

PALMER & DODGE
ONE BEACON STREET
BOSTON, MASSACHUSETTS 02108
TELEPHONE (617) 573-0100
TELECOPIER (617) 227-4420
TELEX 951104

AUG 25

August 24, 1989

CERTIFIED MAIL

Roy C. Smith, Trustee
High Street PCRC Trust
292 Great Road
Acton, Massachusetts 01720

re: Audubon Hill
Conservation Restriction

Dear Mr. Smith:

As you know, this firm represents the Town of Acton. Under Section 2.2(a) of the Comprehensive Development Agreement dated June 23, 1989 between you, as trustee of the PCRC High Street Trust and the Town of Acton, Massachusetts, a Conservation Restriction, in the form attached to the Agreement as Exhibit D, must be recorded with the proper registry prior to the commencement of construction, and in any case by July 24, 1989. Representatives of the Town have informed me that not only has this instrument not yet been recorded, but in addition, land clearance and the construction of Improvements on the Development Property has begun; your attorney, Dick Cotter has confirmed this. Therefore, pursuant to Section 8.1 of the Agreement, as attorney for and on behalf of the Town, I hereby give you formal notice that you are not in compliance with the Agreement.

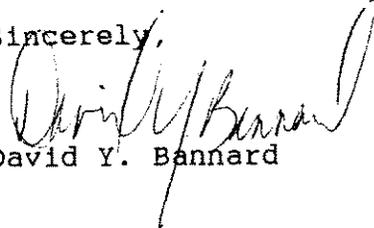
The Town has not waived and does not intend to waive any of its rights under the Agreement, at law or in equity. However, prompt recording of the Conservation Restriction as provided in the Agreement, is likely to resolve this matter

cc: BOS - INFO.

Roy C. Smith, Trustee
August 24, 1989
Page 2

quickly. Please contact me at your earliest convenience concerning this matter. Your failure to resolve this matter may have serious consequences.

Sincerely,


David Y. Bannard

DYB:rj

cc: Richard M. Cotter, Esquire (Certified Mail)
Don Johnson, Town Manager
Norman P. Cohen, Esquire

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cc: BOS - INFO -

August 28, 1989

BY TELECOPIER
(508) 263-7142

CERTIFIED MAIL

Richard M. Cotter
Wilson, Orcutt, Cotter and Greenberg, P.C.
201 Great Road
Acton, Massachusetts 01720

re: Audubon Hill
Conservation Restriction

Dear Dick:

Thank you for sending a telecopy of your proposed conservation restriction for Audubon Hill. As I mentioned on the telephone Friday morning, I have certain concerns regarding this restriction which, however, I believe can be easily resolved.

1. I note that the grantee of this restriction is R. Smith Associates, Inc. Please forward the relevant information concerning the transfer of title to this site from the PCRC High Street Trust to R. Smith Associates, Inc.

2. The title of the plan referenced in this restriction differs from the plan of which I have a copy. I understand that you will send me a copy of the plan dated July 17, 1989. Furthermore, you have indicated that Don Johnson, the Town Designee, approved the July 17, 1989 plan on behalf of the Town. The June 23, 1989 Agreement between the Town and the Developer references the plan dated June 30, 1989 but instead you recorded the July 17, 1989 plan. Therefore, you have agreed to prepare an amendment to the June 23 Agreement stating that references to the "Site Plan" in the Agreement shall refer to the July 17, 1989 plan.

Richard M. Cotter, Esquire
August 28, 1989
Page 2

3. Unlike the conservation restriction dated June 17, 1989 and approved by the Town, the draft you sent to me does not include Lots E or R, on which the senior center and recreation facility, respectively, will be built. I believe, however, that it was not the Town's expectation that Lots E and R would be included in the restriction and that the inclusion of these Lots in the June 17, 1989 draft was a mistake. The Town's delegation to Don Johnson of authority to approve a Site Plan consistent with the Agreement, and Mr. Johnson's subsequent approval of the July 17, 1989 plan (which approval, I understand, clearly indicates that Lots E and R are not included within the conservation area) supports this belief.

4. Finally, for the final conservation restriction not be unenforceable for lack of privity, Mass. G.L. c.184, §32 provides that, in addition to receiving Town approval, the Secretary of the Executive Office of Environmental Affairs must also approve the restriction.

I suggest that you modify the signature page of the restriction by deleting approval of the Planning Board and Conservation Commission and inserting the following language:

APPROVAL BY SELECTMEN

We, the undersigned Board of Selectmen of the Town of Acton, hereby certify that we approve the receipt of the foregoing conservation restriction pursuant to Massachusetts General Laws Chapter 40, Section 8C, as it has been and may be amended, as requested by a vote of the Conservation Commission of the Town, for the protection of the natural and watershed resources of the Town.

Being a majority of the Board
of Selectmen of the Town of
Acton, Massachusetts

Richard M. Cotter, Esquire
August 28, 1989
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APPROVAL BY SECRETARY

The undersigned Secretary of the Executive Office of Environmental Affairs of the Commonwealth of Massachusetts hereby certifies that the foregoing Conservation Restriction has been approved as being in the public interest pursuant to Massachusetts General Laws Chapter 184, Section 32.

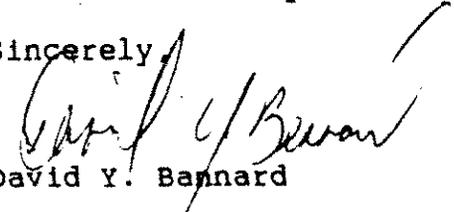
Date:

Secretary, Executive Office of
Environmental Affairs

If the Secretary of the Executive Office of Environmental Affairs approves this draft of the restriction, and it is recorded within ten (10) days from the date the Town executes and approves the restriction, the Town has indicated that the noncompliance with the Agreement outlined in my August 24, 1989 letter to Roy C. Smith shall be waived by the Town. I have been informed that the Town Selectmen are prepared to execute the Conservation Restriction, modified pursuant to this letter, on Tuesday evening August 29. If, however, this document is not ready for execution at that time, there may be a substantial delay due to unavailability of certain Selectmen.

In closing, I appreciate the complexity of this project and the attendant legal difficulties. However, your client has entered into an agreement with the Town of Acton that calls for him to perform certain actions by certain dates. My client sincerely looks forward to the successful completion of this development, but my client also wishes me to emphasize that continued delay by your client, and the consequent expense to the Town, will be unacceptable.

Sincerely,

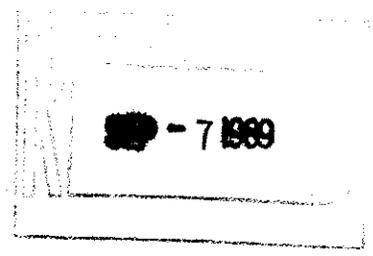

David Y. Bannard

DYB:rj

cc: Mr. Roy C. Smith (Certified Mail and Telecopy)
Mr. Don Johnson, Town Manager ✓
Norman P. Cohen, Esquire

9/8/89
CC: TOM TIDMAN -
PLEASE NOTE THE SCHEDULE
BELOW AND LET ME KNOW
HOW WE PROGRESS
TOWARD COMPLIANCE.

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ONE BEACON STREET
BOSTON, MASSACHUSETTS 02108
TELEPHONE (617) 573-0100
TELECOPIER (617) 227-4420
TELEX 951104



cc: BOS

Tom
9/8

September 6, 1989

CERTIFIED MAIL
No. 769 838 943

Richard M. Cotter, Esquire
Wilson, Orcutt, Cotter and Greenberg, P.C.
201 Great Road
Acton, Massachusetts 01720

re: Audubon Hill
Conservation Restriction

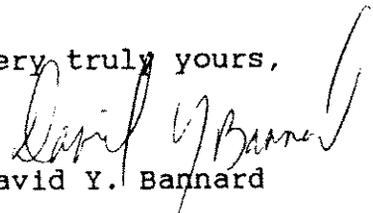
Dear Dick:

As I told you on the telephone yesterday, I understand that the Town of Acton received an acceptable copy of the conservation restriction for Audubon Hill in form suitable for execution late last week. You have told me that you understand that it will take between sixty (60) and one hundred twenty (120) days to obtain the approval of the Secretary of the Executive Office of Environmental Affairs. Our office, however, has been able to obtain such approval in the past in far less time. Representatives of the Town, furthermore, feel that this matter must be resolved as soon as possible. Accordingly, on behalf of the Town and as its attorney, I have been asked to inform you that in order to cure your client's non-compliance with the June 23, 1989 Comprehensive Development Agreement, the following steps must be taken by or on behalf of R. Smith Associates, Inc., the Developer: (i) within five (5) days of receiving the the executed originals of the restriction from the Town, the conservation restriction must be recorded and the relevant recording information provided to the Town; (ii) the Developer must proceed expeditiously and with utmost diligence to obtain approval of the conservation restriction by the Secretary of the Executive Office of Environmental Affairs within forty-five (45) days of receiving executed originals from the Town; and (iii) the conservation

Richard M. Cotter, Esquire
September 6, 1989
Page 2

restriction, as approved by the Secretary, must be recorded and the relevant recording information provided to the Town on or before October 27, 1989. Representatives of the Town have asked me to inform you that if the Developer complies with these three conditions, the Town will waive the non-compliance with the Agreement by the Developer relating to the conservation restriction.

Very truly yours,


David Y. Bannard

DYB:rj

cc: Mr. Roy C. Smith, President (Certified Mail)
Mr. Don Johnson, Town Manager ✓
Norman P. Cohen, Esquire

TOWN OF ACTON
INTEROFFICE COMMUNICATIONS

DATE: October 13, 1989

TO: Don P. Johnson
FROM: John Murray
SUBJECT: Defaults of Audubon Hill Development Agreement

1. Conservation restriction recorded "prior to the commencement of construction of any improvements or any portion of the development property". (page 10 sec 2.2a) (extended by town)
2. System of trails pursuant to standards, conditions and procedures required by the Conservation administrator. (page 11 sec 2.2d) (See attachment "A")
3. The developer shall obtain security running to the town for the full cost of the conservation improvements. (page 11 sec 2.2f)
4. Won't release the First Option until 1-~~3~~ are completed. (page 12 sec 2.2h)
5. Insurance (fire, public liability (extended coverage), workmen's compensation and builders risk) on property and equipment for the full amount of the replacement value shall be payable to the developer, construction lender and the Town, before entering the property. (page 30 sec 7.1a & b)
6. Certificates of insurance shall be filed with the Town. (page 31 sec 7.1c)
7. The first building permit for the South phase shall be issued only after the developer has constructed access roads and utilities in accordance with the plan. (page 36 sec 8.5)

AUDUBON HILL MTG.

F

- w/ R. SMITH, D. COTTER, S. GORDON 10/13/89
- D. BANWARD, R. BARTL, D. ABST, J. MURRAY, G. RHODES, D. CHARTER.

CONS. IMPROVEMENTS PARTIALLY COMPLETED.

BANWARD DISCUSSED AREAS OF CONCERN:

- 1) CONS. RESTRICTIONS MUST HAVE SECY. OF ENVIRONMENTAL AFFAIRS' SIGNATURE
ROY GET CONTACT TO ANY AUTHORITY AS POSSIBLE HELP w/ DEVELOPER'S SIG.
- 2) EASEMENT TO CONS. LAND - ROY HAS SIGNED, SENT TO S. GORDON, TO US SHORTLY.
- 3) SURVEY OF COXSV. LAND - DUNPHY SHOULD HAVE PLAN TO US NEXT WEEK.
- 4) SECURITY FOR CONS. IMPROVEMENTS. BENCHMARK TO PROVIDE ESTIMATES.
- 5) NO TRANSFER OF DEVEL. RIGHTS w/o DESIGNEE'S APPROVAL

COTTER WILL SEND NOTICE.

- 6) COPIES OF MORTGAGE, CONST. LOAN AGREEMENT - STAN WILL PROVIDE.
- 7) COPIES OF INS. DOCUMENTS.
- 8) ROAD OR WHAT FIRST - 1ST BLDG. PERMIT TRIGGERED.

MUST BE CLEAR THAT FOUND. IS NOT A BLDG. PERMIT.

IF CAPS ON FOUND. NEED FIREFIGHTING PROVISIONS

EXPRESSLY UNDERSTAND LIMITS ON APPROVAL FOR FOUNDATIONS, CAPS

w/ WATER IN BEFORE CAPS.