 6 discusses the Emergency Access Drive. On the site walk (that I was not notified of, but did attend after hearing about it from Mr. Peck) with Mr. Peck and Mr. Fellini, we did not walk near the emergency access drive. Mr. Fellini in #6 comments about the width of the Emergency Access Drive. This means that he reviewed it before – when he wasn't authorized to review the project (the reason for not responding to our letter) or after our meeting – when he was specifically told not to go on the property without scheduling an appointment.

We then received a follow up letter from the Planning Department dated 12/17/13, stating that Mr. Fellini walked the site during a rainstorm. He was specifically told not to go on the site without scheduling an appointment and that it would be considered trespassing if he did. He clearly ignored my request, did not schedule an appointment and went to the site without my consent.

I was beyond frustrated with the treatment I received from the Planning Department regarding Eastwood Estates and I was beginning to work on another project in Town. I was afraid of retaliation from the Planning Department that could impact my next project. I stopped working on Eastwood Estates and it soon became clear that my fear of retaliation was justified.

I decided that this time I was going to do the project and not go for public road acceptance, since that is when the Planning Department gets involved. Very soon into the process it became clear that the neighbors did not want housing and I was approached to see if I would do an agricultural and earth removal project. After speaking with several people, including engineers, landowners, farmers and earth removal operators, I was told that Ms. Geoffroy did not have a history of getting involved in cranberry and earth removal permits, they are handled by the Board of Selectmen. I decided to go for it.

My attorney pointed out to me that Ms. Geoffroy and the Planning Department have every right to comment on cranberry bog and earth removal applications. During our hearings with the Selectmen, even though not one neighbor objected to the project,

that they determine needs to be fixed. I am not saying that I won't finish the subdivision. I am saying that I will finish the subdivision with the Board that issued me the permit and the Board that I trust will be professional and fair. I will not do any work if there is any involvement at all from the Planning Department or the Planning Board.

After you have had a chance to review this, I am available to get together and discuss how you would like to proceed.

Sincerely,

Marcus Baptiste, President
Greystone Realty, Inc.

3



Town of Middleborough

Massachusetts

PLANNING DIRECTOR
Ruth McCawley Geoffroy

Planning Board

Telephone (508) 946-2425
Fax (508) 946-1991

January 20, 2015

Mr. Marcus Baptiste, President
Greystone Realty, Inc.
3 Chester Avenue
Berkley, MA 02779

Re: Letter to Homeowners of Eastwood Estates

Dear Mr. Baptiste,

The Middleborough Planning Board is in receipt of your letter dated January 12, 2015, to the Homeowners of Eastwood Estates. In this letter you make a number of allegations of wrong doing concerning the Middleborough Planning Department and its staff. The Board has found, from review of the attached Planning Department rebuttal and documents associated with the projects that you reference, that your allegations are unfounded conjecture and are not supported by the facts in the written record.

As you are aware, the Planning Department works for the Middleborough Planning Board as our administrative staff, advising and representing the Board and carrying out the Planning Board's duties on a day to day basis. The Planning Board has reviewed your allegations of wrong doing against Planning Department staff and your use of these allegations to justify abandonment of the Eastwood Estates road construction, which you are obligated to complete. The Planning Board would have no involvement with the Eastwood Estates roads if they are never petitioned for acceptance as Town roads, but if they are to become Town roads as they should, the Planning Board is concerned and would report that fact to the Board of Selectmen, if they are not built in accordance with the approved plans 40B plans, which would comply with the Town's Subdivision Rules and Regulations with the exception of the 40B waivers granted by the ZBA.

In summary, the Planning Board has reviewed your allegations of wrong doing, as well as the record for each project. The Planning Board has found that the Planning Department and its staff are doing the job that the Planning Board has hired them for and assigned them to do. The record fails to show that the Department or its staff ever acted in a malicious, retaliatory, unprofessional or untruthful manner with respect to you or your projects including but not limited to Eastwood Estates, but in fact shows that they were doing their job on behalf of the Planning Board.

Mr. Marcus Baptiste, President
January 20, 2015
Page 2

The Planning Board believes that a retraction of these allegations of wrong doing is warranted and hereby demands that you retract your allegations. Please notify the Board by February 6, 2015, whether you will voluntarily provide a retraction as demanded.

If you have any questions, please do not hesitate to contact me.

Respectfully,



Michael J. Labonte, Chairman
For the Middleborough Planning Board

Encl.

Cc: Atty. Daniel F. Murray, Town Counsel
Eastwood Estates Residents
Middleborough Board of Selectmen
Robert Nunes, Town Manager
Ruth M. Geoffroy, Planning Director
Paul A. Fellini, Construction Administrator
Christopher Peck, PE, Public Works Director



Town of Middleborough
Massachusetts

PLANNING DIRECTOR
Ruth McCawley Geoffroy

Planning Board

Telephone (508) 946-2425
Fax (508) 946-1991

MEMORANDUM

To: Planning Board
From: Ruth M. Geoffroy, Planning Director 
Date: January 20, 2015
Re: Marcus Baptiste, Letter to Homeowners of Eastwood Estates

The Planning Department and Planning Board are in receipt of a letter dated January 12, 2015, from Marcus Baptiste, President of Greystone Realty, Inc. to the Homeowners of Eastwood Estates. In this letter Mr. Baptiste makes a number of very serious allegations concerning the Middleborough Planning Department and its staff. This memorandum provides a rebuttal to these allegations, based on the written record of Planning Board project files and Planning Department staff reports. Mr. Baptiste's allegations are not supported by the facts in the written record and his resulting conjecture that staff acted in a malicious, retaliatory, unprofessional or untruthful manner with respect to his projects, including but not limited to Eastwood Estates, is not consistent with the record.

1. There is a quirk in the rules for road acceptance. The Planning Board has to make the recommendation for road acceptance to the Board of Selectmen, even though in our case, a Comprehensive Permit, the Planning Board had no official role during the permitting or construction of the project.

Answer 1. "There is no quirk in the rules" Massachusetts General Law, MGL Ch.41 Section 81I, requires that no public way be laid out, altered, relocated or discontinued, unless the Planning Board has made a report to the Board of Selectmen or 45 days have passed.

2. We will not be finishing the subdivision if we have to deal with the Planning Department.

We have dealt with the Planning Department for fifteen years and it has been a very unpleasant experience from day one. We put up with their behavior, as we were always working on another project in Town and were afraid of retaliation. After building approximately one hundred homes in Middleborough, I recently made the decision to not work in the Town anymore, due to the Planning Department staff and their behavior.

Answer 2. Mr. Baptiste has not permitted any subdivisions with the Planning Board, except the preliminary approval of Ravenwood Estates, as he has consistently built 40B housing in the town avoiding town zoning and road standards. Finishing the subdivision has nothing to do with the Planning Board, only layout of the roads for public acceptance.

3. Below is a summary of some of our dealings with the Planning Department. There are many more instances of unprofessionalism, but I am only writing of events that have documentation or witnesses.

My history with the Town Planner, Ruth McCawley Geoffroy, started in the year 2000. My partner and I had only been in business for a few years. Our engineer drew a preliminary subdivision plan for a small subdivision off of Raven Street called Raven Estates. We had a preliminary meeting with Ms. Geoffroy in her office to review the plans. She did not identify any major issues, so we told her we would continue to definitive plans and submit our application. My partner and I spent every dime we had for the engineer to draw the definitive plans. When we got into the first official meeting, it was like Ms. Geoffroy had never met us before. We were told that we had to move the road to the other side of the property. This meant we would have to throw everything we had done in the rubbish. By moving the road, you change the road, drainage, perc tests, lot layout and just about everything else. The only work that would have been saved was the survey. At this moment, I knew that I could not trust or work with Ms. Geoffroy. We withdrew our plan for Raven Estates from the Planning Department and submitted a plan for Greystone Estates on the same piece of land to the Zoning Board of Appeals, for a permit under Chapter 40b. My partner and I both had to sell our houses and move in with our in-laws to generate the funds to continue with the project.

Answer 3. The Planning Director often meets with developers and engineers to discuss conceptual or preliminary subdivisions as a courtesy; there is a formal process to bring a preliminary Form B plan before the Planning Board for review/in depth discussion prior to full design. At a single initial meeting, town staff would have no direct knowledge about a particular property or street, and therefore the issues, but would try to generally answer questions posed by the developer.

Ravenwood Estates definitive, 9 Lot conventional subdivision plan, was heard by the Planning Board over 3 public hearings from 9/26/00 to 10/27/00 according to the meeting minutes. The plan received engineering review by Atlantic Design, the Planning Board's 3rd party engineer. Numerous residents attended and raised concerns. Planning Board member K. Easterbrooks proposed that the road be relocated. The Planning Board also told Mr. Baptiste that based on public comments and drainage issues, a 9 lot cluster subdivision may suit the property better. Mr. Baptiste and his engineer agreed and reconfigured the project to a cluster after the first hearing; at the 3rd hearing, the Board voted to approve a preliminary 9 lot cluster subdivision and deny the initial 9 lot conventional plan. The Planning Director did not tell Mr. Baptiste that he had to move the road as implied by the statement, nor did he "withdraw" his subdivision. Mr. Baptiste chose instead to build a 31 lot 40B with an entrance on a newly added parcel of land on Plymouth Street, avoiding many of the concerns raised by the Planning Board regarding an entrance on Raven Street, and building 31 lots rather than the 9 lots allowed by the Town's Zoning By-law and Subdivision Rules and Regulations.

4. Greystone Estates was permitted, built and the roads were accepted. We did have to deal with the Planning Department during the road acceptance procedure, but we dealt with an Assistant to the Town Planner. The assistant was very nice. She issued a letter to the Zoning Board stating

that the roads had been constructed properly. The Zoning Board then issued a Certificate of Completion to the Board of Selectmen and recommended that the road be put on the Town Meeting Warrant. The Selectmen did so and the residents voted to accept the roads as public ways. To the best of my knowledge, the Planning Department never voted to recommend road acceptance to the Selectmen.

Answer 4. The Planning Department was more involved in the permitting and construction of Greystone Estates than with subsequent 40Bs. The Department attended engineering review meetings on behalf of the ZBA as well as worked with the construction engineer for the Town, TEC, similar to a normal Planning Board subdivision. As a result, once the project was complete, although the roads went through a 3 month final review by the Planning Department, with corrections by Mr. Baptiste, the number of outstanding issues appear to have been much less.

5. At the time, I didn't know of the quirk in the law that states the Planning Board, not the Zoning Board of Appeals, has to make the recommendation to the Selectmen. I don't think anyone else knew either, and to the best of my knowledge, the roads at Greystone Estates were accepted without a vote of recommendation from the Planning Board. If the Planning Board did hold a meeting and vote to recommend road acceptance to the Selectmen, they did so without notifying me of the meeting or vote.

Answer 5. From the quick computer search performed by staff, there does not appear to be any Planning Board recommendation to the Board of Selectmen for Greystone Estates. It is unclear whether the Selectmen referred the roads to the Planning Board prior to laying them out for acceptance.

6. After Greystone, we found a piece of land on Tispaquin Street in Middleborough. We permitted and built another Chapter 40b subdivision, Tispaquin Farms. The Planning Department did not have too much to do with the permitting of Tispaquin Farms. There was one meeting that we had with Ms. Geoffroy, in her office, to go over some engineering issues that she raised in a letter to the ZBA. I went to the meeting with my engineer, John Delano, and met Ms. Geoffroy and the Town's engineer, Rich Tabaczynski from Atlantic Design. Ms. Geoffroy brought up an issue, my engineer told her that we had already reviewed the issue at length with the ZBA and they had made their decision. We told her that since it had already been decided, it did not make sense to continue to discuss it and we asked to move on to the next issue. She proceeded to stand up and stormed out of the meeting while saying "If you're not going to listen to me, why am I wasting my time". Her reaction was irrational and unprofessional. The two engineers and I finished the meeting in her office, without her. We didn't have too much more involvement with Ms. Geoffroy until the end of Tispaquin Farms.

Answer 6. Mr. Baptiste is correct with respect to the Planning Director leaving an engineering review meeting out of frustration; however he is incorrect with respect to the project and issues. From review of the records, this occurred during the design review of Greystone Estates, not Silo Lane and the matter was immediately reported to the ZBA through letter dated 9/25/01, which states that John Delano, RLS, had presented the plan and it quickly became evident that the comments that were being made by the Planning Director were not welcomed by Mr. Baptiste or Mr. Delano, including routine comments regarding Highway Department requirements and issues relating to drainage problems recently experienced with the failure of the adjacent Tanglewood Estates drainage system.

7. While going for road acceptance at Tispaquin Farms, I followed the same procedure that I used at Greystone Estates. We received a Certificate of Completion and a vote of recommendation from the Zoning Board of Appeals. We then went to the Board of Selectmen for a road acceptance hearing. Ms. Geoffroy attended the hearing and informed the Selectmen of the quirk in the law that requires the Planning Board to make the road recommendation. She watched us for several months go through the whole procedure, and then on the final night, she ambushed us at the Selectmen's meeting. I realize that Ms. Geoffroy had no obligation to inform us of the quirk, but if she had any decency, she would have spoken to us in advance.

Answer 7. On 5/19/08, Planning Department staff held a meeting with Mr. Baptiste, his partner and the Clerk to the ZBA and reviewed the completion process for Silo Lane. This review included providing and discussing the Planning Board's guidance document entitled "General Subdivision Completeness Certification and Road Acceptance Procedure" dated 10/3/07, which lays out, beginning on page 3, the Board of Selectmen's road layout procedure including Step 2, referral of the layout to the Planning Board for 45 day comment period. The record also indicates that the Planning Department proceeded to review the as-built and layout plans submitted by Mr. Baptiste and conducted an onsite inspection. Staff issued 2 comment letters to Mr. Baptiste regarding the plans on 7/9/08, and a 4 page memo to the ZBA on site conditions on 7/23/08, in time for their 7/24/08 Completion hearing. Although not all outstanding construction issues had been addressed, most notably drainage system deficiencies, it appears that the ZBA certified the project complete on 8/14/08 and Mr. Baptiste submitted Silo Lane to the Board of Selectmen, for public layout, on 9/8/08.

The Board of Selectmen formally requested that the Planning Board comment on the proposed layout of Silo Lane on 10/3/08. Since the Planning Director was assigned to coordinating the Mashpee Wampanoag Casino for the Town, a staff planner was hired by the Planning Board to oversee and perform subdivision and other planning related duties in the Planning Department. The Staff Planner notified the Planning Board, through memorandum dated 10/7/08, of the receipt of the request from the Board of Selectmen and recommended that the matter be tabled for further review because of the outstanding issues. On 10/14/08 the Planning Board met and voted to recommend to the Board of Selectmen that the layout be postponed to the 2009 annual Town Meeting as the Board had not had adequate time to review the matter; as only 11 days had passed since notice.

The Board of Selectmen met and opened the Silo Lane layout hearing at 8:25 PM on the same 10/14/08 Tuesday night as the Planning Board's meeting. The Planning Director, on behalf of the Planning Board, left the Planning Board meeting and went to the Selectmen's meeting to remind the Selectmen of the 45 day period for Planning Board comment and advise them of the Planning Board's vote requesting that the layout be postponed. The Selectmen's minutes indicate that the Town Manager was aware of the Planning Board's concerns prior to the Selectmen's hearing, as he had already consulted with Town Counsel who agreed that the Selectmen could not hold a layout hearing unless the Planning Board had reported or 45 days had elapsed under State law. The Selectmen's hearing was closed and the Planning Board submitted their report to the Board of Selectmen on 10/28/08

Nothing had been hidden and there was no ambush; MGL Ch. 41 S. 81I is not a "quirk" known only to the Planning Board, but to anyone involved with the laying out of public roads in

Massachusetts, from both the public and private sector. Mr. Baptiste and his partner were made aware of the entire process, including the Selectmen's 45 day requirement of MGL Ch. 41 S. 81I, when Planning Department staff met with him on 5/19/08 and not only walked him through the process but gave him a written copy of it in the meeting. Mr. Baptiste was present at the 7:00 PM Planning Board meeting on 10/14/08, where the Board discussed the 45 days and voted to request that the layout be postponed until spring. As a result, the Planning Department's report at the Selectmen's meeting 1-1/2 hours later would have been no surprise to him.

Below are several issues that we had during the Tispaquin Farms road acceptance.

8. No notification of meetings

The Planning Department held at least two meetings about us and did not notify us of either one. In an October 28, 2008 letter from the Planning Department it says, "We have reviewed the matter of the proposed layout of Silo Lane as a Town way. Please be advised that the Planning Board voted at their regularly scheduled meeting held on October 28, 2008 to recommend unfavorable action on the road layout as proposed to the Board of Selectmen....". I was not notified of this meeting nor that there was going to be a vote regarding our subdivision. I was not given the opportunity to have my engineer or attorney there to present our side of the situation before the vote. Tispaquin Farms was discussed on at least one other occasion, without notification to us. There is a ten page memo from the Planning Department dated March 19, 2009, that says, "Please note that the Planning Board during their public hearing on March 24, 2009 reviewed and approved this report with minor changes". I know the memo date precedes the meeting date, that's the way it is. They reviewed a twenty-nine item, ten page memo that was all about Tispaquin Farms and nobody thought that we should be there. How was I not notified of this meeting so that I could be there with my engineer and attorney?

Answer 8. If a matter is placed on the agenda at the request of a specific party, that party is notified, not all parties that could potentially be involved. The 10/28/08 Planning Board discussion and letter was a result of the Selectmen's 10/3/08 request and Mr. Baptiste was fully aware that this matter would be discussed at a Planning Board meeting within the 45 day response period and could have called to enquire when. Mr. Baptiste was actually in attendance at the 10/28/09 meeting and the record does not indicate that either his engineer or attorney were present.

With respect to the issue of dates on the 3/19/09 memorandum, Planning Staff who wrote the memo to the Planning Board had only been on the job 10 days when the 3/19/09 memo was written. That memo was submitted to the Planning Board, discussed at the 3/24/09 meeting and the Planning Board voted to send the memo to the Board of Selectmen. Staff modified the memo's first paragraph to reflect the Planning Board's vote, for the benefit of the Selectmen; the memo instead should have been left alone and a cover letter should have been written reflecting the Planning Board's vote.

9. While thinking about the lack of notification to me from the Planning Department for the two meetings, I decided to look online at minutes from other Planning Board meetings to see if there were other road acceptance hearings. I wanted to know if the developers for other road acceptance hearings were notified. I reviewed all of the Planning Board minutes for the year 2013. On 4/16/13, there was a meeting for Fernway Estates. In the minutes, it says, "Chairman Labonte expressed his disappointment that neither the developer Cavallo nor his attorney or engineer is

present for the meeting; “not cool””. And then at the end of the minutes it says, “Chairman Labonte again expressed his disappointment that developer Cavallo is not present...”. So, if other developers are not present for hearings, they are “disappointed” and it is “not cool”, but I do not even get notified that there is a meeting.

Answer 9. The Planning Board’s meeting on 4/16/13 where the Planning Board Chairman was “disappointed” that the developer did not attend was in no way similar to the meeting regarding Silo Lane, where a discussion was held to make comments to the Board of Selectmen. The 4/16/13 meeting regarding Fernway Estates was scheduled between the Planning Board, Developer, Contractor and project residents, to discuss the road’s repair and completion within a specific time frame, and to prevent the developer’s default; without the developer’s presence, no discussion could be held.

10. Riser Rings

There are two ways to raise the metal structures in the roadway, just prior to the top pavement being installed. One of the ways is by using a “Riser Ring”. In the 29-item memo from the Planning Department it says, “It should be noted that riser rings **have never been approved** by the Town of Middleborough or the Massachusetts Highway Department and therefore should not be used on any town or State project.” They are everywhere in Town. I have a list of numerous roads that have been issued a Certificate of Completion by the Planning Board which use riser rings. That means that the Planning Department was not telling the truth when they said that riser rings were never approved by the Town or it means that the Planning Department had no idea about a standard construction practice in town. Riser rings are installed just prior to the final coat of pavement and are very easy to see and differentiate. If the Planning Department was doing inspections during the final paving process, they must have known that they were being used – you could not miss them if you were doing an inspection.

Answer 10. The Subdivision Rules and Regulations do not allow riser rings, nor do the MADOT Standard Specifications referenced in the Rules and Regulations; the Regulations require that the contractor cut out the frame of a drainage structure and raise it to finish grade prior to paving using specified methods. Use of riser rings would require a waiver of the Subdivision Rules and Regulations. Mr. Baptiste indicates that a number of roads, in the past, may have been certified complete with riser rings installed. The Planning Board and Planning Department were not aware that riser rings were used in these projects; and, the Planning Board was not asked for nor did they grant waivers for their use. The Board became aware that riser rings were being used in 2009, and determined that they were unacceptable, because they did not have the thickness and strength of the drainage structure frame itself, being easily damaged by snowplowing, and costing the tax payer more for maintenance once the road is accepted as a public way. It should be noted that the Planning Board relies on construction engineering consultants to perform construction observation of the subdivision road construction for compliance with the Approved Plans and Subdivision Rules and Regulations, including at the time of final paving, and the use of riser rings during construction was not brought to the Planning Board’s attention. Planning Department staff managed the consulting engineers, provided administrative services for the project and generally monitored the construction process for the Planning Board.

11. Guardrail

We installed some wooden guardrails at Tispaquin Farms. In the 29-item memo it says, "The guardrails do not comply with the Planning Board requirements...". I went around and measured guardrails all over Town, in new and old subdivisions. I used the same contractor to install the guardrail as most other developers in Town. I even stopped on 495 and measured a guardrail they had just put up. I forwarded my results to the Planning Board, showing that my guardrail was within an inch or two, either higher or lower, as all others in Town. After I did so, I received the following response in an 8/12/09 letter, "Since the writing of the original letter dated 4/2/09, the Planning Board has thoroughly investigated the configuration of the wooden guard rail...therefore no additional action is required." Again, the Planning Board either did not tell the truth in the original letter or they did not know what the standard construction practice is in town.

Answer 11. The approved 40B subdivision plan, designed and stamped by a Registered Professional Engineer, required a specific design for the guardrail, including but not limited to the height and a specific number and spacing of steel carriage bolts. Planning Department reports indicate that the guardrail, as it was built, did not comply with the Engineer's design, shown on the approved 40B Plan. The Subdivision Rules and Regulations require steel beam guardrails in compliance with MADOT Highway Standards. These standards do not include wood beam guardrails which appear more aesthetic in smaller residential subdivisions. As a result the Planning Board had allowed wood beam guardrails, relying on the design and professional stamp of the individual civil engineer designing a subdivision. The Planning Board now follows MADOT, ASSHTO, or FHA (Federal Highway) standards, including FHA steel backed wood beam guardrails, as these designs have undergone testing for safety and performance in crash conditions. Mr. Baptiste quotes from the 8/12/09 Planning Department letter but fails to include the most important part which reads "Since the writing of the original letter dated 4/2/09, the Planning Board has thoroughly investigated the configuration of the wooden guard rail...however the 18" separation between the actual rail and the ground does comply with the U.S. Department of Transportation: Federal Highway Administration: Steel-Backed Timber Guardrail detail. Therefore no additional action is required." There was a very specific technical reason, after more extensive research, that the Planning Department changed its position on the guardrail, citing no additional action.

12. Joint where Silo meets Tispaquin

The Town road, Tispaquin Street, had a finish coat of asphalt on it. Our road, Silo Lane, only had a binder coat (the base coat of asphalt). When paving the final coat on top of our binder coat we had to grind out some of the binder coat next to where it was meeting the Town road. This is called a "keyway" and it allows for a thicker layer of new asphalt where our road meets the Town road.

In the 29-item memo, the Planning Department states that we did not provide a keyway. There is absolutely no way to tell by looking at the top-coat of asphalt if a keyway was cut into the base coat of asphalt. You cannot see the keyway through the top-coat. After they stated we did not do it, I specifically told the Planning Department that we did. After I told them that we did, in an 8/12/09 letter, they said, "The Planning Board re-investigated the pavement joint...and determined...that the contractor did not provide a keyway...". Again, there is no way to re-investigate – you cannot see through the top-coat. While re-doing the area, because the Planning Department did not believe there was a keyway, we peeled off the top layer of asphalt and exposed the keyway in front of the inspector.

Answer 12. The condition of the pavement joint when inspected, gave the appearance to Planning Department staff that a keyway was not installed. Staff reported that once the joint was exposed, it revealed that a small keyway was used, but that it was not sufficient in size to prevent the degradation of the road's joint with Tispaquin Street that was observed.

13. Slopes

Tispaquin Farms, like all other subdivisions, has retention ponds to handle drainage. The Zoning Board of Appeals, the permitting authority, voted for the basins not to have fences. While going for road acceptance, the Planning Board wanted the basins fenced in and asked the Zoning Board to reconsider. The Zoning Board again voted to not have fences around the basins. The basins are all located on private property, and none of the property owners wanted fences around the basins. The Planning Department continued to try to force fences. In a 3/15/12 email from Ms. Geoffroy, it says, "The Planning Board requires fencing if the slopes are steeper than 5:1". In an 8/12/09 letter from the Chairman of the Planning Board, it says, "The drainage basins are not surrounded by fence which is typically required for slopes greater than 3:1".

What is it 3:1 or 5:1? Again, is someone not telling the truth or do they not know the standard? Either way, they have not enforced either one. I measured (with a digital level) all subdivisions that were issued a Certificate of Completion by the Planning Board in the last decade that do not have fencing around their basins and found slopes steeper than 3:1 in all of them – many had slopes of 2:1-2.5:1, one had slopes as steep as 1.5:1. None of the basins have 5:1 slopes, which Ms. Geoffroy says is required; none of them are even close.

Answer 13. The Planning Board has long been aware that drainage basins in residential subdivisions may present a safety hazard when full of water. In the 1990's, after a child drowned in a Town of Easton detention basin, the Middleborough Planning Board, working with the Highway Superintendent, developed guidelines to fence those basins that had slopes, depths of water and proximity to houses that could be perceived as negligent if not fenced. The Planning Director's letter to the ZBA dated 9/25/01 regarding Greystone Estates, outlined these guidelines for fencing, which are generally less than 2' of water during the 100 year storm, slopes no steeper than 5:1 and consideration of the proximity of homes. The 8/9/12 letter from the Planning Board referenced an incorrect slope.

14. After several stressful years, we finally got a signoff from the Planning Board for Tispaquin Farms. I believe this only happened because of the support we received from the Zoning Board of Appeals. If they had not intervened and backed us, I do not think the Planning Board would have ever signed off

Answer 14. The Silo Lane construction items that Mr. Baptiste identified above were minor as compared to the larger construction deficiencies at the site. Lot flooding, pipes sloped backwards and pipes crushed during construction were items of a much more serious nature that were ultimately remedied through Planning Board and Planning Department involvement, prior to acceptance of the road as a public way and Town ownership of the infrastructure.

Eastwood

15. After finally finishing Tispaquin Farms, it was time to start working on completing Eastwood Estates. On November 1st, 2013, a letter was hand delivered by Prime Engineering to the Planning Department requesting a pre-paving meeting on November 12th, 2013. The letter stated that we wanted a pre-paving meeting on November 12th and that we intended to pave in 2013. The Planning Department did not respond to the letter. Rich Rheume from Prime Engineering called the Planning Department several times to check on the status of the meeting. No calls were returned.

At the end of November, I decided that I couldn't wait any longer for the Planning Department to respond and I decided to pave. I notified the paving contractor to go ahead. On Monday, December 2nd, the paving contractor received a call from the Planning Board saying that paving season ended and that they couldn't pave. The phone call was made the Monday after the paving season ended. I do not believe that after a month of no response, it was coincidental that we received a call the day after the paving season ended.

I went in on Monday, after hearing about the no-pave phone call, to the Planning Department and confronted Ms. Geoffroy and her assistant, Paul Fellini. They admitted that they received the letter on November 1st. They denied receiving any phone calls from Prime. They said that they were not authorized by the Zoning Board of Appeals to review the project and that's why they didn't call us back. They blamed the lack of authorization on the Senior Clerk of Zoning Board of Appeals. I told them that I had raised the drainage structures and that there was now a plowing hazard – they said that they knew I raised the structures. How did they know? I thought they weren't authorized to be out there. Even if they believed they weren't authorized to be out there, which I feel is a lie, if they had any decency, they would have contacted the Zoning Board to get the authorization. The two offices are less than a hundred feet away from each other. They could have obtained authorization in two minutes.

While with Ms. Geoffroy and Mr. Fellini, on Monday December 2nd, they said they never got any calls from Prime. Ms. Geoffroy walked over and picked up the call logbook off of the secretary's desk and flipped through about 4 or 5 pages and said, no, never got any calls. How many calls does the Planning Department get in a day? I would guess at least 10, maybe 20 or more. There are 20 workdays in a month, that's at least 200 calls. There are maybe 4-5 call log sheets per page. She would have to look through at least 40-50 pages of the call log book to determine if Prime had called from November 1st to December 2nd, not just the first couple of pages.

Answer 15. As-built plans for Eastwood Estates were dropped off in the Planning Department, as reported, with a cover letter from Prime Engineering describing the condition of the roads and construction compliance with the approved plans; then the letter asks that the Department review the plans, inspect the roads and provide comments. The letter gave a date to the Planning Department to hold an onsite meeting prior to paving. Planning Department staff were confused as to why this letter was delivered to the Department as the Planning Board and Planning Department had not been involved with Eastwood Estates and would have had no role in review of as-builts or coordination of paving. The Department did not receive nor is there a record of receipt of phone calls from Prime Engineering. Staff did not fully read the letter at submission as it did not involve Planning; nothing was immediately done after the receipt of this material and as Mr. Baptiste reports he did not call or stop by the Planning Department to discuss his unanswered request as his next step was to schedule paving for early December. Planning Department staff contacted the ZBA Clerk to ask her if the ZBA wanted the Planning Department to become involved in Eastwood

Estates on their behalf, and asked her to have the ZBA give direction and approval. The Zoning Clerk consulted with the ZBA and informed the Planning Department that they gave the go ahead.

The paving contractor called the Planning Department on 12/2/13 and wanted to know if they could pave, Planning Department staff told them that the Subdivision Rules and Regulations prohibit paving after December 1 but it was unclear how the Planning Board's deadline related to a 40B project. The paving contractor was advised to coordinate w/ ZBA and the project engineer. This was the first contact the Planning Department had received since the Prime engineering package was erroneously dropped off.

16. On Tuesday, December 3rd, I went to see Chris Peck, the Town Highway Superintendent, to let him know that I am meeting Pat Brennan from Amory Engineering, the Zoning Board's review engineer, at Eastwood to review a bond reduction request. Mr. Peck told me that Mr. Fellini called him yesterday to request a meeting and they are meeting today. I was not notified of this meeting – neither was Prime Engineering or my attorney. We spent a month requesting a meeting with the Planning Department to review the site and they wouldn't even respond. I then went to the Planning Department and directly confronted Ms. Geoffroy and Mr. Fellini and expressed my absolute frustration about not being able to get a meeting. After all of that, Mr. Fellini thinks it is appropriate to schedule a meeting for the very next day, on my property, without me! Because Mr. Peck told me of the meeting, I did attend. I very clearly told Mr. Fellini that he could come to the property whenever he wanted to, so long as he schedules it in advance with me and that either me, my engineer or my attorney need to be there. I told Mr. Fellini not to go on the property without scheduling an appointment and if he did so it would be considered trespassing. Mr. Fellini said he did not need my permission, because when I signed the application for a subdivision that I had authorized the Planning Department to be out there. I told him that I never signed anything with the Planning Department; I signed an application with the Zoning Board of Appeals. I again stated that he could go there whenever he wanted, but he needed to schedule an appointment first, and if he did not it would be considered trespassing. Legal or not, why wouldn't he cooperate and schedule an appointment? If the Planning Department is reviewing a project and the owner asks to be present at all meetings, why wouldn't the Planning Department cooperate?

Answer 16. Once the Planning Department was authorized by the ZBA to become involved in Eastwood Estates and the discussion with Mr. Baptiste had occurred on 12/2/13, staff scheduled an onsite review for the next day and invited the Public Works Director to walk the site too. Two Town officials walking a project site would not have been considered a "meeting" and it is not customary for the developer to be notified prior to such site walk, as the purpose of the walk would be for the Town official or representative to observe and report site conditions, not discuss or debate the conditions with a developer or contractor. Discussion of the conditions with the developer would occur after the Planning Department's report was made.

Mr. Baptiste identified that he should have been notified of any meeting and that Planning Staff did not have his authorization to visit the site unless it was scheduled with him first so he could be there. Staff reports that they explained that with a normal subdivision, the signature of the developer on the application, gave the town the right to enter the subdivision throughout the approval and construction process without additional approvals, accompaniment or scheduling. Since the Planning Department does not administer 40B subdivisions, staff was unaware at the time that Section IX.D.2 of the project's Comprehensive Permit states that "ZBA representatives shall be permitted access to the site to observe and inspect the site and construction progress until such time

as the Project has been completed.” The Planning Department had been requested by the ZBA to inspect the site and comment on their behalf.

17. During the walk through, Mr. Fellini stated that he had been on site several times to witness the installation of the street trees. The trees were installed at the beginning of November – at the same time the letter was submitted to the Planning Department requesting a meeting. When I confronted Ms. Geoffroy and Mr. Fellini and asked why they did not respond to our letter or phone calls, they said that they couldn’t, they weren’t authorized to be out there. If the Planning Department wasn’t authorized to review the project, why was Mr. Fellini there several times reviewing the tree installation? They can’t have it both ways – authorized and not authorized. Mr. Fellini also went to the nursery with the landscaper and approved all of the trees prior to planting – before the letter was handed in.

Answer 17. Planning Staff did visit the site once, on 10/31/13, at the request of Spillane’s Nursery, who had been with staff on another subdivision the day before and who were going to plant trees at Eastwood Estates the next day. This 20 minute, unofficial visit was done as a favor to Spillane’s, who had been informed that the Planning Department had no role in the project; however, Spillane’s foreman expressed that he felt that they had no one else to call to view the planting locations of the trees. Staff did not visit the nursery to inspect trees for this project.

18. Another day, I went to speak with Mr. Peck on another issue and he asks, “have you seen the letter from Paul (Mr. Fellini)”, I say no. I see Pat Brennan, the ZBA’s review engineer, later that night, and he asks if I’ve seen the letter, I say no. I obtained a copy of the letter. The letter, which is about Eastwood, was not cc’d to my engineer, attorney or me. It was cc’d to several other people (including the Office of Economic & Community Development that had nothing to do with this project) but it did not go to me. It only got forwarded to me when I brought this to the Zoning Board’s attention and they told Mr. Fellini to forward it.

Answer 18. It was an oversight to have not copied the developer on the initial distribution of the letter.

19. There were several issues brought up in Mr. Fellini’s letter, but one caught my attention. Number 6 discusses the Emergency Access Drive. On the site walk (that I was not notified of, but did attend after hearing about it from Mr. Peck) with Mr. Peck and Mr. Fellini, we did not walk near the emergency access drive. Mr. Fellini in #6 comments about the width of the Emergency Access Drive. This means that he reviewed it before – when he wasn’t authorized to review the project (the reason for not responding to our letter) or after our meeting – when he was specifically told not to go on the property without scheduling an appointment.

We then received a follow up letter from the Planning Department dated 12/17/13, stating that Mr. Fellini walked the site during a rainstorm. He was specifically told not to go on the site without scheduling an appointment and that it would be considered trespassing if he did. He clearly ignored my request, did not schedule an appointment and went to the site without my consent.

Answer 19. After the 12/3/13 site walk, Mr. Baptiste provided the Planning and Public Works Departments as well as the ZBA’s consulting engineer with the notes he had taken on the site walk, which consisted of 31 items including reference in item #23 to “On Hayden Way, near emergency access...” During preparation of the report to the ZBA, Planning Staff reports that they realized

they had not viewed the Emergency Access, so a drive by was conducted to view, and comment in the report as necessary. Again staff reports that on 12/10/13, while visiting Town subdivisions during a rainstorm, the site was visited to view puddling on the road and document site conditions during the heavy rains. Staff had understood that no meetings were to be held onsite without notice to the developer, but did not believe that driving through to complete the report requested by the ZBA was prohibited. The results of the Eastwood Estates Planning Department review letter dated 12/17/13 indicate that a number of repairs and corrections need to be made to the roadways and drainage structures prior to paving, for the project to be in compliance with the approved 40B plans upon completion.

20. I was beyond frustrated with the treatment I received from the Planning Department regarding Eastwood Estates and I was beginning to work on another project in Town. I was afraid of retaliation from the Planning Department that could impact my next project. I stopped working on Eastwood Estates and it soon became clear that my fear of retaliation was justified.

I decided that this time I was going to do the project and not go for public road acceptance, since that is when the Planning Department gets involved. Very soon into the process it became clear that the neighbors did not want housing and I was approached to see if I would do an agricultural and earth removal project. After speaking with several people, including engineers, landowners, farmers and earth removal operators, I was told that Ms. Geoffroy did not have a history of getting involved in cranberry and earth removal permits, they are handled by the Board of Selectmen. I decided to go for it.

My attorney pointed out to me that Ms. Geoffroy and the Planning Department have every right to comment on cranberry bog and earth removal applications. During our hearings with the Selectmen, even though not one neighbor objected to the project, Ms. Geoffroy wrote several letters trying to reduce the scale of our project. She contacted Natural Heritage (the agency that enforces the Endangered Species Act in Massachusetts) in an attempt to reduce our project. She performed an in-depth financial analysis and actually re-drew our project, all in an attempt to reduce it.

I agree that Ms. Geoffroy and the Planning Department have the right to comment on earth removal and agricultural permits. To see if she had reviewed other projects; I went through all available files for current earth removal projects in the Selectmen's office. I went through each file twice, very carefully, to be sure that I did not miss anything. Not one of them had a review letter from Ms. Geoffroy. I found letters from the Building Inspector and the Conservation Agent, none from Ms. Geoffroy.

There are several current cranberry and earth removal projects ongoing in Middleborough. When comparing my project to the others in Town, some are larger and have been going on for much longer. Some have endangered species. Several are in close proximity to mine. There is no logical reason why Ms. Geoffroy would write letters, do an in-depth financial analysis, call Natural Heritage and re-design my project, all in an attempt to reduce it, while not even commenting on any of the other projects.

Answer 20. On 1/10/14, the Board of Selectmen forwarded an Earth Removal application submitted by Riverrock Realty Trust (Joseph Arruda, Trustee) to the Planning Department for review and comment. On January 24, 2014, the Planning Department commented on the Application and stated in the letter, that the Department was commenting to the Selectmen on policy

considerations more than the nuts and bolts of the proposal. The Planning Board had recently signed a Form A Plan, submitted by John Sarkes, Trustee of Glenfield Trust, creating a number of house lots adjacent to and included in the earth removal application. The Planning Department noted policy considerations that included, but were not limited to, proposing earth removal and very steep slopes on these adjacent house lots, rather than providing a 100' buffers between the earth removal and the house lot as is customarily required by the Board of Selectmen; and, the larger concern regarding zoning, in that earth mining is a prohibited use under the Middleborough Zoning By-law but can be conducted if it was accessory (incidental) to a permitted use, i.e. agriculture. The application identified removal of 743,512 c.y. of earth over 8 acres of land, as accessory to the construction of a 3.53 acre cranberry bog and reservoir, and the question of which use was actually accessory was raised in the Planning Department's comments. The Planning Department had not commented on earth removal applications in a long time, although had recently worked with Atlantic Design Engineers (ADE) on earth removal standards and requirements, at the request of the Town Manager, when ADE began to represent the Board of Selectmen on the review of Earth Removal Permits. When the Riverrock Realty Trust application was received, the magnitude of the proposal, involving newly created house lots, at a time when the cranberry industry had "tanked", caught the department's attention.

Throughout the process the Planning Department submitted 3 comment letters, the 2nd letter reiterating most of the concerns raised in the first and the third letter identified that ADE, had identified that the revised plans had increased the earth removed to 775,243 c.y., over 13 acres to create a 3.15 ac. cranberry bog. The Planning Department, in the 3rd review letter, attempted to show the Board of Selectmen that the amount of earth proposed to be removed and identified as "necessary" to build the 3.15 acres of bog was not "incidental" (subordinate and minor in use), and could in fact be significantly reduced to build the same bogs, if the bogs and reservoir were flipped and relocated away from the Form A lots. The Planning Department referenced the MA Supreme Judicial Court's Hardy v. Dunstable Case, reported in a 12/1/94 letter from Town Counsel, regarding the Zoning requirements of earth removal being incidental to agriculture. It was the Planning Department's observation that the Riverrock RT proposed earth removal and cranberry bogs were designed and located to maximize, not minimize, the earth removed from the site and that the earth removal was a larger project than the resultant cranberry bogs.

The Planning Department often works closely with NHESP staff on projects where both the Planning Board and NHESP are involved, discussions with them on their issues were routine. A meeting held between the applicant, Town Manager and Planning Department at the direction of the Selectmen, to discuss the issues and revisions to the plan, is also routine. Results of the Planning Department's comments did not reduce the project size approved by the Board of Selectmen but did result in reconfigured project/Form A lots that provided a full 100' buffer zone, better protecting the abutting properties and raised important Zoning issues regarding "accessory uses" for the Selectmen to consider for this and subsequent Applications. The Planning Department consulted with and kept the Planning Board apprised of all of the Department's comments. Since these comments regarding Zoning and legal case law were made to the Selectmen on this 2014 Earth Removal application, the Planning Department does not intend to restate them on each subsequent earth removal application received by the Town.

21. Any one, two or three of these events could be explained away as an oversight, a bad day at the office or just a simple, honest mistake. But, when looked at as a body of evidence, the actions of Ms. Geoffroy, Mr. Fellini and the Planning Department have gone beyond uncooperative and

unprofessional. There is an undeniable pattern of dishonest and malicious behavior and I will not work with them any more.

There are three options for you, the homeowners.

First, I can walk away from the development. There is a cash bond that the Town can take and they can complete the road. This still would leave you dealing the Planning Board.

Second, I can finish the road with the Zoning Board of Appeals and not go for road acceptance. The road would be complete but the homeowners will be responsible for plowing and ongoing maintenance. This will be my last year plowing.

The third option is for us to approach the Board of Selectmen together. We will complete the road and try for public road acceptance if the Board of Selectmen will accept a favorable recommendation from the Zoning Board of Appeals instead of the Planning Board. There would have to be no involvement at all from Ms. Geoffroy, Mr. Fellini or the Planning Board.

I'm sure that Ms. Geoffroy and the Planning Department will say that I am a disgruntled developer who does not want to do things the right way. That is not the case. As much as I do not trust Ms. Geoffroy and the Planning Department, I do trust the Zoning Board of Appeals. I will commit to being reviewed by the Zoning Board, the Town's Highway Superintendent and the Town's review engineer. I will fix anything that they determine needs to be fixed. I am not saying that I won't finish the subdivision. I am saying that I will finish the subdivision with the Board that issued me the permit and the Board that I trust will be professional and fair. I will not do any work if there is any involvement at all from the Planning Department or the Planning Board.

Answer 21. Because the actions reported by Mr. Baptiste are inaccurate with respect to the Planning Department his resultant conclusion is wrong. He attributes Staff actions as somehow being personally directed toward him, when the reports and recommendations of Staff are to or on behalf of the Planning Board, and it is the Planning Board who then determines whether they are forwarded on.

The Planning Department's report on Eastwood Estates identifies outstanding construction items that do not comply with the approved 40B plans. The Planning Board would have no involvement with these roads if they are never accepted as Town roads, but if they are, the Town should be concerned if they are not built according to the approved plans.

4

Greystone Realty, Inc.
3 Chester Avenue
Berkley, MA 02779

February 6, 2015

Town of Middleborough
Planning Board
Planning Department
20 Center Street
Middleborough, MA 02346

Re: Eastwood Estates letter

Dear Chairman Labonte:

I am in receipt of your January 20, 2015 letter, which is in response to a letter that I wrote on January 12, 2015.

If it was not clear from the entire content of my January 12th letter that everything set forth in that letter was my personal opinions and beliefs, then I would like to make very clear that they were just that, my personal opinions and beliefs. In clarifying this, please also let me emphasize that everything set forth in my January 12th and this February 6th letter are my personal opinions and beliefs, based on my perception of the events that I detail in the letters.

With particular reference to the fourth (4th) paragraph on the eighth (8th) page of my letter, where I state the following:

“Any one, two or three of these events could be explained away as an oversight, a bad day at the office or just a simple, honest mistake. But, when looked at as a body of evidence, the actions of Ms. Geoffroy, Mr. Fellini and the Planning Department have gone beyond uncooperative and unprofessional. There is an undeniable pattern of dishonest and malicious behavior and I will not work with them any more.”

I honestly believed that after seven (7) pages of documenting specific events that preceded my above statement, it would be clear that my statement was an expression of my honest opinions. Other than the sections retracted or corrected in this letter, that statement is still an expression of my honest opinions, however, in reviewing it I recognize that the word “dishonest” could have several meanings and I therefore retract the use of that word. From my perspective, however, I believe that the Planning

Department and its public officials have made statements that contained information that was not true or only partially true, but again I do retract the use of the word, "dishonest."

With regard to my use of the word, "malicious", I retract the use of that word. I do believe I have at times been singled out and treated unfairly, and in my opinion the record supports my belief. The earth removal permitting process alone suggests to me that I was singled out and treated differently than other similarly situated developers. However, I nonetheless retract the use of the word, "malicious."

The following are my specific replies to Ms. Geoffroy's answer letter dated January 20, 2015 that details twenty-one (21) specific answers.

1. With regard to my opinion as to whether or not there is a quirk in the rules for road acceptance, I maintain and stand by my original opinion that a quirk does exist. In my opinion, it does not make sense to have the Planning Board be responsible for reporting to the Selectmen for road acceptance when the Zoning Board is the governing body that issues the permit and reviews construction of Comprehensive Permits.
2. It is accurate that I have not permitted any subdivisions with the Planning Board. However, that does not mean that I haven't dealt with the Planning Department. I have had extensive dealings with the Planning Department while they were reviewing Ravenwood, Greystone Estates, Tispaquin Farms, Eastwood Estates and the earth removal permit. It has been and still is my opinion that all of my dealings with the Planning Department have been an unpleasant experience, with the exception of dealing with Ms. Denise Cahill who in my opinion was always professional, courteous and helpful.
3. The Planning Director is correct, I did not withdraw Ravenwood Estates; it was disapproved along with an approval of a lot count for a cluster subdivision. I also used an incorrect term when I said our engineer drew a "preliminary plan" for our initial meeting with Ms. Geoffroy. We drew an informal plan. It is my understanding that pursuant to the subdivision control law, a preliminary plan has a specific meaning. A preliminary plan is submitted to the Planning Board as a Form B application to have an in depth review and discussion to identify any major issues before the expense and time is spent drawing a definitive plan.

I stand by and maintain my original opinions as set forth in my letter dated January 12, 2015. In fact, I recently visited with John Delano of John W. Delano & Associates, Inc., the engineer who worked with us on this project. I was able to review Mr. Delano's entire file and therefore was able to confirm a few important points. First, Mr. Delano's file included a Client Visit Log dated January 28, 2000 that states, "Right to Defin. per Ruth", ("Defin" meaning "Definitive Plan").

Secondly, according to a September 25, 2000 letter from the Town Planner, an engineering meeting was held on August 30, 2000 with Atlantic Design Engineers (ADE). In this letter, the Town Planner makes three (3) statements about the location of the road. These statements include the following: 1. In the letter Ms. Geoffroy states, "During the course of the engineering meeting I suggested that an Open Space Development might be a better fit on the site, particularly if the road was located after the Hastings house, extending up into the middle of the site, closer to Route 44." This was before K Easterbrooks proposed that the road be relocated, as stated in Ms. Geoffroy's response, since the public hearings had not started yet. 2. Following our submission of a sketch plan showing where we wanted the road to be constructed, Ms. Geoffroy's letter then states, "The sketch shows the road in a location different than that which was suggested..." Lastly, in Ms. Geoffroy's September 25 letter she states, "The proposed location of the subdivision road does not provide adequate front yard setback to the adjacent Hazard property, thereby rendering it more non-conforming. Because the Hastings land has alternative access points for the subdivision road, the Board should consider the desirability of this condition." The three statements made by Ms. Geoffroy in her September 25, 2000 letter allowed me to reasonably conclude that she was telling me that I have to move the road. Therefore, I maintain and stand by my original opinion in this regard.

4. Based on Ms. Geoffroy's rebuttal, I do not believe a response is needed and I therefore maintain and stand by my original opinion in this regard.
5. Ms. Geoffroy's answer contained in her rebuttal confirms my original opinion in that the Planning Board did not vote to recommend road acceptance for Greystone Estates. The Zoning Board of Appeals apparently handled this function. I attempted to follow the exact same procedure for the Tispaquin Farm road acceptance as I did for Greystone road acceptance.
6. The Planning Director is correct in that the meeting she left was a review of Greystone Estates, not Silo Lane as I had originally stated. Although we had differing views, in my opinion that did not warrant Ms. Geoffroy abruptly getting up from her seat and leaving the meeting. I therefore maintain and stand by my original opinion as to Ms. Geoffroy's conduct in that meeting.
7. When writing my original letter I did not recall, and I still do not recall being notified of or being in attendance at the Planning Board Meeting of October 14, 2008. If I was indeed notified of and was in attendance at that meeting, then the facts that I originally believed to be accurate turn out to not be accurate and I therefore would not have been ambushed at the Selectmen's meeting later that evening and I therefore retract that statement. However, it is still my opinion that I followed the same procedure and conducted myself in the same manner as I had with regard to the road acceptance of our previous development and I do recall quite vividly that by the end of the Selectmen's meeting I was left feeling shocked and dismayed.

8. My response to this paragraph is the same as my response contained in the preceding paragraph (#7).
9. I do not recall being notified of or being in attendance at the Planning Board meeting of October 14, 2008. However, if I was as Ms. Geoffroy claims the record reflects, then my statements contained in my original letter and answered as #9 in Ms. Geoffroy's rebuttal would not be accurate and I therefore retract that portion of my statement.
10. With regard to the issue surrounding riser rings and our apparent disagreement as to my honest opinion of such, I simply find it nearly impossible to believe that the Planning Department possessed no knowledge of their use in other subdivisions. They must have known, certainly as early as June 8, 2009. In a letter from Paul Fellini to Gregory Maroney, Harvestwood Development, Mr. Fellini states, "These Standard Specifications do not allow the use of riser rings and therefore riser rings are not approved for use in the Town of Middleboro, however unbeknownst to the Planning Department riser rings have been used on many roadways." Subsequently, in the August 12, 2009 letter to me regarding Silo Lane, the Planning Department states, "It should be noted that riser rings have never been approved by the Town of Middleborough..." In my opinion, any open, transparent and fully honest discussion regarding riser rings should have included an unambiguous acknowledgment that they have been used extensively throughout town and on roads that have been inspected and approved by the Planning Board.
11. With regard to the issue surrounding guardrails, I stand by my original opinion.
12. With regard to the issues surrounding the joint where Silo meets Tispaquin, I stand by my original opinion.
13. With regard to the issues surrounding slopes, I stand by my original opinion and I accept the Planning Departments explanation that the 3:1 reference was an error and that the standard is 5:1. I am also still of the opinion that there are several existing approved subdivisions with basins that are unfenced and contain slopes significantly steeper than 5:1.
14. I stand by my original opinion.
15. With regard to the issue surrounding the letter that was hand delivered to the Planning Department regarding Eastwood Estates, I stand by my original opinion.
16. With regard to the issue surrounding the meeting of December 3, 2013, I stand by my original opinion and furthermore, it is apparent that the Planning Department

and I are in disagreement as to the appropriate way to schedule and conduct a meeting and/or site review on private property.

17. With regard to the issues surrounding the installation of street trees, I stand by my original opinion. However, after reading Ms. Geoffroy's Rebuttal / Response dated January 20, 2015, I contacted the tree installer for clarification as to the number of visits. I do stand corrected with regard to the number of staff visits to the property and the fact that the staff apparently did not visit the nursery.
18. No Response Needed.
19. With regard to the issue surrounding visits to the property without permission or providing notice, I stand by my original opinion. It was very clear, in no ambiguous terms, that I respectfully requested staff to notify and schedule visits to the property with me in advance.
20. With regard to the issue surrounding Earth Removal, I stand by my original opinion. Furthermore, Ms. Geoffroy's Answer/Rebuttal points out that the, "Planning Department had not commented on earth removal applications in a long time..." and "does not intend to restate them on each subsequent earth removal application received by the town." This is one of the many reasons I have felt singled out and treated differently than other similarly situated developers.
21. Except as retracted or corrected in the preceding answers, I stand by my original opinions and beliefs.

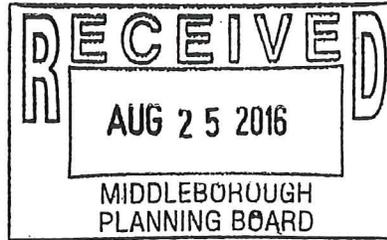
I thank you for the opportunity to respond and I hope I was able to clarify the personal opinions I have had for quite some time.

Sincerely,

A handwritten signature in cursive script, appearing to read "Marcus Baptiste, President".

Marcus Baptiste, President
Greystone Realty, Inc.

5



FILE

255 State Street, 7th Floor
Boston, MA 02109
Telephone 617.742.4200
Facsimile 617.742.2355
www.riw.com

Memorandum

To: Greystone Realty, Inc.
From: Ruberto, Israel & Weiner, P.C.
Date: 6/23/2016
Re: Eastwood Estates Comprehensive Permit Subdivision Roadway Acceptance

Question Presented:

Greystone Realty, Inc. ("Greystone") has asked that we render our opinion as to whether the Middleborough Zoning Board and not the Planning Board is the appropriate local board to issue a report under G.L. c. 41, § 81I, regarding acceptance of the Eastwood Estates subdivision roadway as a public way. We conclude that a planning board acting under Section 81I is a "local board" acting with respect to an application for a "local permit or approval" within the meaning of G.L. c. 40B, §§ 20-23 ("Chapter 40B"). Therefore, given that the Middleborough Zoning Board permitted the Eastwood Estates subdivision as a comprehensive permit project under Chapter 40B, the Middleborough Zoning Board and not the Planning Board has the power to report on the subdivision roadway under Section 81I.

Applicable Law:

Chapter 40B provides that local zoning boards, "shall have the same power to issue permits or approvals as any *local board* [emphasis added] or official who would otherwise act" with respect to a comprehensive permit project. See G.L. c. 40B, § 21. A comprehensive permit is a, "master permit which shall subsume all local permits and approvals normally issued by local boards." See 760 C.M.R. § 56.05(10)(b). A zoning board's authority to act on a comprehensive permit project does not end with the issuance of a comprehensive permit. Rather, "after the issuance of a Comprehensive Permit, [a zoning board] *may issue directions or orders* [emphasis added] to Local Boards designed to effectuate the issuance of a Comprehensive Permit (including any Waivers) and the construction of the Project." See 760 C.M.R. § 56.05(10)(c). The definition of "Local Boards" under the comprehensive permit law expressly includes both the planning board and the board of selectmen. See G.L. c. 40B, § 20.

Towns derive their authority to lay out and accept public roads from G.L. c. 82, §§ 21-24, which provides that the board of selectmen shall refer the question of roadway acceptance to town meeting for a vote. Section 81I of Chapter 41¹ describes the role of the planning board in the road

¹ We assume Middleborough does not have an official town map, therefore G.L. c. 41, § 81I applies and not Section 81G. Our analysis would not change under Section 81G.

acceptance process. Section 81I provides that in order to lay out and dedicate a roadway for public use, the matter must be "referred to the planning board" for a "report" on the roadway. Ultimately, town meeting must vote to accept a newly constructed subdivision roadway as a public way. See G.L. c. 82, § 23.

Discussion:

Chapter 40B expressly identifies a planning board established under G.L. c. 41, § 81A as a local board for purposes of Chapter 40B; therefore, the answer to our question turns on whether "report" under G.L. c. 41, § 81I falls within the gamut of local "permits and approvals" referred to the zoning board under Chapter 40B. Any analysis of law under Chapter 40B must account for its legislative purpose, which is to streamline and expedite the permitting process to encourage the development of affordable housing. See Board of Appeals of Hanover v. Housing Appeals Comm., 363 Mass. 339, 354–55 (1973).

In recent years, several appellate cases have considered the extent to which a zoning board may act in place of other local boards and officials and the extent to which Chapter 40B encompasses various permits and approvals in furtherance of this legislative goal. In exploring the limits of Chapter 40B, courts have consistently held that any local board or official acting on a matter of local concern falls within the purview of the zoning board as the permit granting authority under Chapter 40B. The court in Groton described the nature of local "permits and approvals" that the legislature intended to consolidate before a zoning board of appeals. See Groton v. Hous. Appeals Comm., 451 Mass. 35, 41 (2008). The Groton court held as follows:

The phrase "permits or approvals,"... refers to building permits and other approvals typically given on application to, and evaluation by, separate local agencies, boards, or commissions whose approval would otherwise be required...

The Supreme Judicial Court expanded on Groton when it determined that a fire chief "reporting" to a local building inspector on state building code issues is acting with respect to local permits and approvals. See Zoning Bd. Of Sunderland v. Sugarbush Meadow, LLC., 464 Mass. 166, 182 (2013). The court explained that a zoning board could act in place of the fire chief where, "Under the [State Building Code], the fire chief *reports* [emphasis added] the result of his review of construction documents to the 'building official'". See id. In Sunderland, the fire chief issued a report pursuant to the building code, lobbying against a comprehensive permit project because the department's ladder truck could not reach the roof. The court acknowledged that the situation was not ideal; however, it was not a violation of state law and therefore the fire chief's report was dismissed as a local permit or approval subsumed by Chapter 40B. See id. Similarly, although not a permit or approval in the traditional sense, a local historic committee's certificate of appropriateness is covered by Chapter 40B as well. See Dennis Housing Corp. v. Zoning Bd. Of Dennis, 439 Mass. 71, 72 (2003).

To limit the definition of "permits and approvals" would unnecessarily burden Chapter 40B applicants; therefore, appellate courts have consistently expanded the definition to prevent a displeased local board or official from erecting barriers to development. Generally, Chapter 40B will control where a local board is acting with respect to the general welfare of a town's inhabitants. See id. Producing a report on, and acceptance of a subdivision roadway is an

inherently local process. See G.L. c. 82, §§ 21-24. A planning board's involvement in the reporting process under G.L. c. 41, § 81I is no different. Sections 81A through 81J are captioned, "Improved Method Of Municipal Planning," which further indicates that the roadway acceptance process is entirely a local concern. Certainly the planning board's report would "otherwise be required" as described in Groton, but where the zoning board has overseen the design, permitting and ultimate construction of the Eastwood Estates subdivision roadway, an additional separate application to the planning board for a report under Section 81I is inconsistent with the very local nature of subdivision road acceptance and the purpose of Chapter 40B.

Road layout and construction requirements under the subdivision control law are squarely within the spectrum of local "requirements and regulations". See Boothroyd v. Zoning Bd. Of Appeals of Amherst, 449 Mass. 333, 337-38 n.11 (2007) (describing authority of zoning board to override local bylaws). Several challenges to this general rule have failed on various grounds in various contexts. See Blue View Const., Inc. v. Town of Franklin, 70 Mass. App. Ct. 345, 353 (2007) (zoning board authorized to act on behalf of planning board); Planning Bd. Of Hingham v. Hingham Campus, LLC, 438 Mass. 364, 368-69 (2003) (planning board not aggrieved party under Chapter 40B). In Blue View, the court held that specific references to the planning board and its role under G.L. c. 41, § 81W, "[have] no effect on a zoning board of appeals and in no way limits that board's authority under G.L. c. 40B." See id. Section 81W of the subdivision control law specifically identifies the planning board as the local agency responsible for review of modifications to existing subdivision plans, but zoning boards regularly fill that role under Chapter 40B. See id. The zoning board's role under Section 81I would be no different. Blue View confirms that the planning board's role is inherently local and subsumed within Chapter 40B.

The power of Chapter 40B does have limits. For instance, it is clear that Chapter 40B does not override requirements of state law. See Groton, 451 Mass. at 41. Chapter 40B cannot compel a town to grant an easement or other property rights. Chapter 40B also does not empower a zoning board to act in place of town meeting where municipal legislative action is required. See id. However, a report regarding the sufficiency of a subdivision roadway does not implicate any matter of state law and does not affect any private property rights. Ultimately, town meeting must vote to accept the road, but any permit or approval, including any reports under Section 81I, must come from the zoning board under Chapter 40B when a comprehensive permit project is at issue. To conclude otherwise would stifle the purpose of Chapter 40B and run contrary to well established case law on the issue.

Conclusion

The Middleborough Zoning Board is the appropriate local board to issue any permits, approvals, directions, reports or orders and to take any necessary local action under G.L. c. 41, § 81I, regarding the Eastwood Estates subdivision road. See 760 C.M.R. § 56.05(10).

6

SECTION 81-I.

Duties of Municipalities Having No Official Map

Referral of Changes in Public Ways to Board

Referral of Other Matters to Board for Report

In a city or town having a planning board established under section eighty-one A but which has not adopted an official map no public way shall be laid out, altered, relocated or discontinued, unless the proposed laying out, alteration, relocation or discontinuance has been referred to the planning board of such city or town and such board has reported thereon, or has allowed forty-five days to elapse after such reference without submitting its report. Any city or town having a planning board established under section eighty-one A may, by ordinance, by-law or vote, provide for the reference of any other matter or class of matters to the planning board before final action thereon, with or without provision that final action shall not be taken until the planning board has submitted its report or has had a reasonable fixed time to submit such report. Such planning board shall have full power to make such investigations, maps and reports, and recommendations in connection therewith, relating to any of the subjects referred to it under this section, as it deems desirable.

Added by St. 1947, c. 340, s. 4.

7

CRANBERRY CAPITAL
OF THE WORLD



FILE

Phone: 508-946-2405

Fax: 508-946-0058

Town of Middleborough

Massachusetts
Board of Selectmen



July 26, 2016

Adam Bond, Chairman
Middleborough Planning Board
20 Centre Street
Middleborough, MA 02346

Dear Chairman Bond;

Please be advised that, at its meeting held on July 25, 2016, the Middleborough Board of Selectmen voted to refer the proposed roadway layouts for Captain Hall Road, Augustus Way, Hayden Way and Leland Road known as Eastwood Estates to the Planning Board and it was further voted to scheduled a layout hearing for August 22, 2016..

If you have any questions or require additional information, please let me know.

Sincerely,

A handwritten signature in cursive script, appearing to read "Colleen Lieb".

Colleen Lieb, Acting - Executive Assistant
to MIDDLEBOROUGH BOARD OF SELECTMEN

ROBERT J. MATHER, ESQ.
ATTORNEY AT LAW

One Lakeville Business Park
Suite 1A
Lakeville, MA 02347

Tel (508) 946-0066
Fax (508) 946-4474
E-Mail: rjmather@rjmatherlaw.com

June 22, 2016

Board of Selectmen
Town of Middleborough
Town Hall
Middleborough, MA 02346

Re: Captain Hall Road, Augustus Way, Hayden Way and Leland Way Road Acceptance

Dear Board Members:

Please be advised that I am writing once again as attorney for Greystone Realty, Inc. and Marcus Baptiste. As you know, we began the process for public road acceptance for the roadways at Eastwood Estates a few months ago with the goal of presenting the roadways for acceptance at the 2016 annual town meeting. Unfortunately we were forced to withdraw our petition because we were unable to meet the required time periods. We would now like to begin the process again so that we will be ready for the special town meeting in the fall.

Please accept this letter as a petition on behalf of my client to the Board of Selectman to layout the roads in Eastwood Estates known as Captain Hall Road, Augustus Way, Hayden Way and Leland Way as public ways. I believe that you are already in possession of the road layout plans and as-built plans for each of these roads. I am sending a copy of this letter to the Middleborough Town Clerk. A set of the road layout plans were also previously filed with the Town Clerk. In addition, Release of Claims forms which have been executed by all of the lot owners in Eastwood Estates and the Developer have also been previously filed with you.

It is my understanding that the Board of Selectmen will now refer the proposed layout to the Town of Middleborough Planning Board pursuant to Massachusetts General Laws Chapter 41, Section 81I and will schedule a layout hearing for approximately four (4) weeks from this date. Notice of the layout hearing must be published in the Middleborough Gazette and copies of the notice must be delivered to the developer, the owners of all of the lots in the subdivision and the owners of any lots that are not in the subdivision but which lots have easements on them for the benefit of the subdivision and the Board shall also post a notice of the layout hearing in a public place in the town of Middleborough.

If you require any additional information, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read 'RJM', with a long horizontal flourish extending to the right.

Robert J. Mather
RJM/slf

cc: Middleborough Town Clerk – by hand delivery

8

Ruth Geoffroy

Subject: FW: referral of proposed road layout for report & letter of surety credit

From: decas.murray.decas@verizon.net [mailto:decas.murray.decas@verizon.net]

Sent: Tuesday, August 30, 2016 11:15 AM

To: Ruth Geoffroy

Cc: Robert G. Nunes

Subject: referral of proposed road layout for report & letter of surety credit

August 30, 2016

Middleboro Planning Board (*c/o Ruth Geoffroy via email*)

RE: (I.) Referral of proposed road layout for report;

(II.) Letter of credit surety

Dear Board Members:

EASTWOOD I. I recently reviewed an opinion of private counsel that the referral by a board of selectmen of a proposed public way layout under G.L. ch. 41, sec. 81I is to a board of appeals in lieu of a planning board when the prospective public way is part of a Chapter 30B development. I do not agree with the opinion. I think the Chapter 81I referral should be to a planning board. The referral and report process under Section 81I does not constitute a local permit or approval under G.L. ch. 40B, sec. 21 with respect to an application to build low or moderate income housing.

II. A draft letter of credit was submitted. The language in the draft deviates from the Board's approved form for a letter of credit in that if a developer fails to complete required subdivision improvements, the lender which issued the letter would have the right to complete needed improvements instead of paying to the Board a cash amount.

The purpose of a letter of credit surety is to provide to the Town a sum of money sufficient to complete construction of a subdivision in the event of a default. The draft letter of credit fails to meet this fundamental purpose.

Very truly yours,

Daniel F. Murray

Town Counsel

DFM/s

16-107

cc: Robert G. Nunes, Town Manager (*via email*)

**Earth Removal – 375 Wareham Street –
YMCA**

HEARINGS, MEETINGS, LICENSES

9/12/16

This is a new hearing, please read the legal notice



A hearing will be held in the Selectmen's Meeting Room at the Town Hall, 10 Nickerson Avenue, Middleborough, MA on **Monday, September 12, 2016 at 7:45 pm** for the purpose of discussing an application filed by **Foresite Engineering, Inc.** on behalf of the **Brockton YMCA** for an Earth Removal Permit for property located **375 Wareham Street, Assessors Map 073, Lot 5813, Middleborough, MA.** The reason for this request is for the removal of approximately 20,000 to 25,000 cubic yards of soil as shown on plan dated July 1, 2016, prepared by **Foresite Engineering, Inc.** Anyone desiring to be heard on this matter should appear at the time and place designated.

Diane C. Stewart
Stephen J. McKinnon
John M. Knowlton
Leilani Dalpe
Allin Frawley
BOARD OF SELECTMEN
September 1, 2016
The Middleboro Gazette Newspaper



September 7, 2016

Board of Selectmen
Town Hall Building
10 Nickerson Avenue
Middleborough, MA 02346

**Re: Initial Engineering Review
WRPD Application – Keith McLaughlin
Map 25, Lot 1026 – Fuller Street
ADE Job Number 2518.48**

Dear Board Members:

Atlantic Design Engineers, Inc. has completed our initial engineering review of the site plans for the above-referenced project relative to a Special Permit request under the Water Resource Protection District (WRPD) bylaw. The plan is dated 9/24/12 and is prepared by Piling Engineering Group for Keith McLaughlin of West Bridgewater, MA.

We have the following comments:

1. The project has apparently received an Order of Conditions from the Conservation Commission and has been considered a “limited project” as there is no other reasonable means of access to the upland area of the lot. A copy of the Order or other correspondence from the Conservation Commission should be provided to the Board.
2. The Board may want to consider requiring some sort of permanent visual barrier (fence, vegetation, signs, etc.) at the limit of the 25 foot no disturb zone to prevent further/future encroachment into it over time.
3. The checklists (for Site Plan and Project Narrative) typically submitted with the applications were not provided.
4. The plans need to be stamped/signed by a PE or RLS.
5. Specify the type of driveway to be constructed – paved, gravel, etc. and also specify the width of the drive, shoulders, and type of sideslopes. A typical cross section would help.
6. The Project Narrative states that the driveway is to be “elevated above the wetlands by filling”. However, grading of the proposed driveway is not shown on the plans, particularly in the 25’ buffer zone. This is critical to confirm the limit of disturbance.

Also, address stormwater and drainage patterns – is a culvert proposed under the driveway?

7. The haybale/silt fence limits should be extended to the west to Fuller Street to prevent possible siltation at the entrance.
8. The total area of 25' buffer zone disturbance should be clearly shown and labeled on the plans. It should include the area where the driveway is being built, as well as where the replication area is being built.
9. Is there any grading associated with the replication area? Please show on the plans as it may affect the amount of 25 foot buffer disturbance in this area.
10. Plans for Lot 2 (Map 25, Lot 1012) were provided but not reviewed, as the WRPD application was for Map 25 Lot 1026 only. It does appear that the driveway for Lot 2 (Map 25, Lot 1012) is within the 25' buffer zone and therefore would require a WRPD Special Permit.

Please call if you have any questions or comments.

Sincerely,

ATLANTIC DESIGN ENGINEERS, INC.

A handwritten signature in black ink, appearing to read 'Richard J. Tabaczynski', written in a cursive style.

Richard J. Tabaczynski, P.E.
Project Manager



Town of Middleborough

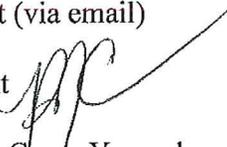
CONSERVATION COMMISSION

20 CENTRE STREET
MIDDLEBOROUGH, MASSACHUSETTS 02346

PHONE: 1-508-946-2406
FAX: 1-508-946-2309

MEMORANDUM

TO: Board of Selectmen (via email)
Ruth Geoffroy, Planning Director (via email)
Robert Whalen, Building Commissioner (via email)
Christopher Peck, DPW Superintendent (via email)

FROM: Patricia J. Cassady, Conservation Agent 

RE: Earth Removal Application – YMCA – Camp Yomechas, 375 Wareham Street
(Map 73, Lot 5813)

DATE: September 2, 2016

This memorandum is in response to the earth removal permit that the above-mentioned applicant has submitted to the Board of Selectmen.

I have the following comments regarding this site:

- 1) The area where the proposed earth removal is taking place is within a Zone II Wellhead Protection Area.
- 2) This area is *not* in a floodplain or mapped under the Division of Fisheries & Wildlife Natural Heritage & Endangered Species Program.
- 3) There are bordering vegetated wetlands with a 100-foot buffer zone at the site on the other side of the entrance road. These may be potentially far enough from the project however we would be interested in how they will be protected during the removal of earth through truck traffic.
- 4) There are isolated wetlands near the proposed earth removal area and should be further examined as they may be potential vernal pools and it should be determined through calculations if any of them qualify as Isolated Land Subject to Flooding under the Wetlands Protection Act.
- 5) I would recommend that the applicant and their representative speak with the Conservation Department prior to the commencement of any activity pertaining to the proposed earth removal.

If you have any further questions, don't hesitate to contact the Conservation Office at 508-946-2406.

Thank you

pjc



Town of Middleborough
20 Centre Street, Second Floor
Middleborough, Massachusetts 02346

Robert J. Whalen
Building Commissioner
Tel. 508-946-2426
Fax 508-946-2305

September 7, 2016

Middleborough Board of Selectmen
Middleborough Town Offices
10 Nickerson Ave
Middleborough, MA 02346

RE: Earth Removal Permit for Brockton YMCA for a Special Permit located at 375 Wareham Street, Assessor's Map: 073 Lot: 5813, Zoning District Residential Rural, WRPD District Z2.

Honorable Board,

I have reviewed the plan submitted for Brockton YMCA designed by Darren Michaelis of Foresight Engineering for an Earth Removal permit for the property located on 375 Wareham Street. This property is the subject of a Special Permit from the Middleborough Zoning Board of Appeals. The applicant would need to apply to the Z.B.A. and receive approval before any of the proposed improvements take place.

Respectfully submitted,

Robert J. Whalen
Building Commissioner
Zoning Enforcement Officer

RJW/d



Town of Middleborough

Massachusetts

BOARD OF SELECTMEN APPLICATION FOR LICENSE (PLEASE TYPE OR PRINT CLEARLY)

DATE 7-15-16
 NAME OF APPLICANT Old Colony YMCA - Frank McDonald
 ADDRESS OF APPLICANT 61 EAST Grove ST
 ASSESSORS MAP & LOT 073-5813
 DAYTIME TELEPHONE 508-958-6662 cell 508-947-1390

NAME OF BUSINESS Old Colony YMCA - Camp Yomechas
 OWNER OF PROPERTY TO BE LICENSED Old Colony YMCA
 ADDRESS OF PROPERTY TO BE LICENSED 375 Wareham St.
 ASSESSORS MAP & LOT 073-5813

TYPE OF LICENSE REQUESTED (Check One)

2nd Hand _____ WRPD _____
 Class I Automobile Dealer License _____ Earth Removal Permit X
 Class II Automobile Dealer License _____ Liquor License _____
 Class III Automobile Dealer License _____ Junk Dealer _____
 Entertainment _____ Other _____

Anticipated Start Date for Business: _____

Days & Hours of Operation: _____

Has the applicant previously held a similar license in the Town of Middleborough or elsewhere?
If yes, explain:

Signature Frank McDonald

DATE OF HEARING: _____

Please bring to the Treasurer/Collector's office @ the Town Hall Annex, 20 Center Street, 3rd floor to obtain confirmation/signature that no outstanding taxes/municipal charges exist.

Dear Treasurer/Collector:

Please inform this department as to whether or not the above listed property owner/applicant/petitioner owes the Town of Middleborough any outstanding taxes and/or municipal charges that remain unpaid for more than one year.

Does Property Owner/Applicant/Petitioner owe Taxes/Municipal Charges? _____

Foresight Engineering

518 County Road
(Wishbone Way)
West Wareham, MA 02576
508-245-2148

July 1, 2016

Town of Middleborough
Board of Selectmen
20 Centre Street
Middleborough, MA 02346

RE: **Project plan**, 375 Wareham Street, Middleborough, MA

1. **Purpose of Project:** The proposed project will include widening of existing gravel roadways within the camp, removal of gravel to create a level area for a proposed baseball field, batting cages, basketball court, concession stand, gravel parking area and spectator walkway surrounding the proposed sports complex area.
2. **Description of site prior to work:** The property is located at 375 Wareham Street in Middleboro and is the location of Camp Yomechas. This is a summer camp ground and day camp for individuals and families. The septic system was upgraded in 2001. The property abuts Tispaquin Pond to the North and East and Residential properties to the South and West. The proposed work area is located to the Southern portion of the camp and abuts residential homes located on Wareham Street. This area is currently used for multiple camp functions and activities. The area has recently been cut and partially cleared.
3. **Reasons for Earth Removal Permit:** The applicant, the Old Colony YMCA, Middleboro Branch, is a non-profit organization that supports family and youth activities in Middleboro. The Middleboro Branch has two main properties, the main Branch at 61 E.Grove St., and Camp Yomechas at 375 Wareham St.. The Middleboro Branch serves around 12,000 members a year, and Camp Yomechas which serves approximately 1500 children throughout the summer. Between 500-600 children attend camp on a scholarship. The earth removal permit applies to the Camp Yomechas site and program. The current facilities at camp are very outdated (basketball court), are not large enough or built according to official specs (baseball/soccer fields), and/or don't exist, e.g., track. The earth removal would enable the Y to improve their program delivery and serve more campers, members and community members, e.g., outreach programs with Middleboro Schools. The earth removal permit would allow the Y to build a sports complex that would feature a ballfield suitable for youth baseball and softball, two youth sized soccer fields, an air-nasium, that is a seasonal steel building with a roof that

would have a rubber playing surface, large enough for high school basketball court that would allow for basketball, volleyball, floor hockey, gymnastics, and more. Lastly, there would be a track along the circumference of the sports complex as well as a concession stand with bathroom(s) that campers, youth and families could use. The earth removal project will be of no charge to the YMCA as the removed soils will be sold to pay for the site work.

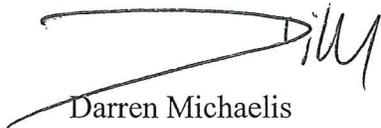
4. **Describe past earth removal activities and compliance issues that may have occurred:** There have been no past earth removal activities on this site.
5. **Project Phase Timelines:** Please refer to Sheet 3 of 3 of the project plans for detailed construction processes. Phase 1- Widening of existing gravel roads, entrance pad construction, removal of stumps and brush.(one Week) Phase 2- Excavation of proposed work area and rough grading, relocation of utility poles, and stock piling in proposed parking area.(two Weeks) Phase 3-All final grading for all proposed projects. Planting of groundcover for all sloped areas.(two Weeks) Phase 4- All final loam and seed spread. All sports areas are constructed as shown on plan. Walkway is completed. Gravel parking area drainage installed. Proposed Concession Stand and septic area are to be left undisturbed until Concession Stand is constructed. (three Weeks). Total Project timeline = 24Months.
6. **Time Duration Requested for Permit:** The applicant is requesting a 3 year time frame period for this permit. The applicant also understands that they may request an extension for up to one year thereafter at the discretion of the Board of Selectmen. The Earth Removal portion of this project is projected to take 12 weeks.
7. **Contractor Goals:**
 - A. Please refer to item 5 above for a description of the phases and associated timelines. We have estimated 20,000 to 25,000 cubic yards of soil will be removed to offsite locations. The loading and trucking of materials will be from the site to various locations The truck types will vary from small dump trucks to tractor trailers, and would use Wareham Street for access to the site. The daily truck trips estimated for the project are 40-50 trucks per day maximum. This is approximately 12 trucks entering and exiting the site per hour for an 8 hr work day.
 - B. A minimum of a 50' buffer will be maintained on all property boundaries abutting the work area.
 - C. The only material to be stockpiled on site will be done so in the proposed gravel parking area.
 - D. All proposed sloping on the southern property line is 2:1 and 3:1 as shown on the plan.
 - E. Contractors shall take steps to minimize the amount of dust generated on the site including those procedures contained below: the contractor shall ensure that all surfaces to be excavated are wet prior to, and if necessary, during excavation. Please refer to Sheet 2 of 3 for more procedures.
 - F. All disturbed areas are to be loamed and seeded as soon as possible to prevent washout and erosion.
 - G. Screening Equipment will only be used for all soils to be removed.

H. Multiple pieces of equipment will remain on site daily. These vehicles are to be left near the proposed parking area.

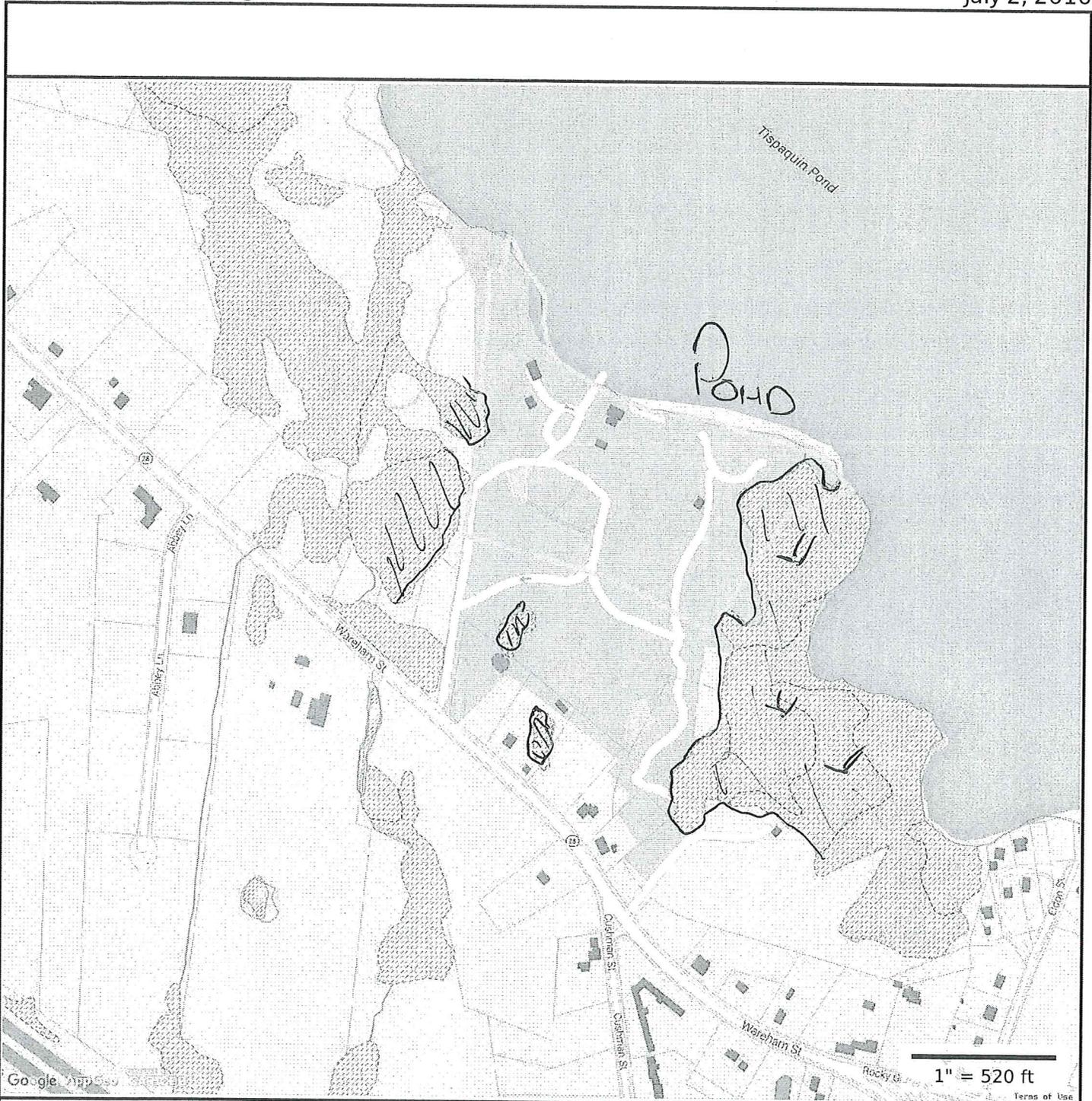
8. As- built plans will be submitted as Phase 4 comes to a completion.

We look forward to presenting the project to the Board and discuss our application. If you should have any questions, please contact my office.

Sincerely,



Darren Michaelis
Design Engineer



Property Information	
Property ID	073-5813
Location	375 WAREHAM ST
Owner	BROCKTON YMCA


**MAP FOR REFERENCE ONLY
 NOT A LEGAL DOCUMENT**
 Town of Middleborough, MA makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.
 Parcels updated 9/1/2015
 Properties updated 10/1/2015

WETLANDS



Property Information

Property ID 073-5813
Location 375 WAREHAM ST
Owner BROCKTON YMCA



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 NOT A LEGAL DOCUMENT

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Parcels updated 9/1/2015
 Properties updated 10/1/2015

WRPO
 ZONE II

Map Theme Legends

Natural Resource Protection

NHESP Certified Vernal Pools



NHESP Priority Habitats of Rare Species

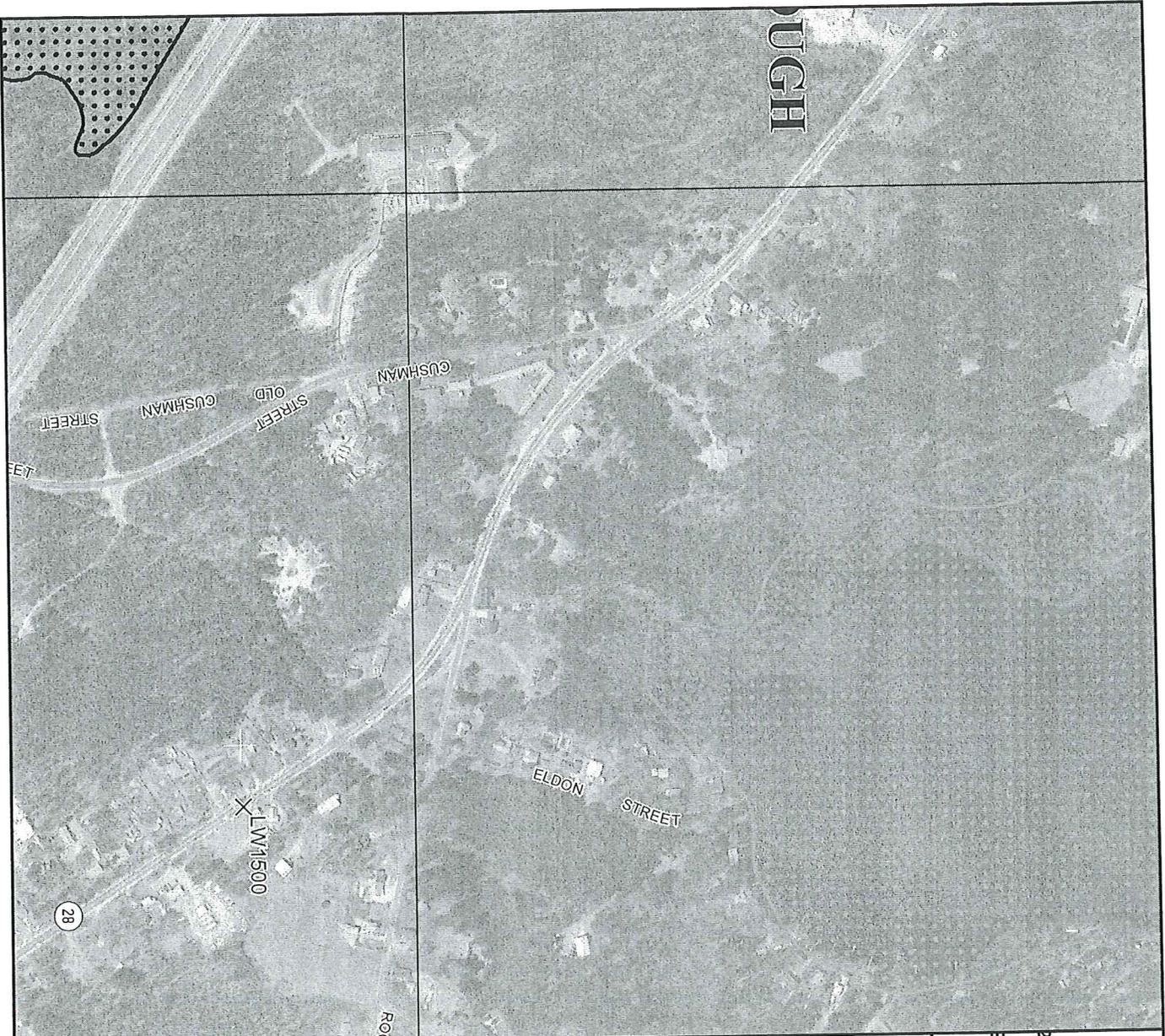
NHESP Estimated Habitats of Rare Wildlife



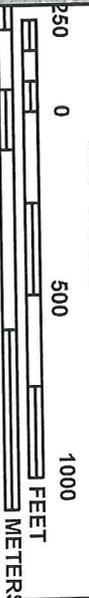
Areas of Critical Environmental Concern



Massachusetts DCR, Natural Heritage and Endangered Species Program



MAP SCALE 1" = 500'



NFIP

PANEL 0451J

FIRM
 FLOOD INSURANCE RATE MAP
 PLYMOUTH COUNTY,
 MASSACHUSETTS
 (ALL JURISDICTIONS)

PANEL 451 OF 650
 (SEE MAP INDEX FOR FIRM PANEL LAYOUT)

CONTAINS:
 COMMUNITY NUMBER 250275
 PANEL SHEET 0451 J
 MIDDLEBOROUGH, TOWN OF

Notice to User: The Map Number shown below should be used when placing map orders, the Community Number shown above should be used on insurance applications for the subject community.



Federal Emergency Management Agency

MAP NUMBER 25023C0451J
 EFFECTIVE DATE JULY 17, 2012

This is an official copy of a portion of the above referenced flood map. It was extracted using F-MIT On-Line. This map does not reflect changes or amendments which may have been made subsequent to the date on the title block. For the latest product information about National Flood Insurance Program flood maps check the FEMA Flood Map Store at www.msc.fema.gov

APPENDIX B

PLAN CHECKLIST

PLEASE COMPLETE CHECKLISTS FOR PLANS AND PROJECT PLAN AND INITIAL:

PLANS	Check	Initials
A. Cover page that shows:		
1. Name of project:	<u>X</u>	_____
2. General directional and town locus:	<u>X</u>	_____
3. Water Resource Protection District limits	<u>X</u>	_____
4. Engineering Firm Name and address	<u>X</u>	_____
5. Flood Map limits (if applicable)	<u>X</u>	_____
6. Zoning District limits	<u>X</u>	_____
B. Civil Drawing Sheet 1 - that show at a minimum:		
1. Existing streets	<u>X</u>	_____
2. Property lines and names of adjacent properties/abutters	<u>X</u>	_____
3. Existing tree lines	<u>X</u>	_____
4. Existing and proposed topographical contours (5' foot minimum)	<u>X</u>	_____
5. Town roadways	<u>X</u>	_____
6. Proposed treed buffer zones between edges of excavation and abutters	<u>X</u>	_____
7. Proposed buffer zones between property excavation and town street(s)	<u>X</u>	_____
8. Distances of proposed reservoir or excavations from property lines of abutters.	<u>X</u>	_____
9. Location and type of proposed excavation and work	<u>X</u>	_____
10. Locations of stockpiling of materials	<u>X</u>	_____
11. Proposed reservoir volume, slopes and bottom elevations	<u>NA</u>	_____
12. Site of proposed dewatering pond, discharge and overflow structure	<u>NA</u>	_____
13. Any proposed buildings, structures or utilities	<u>X</u>	_____
14. Roadway systems and gates, and proposed paving areas	<u>X</u>	_____
15. Proposed areas of agricultural uses	<u>NA</u>	_____
16. Indications of phased operations	<u>X</u>	_____
17. Areas to be seeded	<u>X</u>	_____
18. Existing and proposed slopes with limits of final grading	<u>X</u>	_____
19. Locations of ditches	<u>NA</u>	_____
20. Wetlands and water resource areas	<u>X</u>	_____
21. Elevations of water (high, low) as applicable	<u>X</u>	_____
22. Drainage patterns with directional arrows showing flow	<u>X</u>	_____
23. Fencing	_____	_____
24. Professional Engineers Civil stamp	<u>X</u>	_____

25. Date of preparation
Other information as appropriate to good engineering design

X _____

C. Civil Drawing Sheet Number 2 (as applicable)

- 1. Pond specifications with erosion controls
- 2. Erosion controls
- 3. Side Flow Profile

NA _____
X _____
NA _____

APPENDIX C

EARTH REMOVAL BYLAW (S)

APPENDIX D

INSPECTION CHECKLIST

EARTH REMOVAL PERMIT
INSPECTION CHECKLIST

PROJECT NAME:

PROJECT #:

PAYMENT RECEIVED:

EXP. DATE:

YES _____ NO _____

CHECK # _____

LOCATION:

(CIRCLE YES OR NO)

1. Knowledge of Town Hall observed Holidays: **Yes** **No** Comments: _____

2. Topsoil stockpile: **Yes** **No** Comments: _____

3. Bond or surety in place: **Yes** **No** Comments: _____

4. Standard highway signs in place: **Yes** **No** Comments: _____

5. No refining or screening: **Yes** **No** Comments: _____

6. Provisions for dust control adequate: **Yes** **No** Comments: _____

7. Depth and slope compliance: **Yes** **No** Comments: _____

8. Drainage compliance: **Yes** **No** Comments: _____

9. Warning signs along property line meet requirements:
Yes **No** Comments: _____

10. Special conditions (Specified Below): **Yes** **No** Comments: _____
(ex: berm, 5 acre maximum, tree cutting, buffer, truck signs or assigned route, etc.)

General comments and observations: _____

Inspector's Signature

APPENDIX E
TYPICAL ORDER OF CONDITIONS

APPENDIX E

TYPICAL ORDER OF CONDITIONS

Board of Selectmen Conditions

1. Construction of the Ballfield shall be as outlined in the Project Plan required under **Section C - Permit Conditions** of this permit, and approved by the Town's Agent.
2. Existing tree lines, natural land topography and vegetative buffer zones shall be maintained, a minimum of one hundred feet (100 ft.) from all property lines. In the absence of treelines on the property(ies), then the natural vegetated buffer shall be maintained for the same distances and trees planted.
3. A dewatering system, if required will be outlined in the Project Plan. Monitoring wells may be required to determine groundwater levels that could impact adjacent residential overburden and bedrock wells. Note condition 31, under **Section C - Permit Conditions**.

If neighboring overburden wells are determined to be potentially affected by the dewatering operation, work will cease, monitoring wells shall be installed, and an evaluation made from a qualified hydrologist on the dewatering operation, prior to commencement of work. The Town's Agent shall determine if work shall continue, after consultation with the Board of Selectmen.
4. The applicant has prepared OR WILL PREPARE a Farm Plan that meets standards set forth from the United States government' s - Natural Resource Conservation District (NCRS) and the Massachusetts Department of Food and Agriculture.
5. Blasting on site is discouraged. Special permission shall be provided by the Board of Selectmen, prior to permitting application to the town Fire Department.

General Conditions

1. The Permittee shall submit to the Board of Selectmen's Agent and the Conservation Commission Agent a written **Project Plan** that will outline the planned activities and goals for each quarter of the Phase 1 construction work for each year of the permit. A Construction Sequence plan has been submitted for review by the Board of Selectmen's Agent for review and concurrence. The following sections are applicable under this permit:
 - a. General Conditions
 - b. Standard Conditions and Site Requirements
 - c. Special Conditions
 - d. Inspection Fees and Bonding

a, **General Conditions**

1. All Phase 1 work consisting of regrading shall be completed and any required plantings shall be 'growing' prior to any application for a future earth removal permit. No cutting, clearing or grubbing of areas not included under this phase of the work shall be done for any future work.

If any aforesaid described work is done in unpermitted areas, prior to submittal of an earth removal permit then future earth removal requests may be forfeited. The Town of Middleborough's Earth Removal Bylaw, as amended should be reviewed by the project proponent.

2. This permit is valid for **three (3) years** OR for a lesser time approved by the Board of Selectmen at the time of application and hearing - and may be renewed for up to one (1) year thereafter at the discretion of the Board of Selectmen.

3. Hours of operation are limited from 7:30 A.M. to 4:30 P.M. Operation is allowed Monday through Friday. Motors of earth removal equipment, including trucks hauling material to and from the site, are not to be started or run until before 7:30 A.M and after 4:30 pm.

4. No operation is allowed on Saturday, Sunday or Town Hall observed holidays, which are as follows:

New Year's Day	Labor Day
Martin Luther King Day	Columbus Day
Presidents Day	Veteran's Day
Patriots Day	Thanksgiving Day
Memorial Day	Christmas Day
Independence Day	

5. All excavated areas not part of the bogs will be topsoiled and planted per the specification on the plan or at the direction of the Board of Selectmen or through their Agent. All top and subsoil shall be stripped from the operation area and stockpiled for use in restoring the area after the removal operation has ceased. minimum of four inches of topsoil must be put back in place.

6. The permit holder is not permitted to spot excavate to remove better material here and there on the site.

7. Excessive erosion is to be controlled as determined by the Board of Selectmen's Agent or the Town's Conservation Commission's Agent.

8. No refining or screening of material is allowed on the permitted property except the screening of sand and loam to be used for on-site cranberry bogs, gravel for on-site roadways and loam for final on-site grading and seeding.

Any utilized screening plant shall be no larger than 150 to 200 yards per hour.

The permit holder shall provide a written description, time frame and proposed volume of material to be screened for approval by the Town's Agent.

9. The permit holder is allowed use of an onsite screening facility for processing and sorting out of materials for removal from the site.

b. Standard Conditions and Site Requirements

1. Standard highway signs warning of heavy trucks entering the street shall be erected as directed by the Board of Selectmen or their Agent and be in place prior to commencement of removal operations.

2. The Board of Selectmen, Conservation Commission, Town Manager or their Agents shall be free to inspect the premises at any time during normal working hours with or without prior notice to the permit holder.

3. The permit holder shall adhere to all State laws pertaining to covering loads and weight loads.

4. Any spillage on public ways or private property shall be cleaned up immediately by the permit holder or its agent.

5. The Board of Selectmen may, following a public hearing, revoke the permit, modify or revise the conditions of the permit and/or impose a fine if they find that the permittee, or any agent of the permittee violates any condition of this permit.

6. The Town Manager is authorized to act as the Board of Selectmen's Agent in the administration and enforcement of this permit.

7. All loaded vehicles must be covered to prevent dust and contents from spilling or blowing from the property.

8. The haul road and loading area must be watered regularly to keep dust from blowing from the property. Gravel may be required to be added to the haul road by the Board of Selectmen's Agent to assist in dust control.

9. This permit is not transferable, except by vote of the Board of Selectmen. Notice of a pending sale or transfer must be provided to the board. The Board of Selectmen may, in its discretion, hold a public hearing to consider the transfer of this permit to the prospective buyer of the property.

10. During operations, where the excavation working face will have a depth of more than 15 feet with a slope in excess of 1:1, a fence at least three (3) feet high shall be erected to limit access to that excavation.

11. No area shall be excavated so as to cause accumulation of freestanding water, except in conjunction with a storage pond for cranberry bogs as shown on the record plans. Permanent drainage shall be provided as needed in accordance with good conservation practices. Drainage shall not lead directly into or from streams or ponds, except as shown in the plans.

12. No excavation shall be closer than 200 feet to an existing public way unless specifically permitted by the Board of Selectmen at a publicly scheduled hearing. Natural vegetation shall be left and maintained on the undisturbed land for screening and noise reduction purposes.

13. Bog pumps will be powered electrically, or in the alternative, mufflers will be installed on pumps to reduce noise.

14. Gates will be installed on the haul road to prevent unauthorized access to the property.

15. Two by Three foot signs will be erected every 500' along the property line. The signs will display the permit number, the name and phone number of the permit holder's agent and the name and phone number of the Board of Selectmen's Agent, together with the words "NO TRESPASSING-EARTH REMOVAL IN PROGRESS".

16. All trucks hauling from the site must display a sign on the rear of the truck in an area that will be unobstructed and clearly in view displaying the words "TOWN OF MIDDLEBOROUGH PERMIT # 03 - ____".

17. A copy of this Earth Removal Order of Conditions shall be filed with the Registry of Deeds by the Permit holder as a notice to all that these conditions restrict work on the lot under the permit.

18. A Certificate of Compliance will be issued by the Board of Selectmen when the project is completed. The Certificate of Compliance will operate to release the lot from the conditions of the permit and terminate the permit. The Certificate of Compliance must also be filed with the Registry of Deeds by the permit holder.

19. Monitoring well(s) for water levels, if required, are to be measured every seven (7) days, and the results kept in a daily log.

20. The Plan shall be modified to include the general location (no survey required) of the monitoring well.

21. No standing trees are to be cut, trimmed or removed from the site, except for those areas shown on the approved plan. Violation shall result in a fine being imposed, in accordance with Earth Removal Bylaw §6, and/or revocation of the Permit.

If any tree needs to be trimmed, cut or removed, prior approval shall be provided by the Board of Selectmen's Agent.

TOWN OF MIDDLEBOROUGH
EARTH REMOVAL APPLICATION
and renewal form

1. General Information

Name of Applicant: Old Colony Ymca - Frank Mc Donald

Address of Applicant: 61 East Grove St Middleboro

Town or City: Middleboro

Owner of Property: Old Colony Ymca

Location of Property: 375 Wareham Street

Assessor's Parcel and Map Numbers Map 073 Parcel 5813

Map _____ Parcel _____

Map _____ Parcel _____

2. Permit Status

New Application or Renewal: New

Request for an Extension of Time for existing permit. _____

Existing Permit Number: _____

Parcel(s) Acreage: _____

Estimated Number of Cubic Yards to be Removed: 20,000 - 25,000 cubic yards

Requested Time Frame of Permit 3 years

Brief Project Description and Reasons for Request:

Widen existing Roadways, removal of gravel to create a level area for a ballfield, sports complex and concession stand.

3. Project Plan

Has a Project Plan being submitted with this Application?

An Application for an Earth Removal Permit will not be accepted by the Board of Selectmen for a public hearing, unless submitted with this application.

4. Planning Information

a. **Proposed Traffic Route** from site to unloading of materials.

Right onto Route 28, right on Wood st continuing to
Bridge water, also left on Route 28 to
Route 495

b. Has a plan and Notice of Applicability (NOA) or Intent (NOI) been submitted to the Town of Middleborough's Conservation Commission? _____

c. Has Order of Conditions by Conservation Commission been issued: If so what is project number and date of conditions : _____

d. Provide a copy of the Order of Conditions so they may be attached to the permit.

e. Is there a Department of Environmental Protection – Water Management Act Registration or Permit for this property? _____

Permit No. _____ Registration No. _____

f. Has a Farm Plan been completed? _____ Please provide a copy.

g. Expected Date of Project Completion: _____

5. Engineering General Information

Engineering Firm Name: Foresight Engineering

Engineer's Contact/Name : Darren Michaelis

Street: 518 County Road

Town/City W. Wareham

Phone Number: 508-245-2148

7. Financial Obligations

Do you owe any property taxes, water, sewer or any other financial obligation to the Town of Middleborough that is not current?

_____yes X no

8. Authorization of Applicant

a. Have you authorized the engineer to speak on your behalf regarding project questions that may come up prior to the public hearing?

X yes _____ no

b. I have reviewed this Application Package and attached information and deem it to be correct.



Signature of Applicant



Printed Name of Applicant

Date 7-15-16

Phone Number: 508-958-6662
508-947-1390

22. No rock crushing is authorized. Any proposed rock crushing may be authorized by the Board of Selectmen following a public hearing on a request for an Earth Removal Permit modification.

23. Excessive noise levels, as determined by the Board of Selectmen's Agent, shall result in onsite equipment modification within one (1) week of notification.

24. De-watering operation plans shall be provided in the Project Plan. De-watering may be limited during the Summer months. Siltation barriers will be provided as required by the Board of Selectmen's Agent.

c. Special Conditions

1. _____
2. _____
3. _____
4. _____

d. Inspection Fees and Bonding

Inspection Fees

1. An initial review to confirm compliance with permit conditions and restrictions must be performed by the Board of Selectmen's Agent before the commencement of any earth removal activities.

The fee for this review is \$ 600.00, due and payable at the time the permit holder notifies the Board of Selectmen's Agent that all requirements of the permit which must be done prior to commencement of work have been accomplished, and the permit holder is ready for the Agent to perform the initial review.

2. Quarterly reviews must be performed by the Board of Selectmen's Agent every three months following commencement of earth removal work. These reviews will include a field review and plan review to determine on-going compliance with the permit.

a. The fee for each such review is \$ 600.00, due and payable to the Town three months after the commencement of earth removal on the lot and every three months thereafter for the duration of the permitted project.

APPENDIX F
APPLICATION FORM

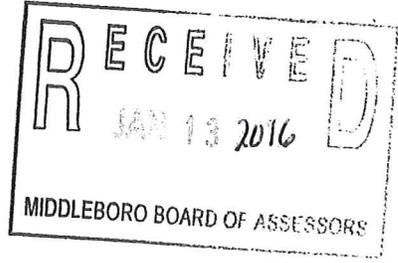
APPLICATION FORM

The project proponent must submit the following information as part of the package for the Board of Selectmen. Incomplete packages will not be accepted by the Board's administrative staff.

It is suggested that the application package be completed by a registered civil engineer.

1. Set of Plans with completed checklist
2. Application Information and Project Plan .
3. Additional submittals as identified in the application information .
4. Conservation Commission Order of Conditions
5. **Application Fee of three hundred dollars (\$ 300.00)**

No Balance



CERTIFIED ABUTTERS LIST REQUEST

Date: 1-12-16

LOCUS: Map 73 Lot 5813 Unit _____

Property Address: 375 Wareham St

Board or Office For: Selectmen

Subdivision/Reason for Project: Earth Removal

Owner's Name(s) & Address: Old Colony YMCA

61 E. Grove St

Applicant Name & Address: Middleboro, ma
(if different from Owner)

CONTACT NAME & PHONE #: Sue Okolita 508-947-1390
ext 12

*Selectman's Office, Zoning Board and Planning Board require a certified abutter's list of all abutters within 300' in all directions including across the street. If it is for a Liquor License, all schools and churches within 500' will be included on the list.

*Planning Board also requires a Form E to be included with the submission of the list.

*Road Completion will include every parcel that abuts the roadway (locus lots) and every direct abutter to those lots (non-locus lots). The locus and non-locus lots will be listed on separate pages.

FEES: The Abutters list fee is \$25.00 for the first page or the first 13 abutters and then \$2.00 for each additional abutter on the remaining pages. The first \$25.00 is due with the submission of the request.

NO REFUNDS: Once the abutter's list request is submitted and completed by this office, absolutely no refunds will be given.

THE CERTIFICATION MAY TAKE UP TO 10 WORKING DAYS: The Contact Person will be notified once the certified abutter's list is complete.

