

Kim DelNigro

From: Matthew Mostoller [mmostoller@concordma.gov]
Sent: Monday, November 19, 2007 12:37 PM
To: Kim DelNigro
Cc: Planning Board; Alan Cathcart
Subject: Review of the Residences at Quail Ridge Senior Residence Special Permit Revisions

Dear Planning Board Members,

Concord Public Works submitted a letter dated October 26, 2007 with initial comments regarding this project. I have attached a copy with this email. In addition to these comments (not yet addressed by the developer) and in response to the revisions dated October 19, 2007, I offer the following.

- 1) The issue of access via Hazelnut Street appears to be resolved with emergency access only. Generally, the Town of Concord believes the developer should still address the September 19, 2007 concerns of the Acton Engineering department relative to this access point. Maintenance, upgrades, and conditions required for an emergency access point have not been addressed and should be prior to approval. The layout of the roadway in relation to the easement should be addressed if any increased use (including emergency access) of this access road is considered for the development.
- 2) The cross sections of the road crossings at Nagog Brook need to be updated to reflect the relationship with Town of Concord infrastructure in this vicinity.
- 3) On the Site Layout Plan dated October 18, 2007, public access to Town of Concord land is shown. The sidewalk/walkway depicted should be removed from the plans.
- 4) With regard to pedestrian access from Acorn Park to the development (Engineering Department, Item 48), a designated sidewalk or painted lane with signage should be installed. Large vehicles access the Concord Water Treatment Plant and this would help ensure the safety of pedestrians using this access road.
- 5) In accordance with Massachusetts Department of Environmental Protection Guidelines and Policies for Public Water Systems, I offer Section 9.7 as a reference regarding the Separation of Water Mains and Sewers. This document should be referenced to protect both our interests and those of the Acton Water District concerning the utility layouts which have yet to be provided.

Should you have any questions regarding the comments here or previously, do not hesitate to contact me. The Town of Concord appreciates the opportunity to review this project and respectfully requests that we continue to be informed of its progress.

Sincerely,

Matthew Mostoller

Environmental Analyst
Town of Concord Water and Sewer Division
135 Keyes Road Concord, MA 01742
978-318-3254

Please note that my email address has changed, please update your address book.
mmostoller@concordma.gov

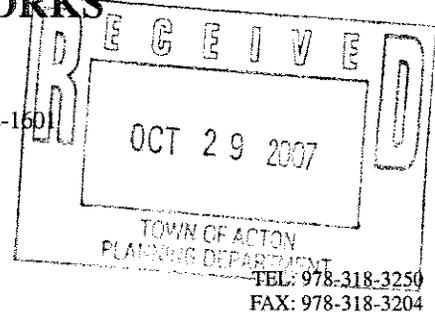
11/19/2007



ALAN H. CATHCART
SUPERINTENDENT

CONCORD PUBLIC WORKS

Water and Sewer Division
135 KEYES ROAD
CONCORD, MASSACHUSETTS 01742-1501



Town of Acton Planning Board
472 Main Street
Acton, MA 01720

October 26, 2007

Re: Review of Senior Residence Special Permit Application
The Residences at Quail Ridge in Acton, MA

Dear Planning Board Members:

In response to a Notification to Abutters of 354B Great Road, Skyline Drive for a Special Permit for the above referenced project, Concord Public Works (CPW) respectfully offers the following comments;

Nagog Pond Water Supply Protection Interests: Although the majority of this project is located down stream of Nagog Pond, an active drinking water supply used by the Town of Concord, the development increases potential risks for unauthorized access/encroachment on public water supply lands. This land is owned by the Town of Concord and is maintained in accordance with best management practices for a public water supply. As such, this land is not open to the public for passive recreation. It is noted that a small portion of this project appears to fall directly within the Zone A protection zone (most sensitive protection zone) of this public drinking water reservoir.

- A.) Any proposals for connecting the development at Quail Ridge to existing trail networks on Town of Acton conservation land should be contiguous between these two parcels. Any efforts to designate a "trail head" should deter unauthorized access to the watershed protection lands. An opportunity to provide information on how these lands fit into the larger green space corridor in this part of Acton and Littleton would also be helpful.
- B.) In the interest of maximizing the protection of the Nagog Pond drinking water supply, any combined or shared wastewater disposal system should be sited outside the Nagog Pond sub-basin. It is noted that all new discharge(s) within the Zone A of a public drinking water reservoir is prohibited. Delineation of these resources should be provided on any subsequent plan. Proper placement of such a system will impact wastewater treatment standards as well as long-term compliance monitoring needs.

C.) Solid waste management for this project has not been addressed. At the direction of the Department of Environmental Protection, the Town of Concord has vigilantly worked with neighboring land owners to eliminate inadvertent food sources for birds and other wildlife. Of great concern is a resident population of sea gulls and geese that populate this general area.

Existing and Future Surface Water Treatment Needs: The Town of Concord operates and maintains an active water treatment facility located near the south-eastern shore of Nagog Pond on land immediately adjacent to the proposed development. Due to ongoing and ever vigilant source water protection efforts, the Town of Concord has successfully maintained a federally issued surface water filtration "waiver". If source water quality can not maintained or the Town elects to upgrade it's present treatment system, Concord will be required to design and install a more sophisticated and expansive treatment facility within this site.

A.) As an immediate abutter to this proposed residential development, it is recommended that consideration be made to insure sufficient "buffer" or "screening" has been incorporated into the design to reduce potential conflicts which may arise between residential interests and long-term water supply interests. Such measures could include maximizing offsets between proposed structures and Town of Concord property, installation of suitable fencing to provide screening (both for aesthetic benefits as well as encroachment controls); covenant restriction on large pets.

B.) Concord currently gains access to this treatment facility via an access drive located off of Hazelnut Drive. Should there be any consideration of accessing this development over this drive, short and long-term interests and maintenance responsibilities must be clearly defined. Any proposed changes to this drive or egress interests must insure uninterrupted access to our facility.

Protection of Existing Utility Easement and Associated Infrastructure. The Town of Concord maintains a 40-foot wide utility easement across this site which carries a large diameter transmission main connecting the Nagog Pond treatment facility to a pumping station located at 300 Great Road in Acton. The existing transmission main was installed in 1909 and is actively used. Construction impacts or any proposed work within this easement must be performed in accordance with the letter of this easement.

A.) Concord's water transmission main should be shown within the existing utility easement. This will help assess its relationship to proposed infrastructure shown on the plan which includes a sewer main. Where appropriate, utility details should be provided to allow for review and compliance with appropriate design standards.

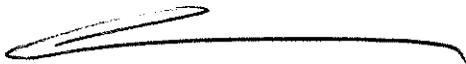
B.) The proponent must demonstrate that any proposed use within this easement (temporary or long-term) shall not lead to a material increase in cost or inconvenience to the Town of Concord as it continues to exercise its respective rights.

C.) Concord Water & Sewer Division requests notification of any site blasting and assurance that such blasting activities shall not compromise the integrity of the existing transmission main. In a related matter, it is recommended that the use of perchlorate as a blasting agent should be prohibited in the interest of protecting local drinking water supplies.

These comments communicate the interests and opportunities which relate directly to the Town of Concord's immediate and long-term needs, specifically as they relate to the protection of an extremely precious drinking water resource and valuable infrastructure. If you have any questions regarding these comments, please contact Matthew Mostoller, Environmental Analyst, at 978-318-3254. Thank you for the opportunity to comment.

Respectfully,

Alan H. Cathcart
Superintendent



Cc: Quail Ridge Country Club, LLC
Christopher Whelan, Concord Town Manager
Public Works Commission.

ways' may occasionally be used in the statutes with a different meaning, see, for example, G.L. (Ter.Ed.) c. 84, 12-14, they commonly mean ways of a special type laid out by public authority for the use of the public. G.L.(Ter.Ed.) c. 82, 21-32A. Such "private ways' are private only in name, but are in all other respects public.' [Citations omitted.] It may be that in the pending bill the words 'private ways' are used in this technical sense. Or it may be that the words 'private ways' in connection with the words 'open to the public use' mean or include ways 'opened and dedicated to the public use, which [have] not become * * * public way[s],' within the meaning of G.L. (Ter.Ed.) c. 84, 23-25. [Case citation omitted.] A dedication of a way to the public use within the meaning of this statute is permanent. [Case citation omitted.] But the words 'private ways' as commonly understood and as sometimes used in the opinions of this court, have a broader meaning than either of the meanings here mentioned. [Citations omitted.] The words may well mean or include defined ways for travel, not laid out by public authority or dedicated to public use, that are wholly the subject of private ownership, either by reason of the ownership of the land upon which they are laid out by the owner thereof [citations omitted], or by reason of ownership of easements of way over land of another person. . . .[Underlining added.]

IV.C. Land subject to an easement may be used for any purpose which does not unreasonably interfere with the easement holder's rights.

The above topic heading merely states, "the long standing rule, in cases of easement by grant, that 'an owner may use the land for all purposes which are not inconsistent with the easement ... or which do not materially interfere with its use.'" *Perry v. Planning Board of Nantucket*, 15 Mass. App. Ct. 144, 158, 444 N.E.2d 389, 397 (1983), quoting *Western Mass. Elec. Co. v. Sambo's of Mass., Inc.*, 8 Mass. App. Ct. 815, 818, 398 N.E.2d 729, 731(1979). The *Sambo's* decision, in turn, recited the general principles with references to cases dating back decades:

The general rule in determining whether a given proposed use falls within the activities forbidden to the owner of a servient estate is that such an owner is entitled to make such use of the estate as is consistent with the easement. *J. S. Lang Engr. Co. v. Wilkins Potter Press*, 246 Mass. 529, 531, 141 N.E. 501 (1923), and cases cited; *Hodgkins v. Bianchini*, 323 Mass. 169, 175, 80 N.E.2d 464 (1948), or as sometimes stated, such an owner may use the land for all purposes which are not inconsistent with the easement, *Ampagoomian v. Atamian*, 232 Mass. 319, 322, 81 N.E.2d 843 (1948), or which do not materially interfere with its use. *Merry v. Priest*, 276 Mass. 592, 600, 177 N.E. 673 (1931). *Carter v. Sullivan*, 281 Mass. 225, 183 N.E. 343 (1932). As we have recently said, "The owner of the servient estate may not use the property subject to the easement in a way that would lead to a material increase in the cost or inconvenience to the easement holder's exercise of his rights." *Texon, Inc. v. Holyoke Mach. Co.*, 8 Mass. App. Ct. 363, 366, 394 N.E.2d 976, 978 (1979).

8 Mass. App. Ct. at 818, 398 N.E.2d at 731. The *Sambo's* dispute arose from the change in land use around a power line easement from agriculture to commercial use. A restaurant wanted to pave the area under electric transmission lines and use it for a parking lot, and install underground utilities. 8 Mass. App. Ct. at 816-817, 398 N.E.2d at 730. The opinion includes a detailed discussion of varying fact situations, with citations to cases and treatises, showing how the standard of reasonableness has been applied to balance the interests of servient estate owners and easement holders. 8 Mass. App. Ct. at 824-825, 398 N.E.2d at 734-735. The court then concluded that under specified limiting conditions, *Sambo's* could pave the area under the power lines for use as a parking lot and install underground utilities. The court also held that a provision in the original deeded easement prohibiting construction of any building within fifty feet of the power lines referred to the existing power line, and did not require that any building be kept fifty feet back from the outer limits of the 100 foot wide easement. 8 Mass. App. Ct. at 829-831, 398 N.E.2d at 737-738.

The Massachusetts decisions cited above in the *Sambo's* case illustrate the various factual situations in which the general rule has been applied. In *J. S. Lang Engineering Co. v. Wilkins Potter Press*, 246 Mass. 529, 531, 141 N.E. 501 (1923), the right of way easement provided that a railroad siding could be placed within the way, "provided there is left in said way an unobstructed width of twenty (20) feet." 246 Mass. at 531, 141 N.E. at 501. When the servient estate owner installed a railroad siding which did not leave this distance, the superior court issued an injunction which the Massachusetts Supreme Judicial Court reluctantly upheld on appeal. 246 Mass. at 532, 141 N.E. at 502. Even though the siding was installed flush with the surface of the street, so that vehicles could still use the way, the Supreme Judicial Court held, "A use which might otherwise be reasonable must yield to this limitation of the deed. ... This conclusion cannot be avoided because of arguments of convenience or strong advantage to one part and lack of substantial damage to the other." *Id.*

Merry v. Priest, 276 Mass. 592, 600, 177 N.E. 673 (1931), and *Hodgkins v. Bianchini*, 323 Mass. 169, 80 N.E.2d 464 (1948), involved gates maintained by the servient estate owner at both ends of a right of way. The question of maintaining gates across a right of way is discussed below in part IV.C.1 of this text.

In *Ampagoomian v. Atamian*, 323 Mass. 319, 81 N.E.2d 843 (1948), the easement holder was not allowed to maintain gas pipes under an easement for a driveway:

[I]t cannot be said that the laying of gas pipes beneath the driveway was necessary to the enjoyment of the plaintiff's right of passage over it. The defendant as owner of the servient estate retained the use of her land for all purposes except such as were inconsistent with the plaintiff's easement. [Citations omitted.]

323 Mass. at 322, 81 N.E.2d at 845. (G.L. c. 187, §5 may have overruled this case.)

Carter v. Sullivan, 281 Mass. 225, 183 N.E. 343 (1932), involved a suit between neighboring land owners, who each owned one half of a five foot wide passage way which ran between their buildings. The plaintiffs sought removal of a shed constructed within the bounds of an easement, a fire escape that projected from a defendant's building over the center line of the passage way, and a fence and gate that narrowed the usable width of the way. From a decree ordering removal of that part of the fire escape extending over the center line, and the other offending structures, the defendants appealed unsuccessfully. The limits of use of the servient estate became an issue when the defendants pointed out that the plaintiffs each maintained a concrete step in the five-foot wide passage way. The court refused to order removal of the steps, citing the rights of the plaintiffs as owners of the servient estate on their side of the center line of the passage way:

The plaintiffs as the owners of the fee in one half of the passageway are entitled to make any use of that half not inconsistent with the common rights of passage therein. [Citations omitted.] ... It is apparent, however, that the steps created irregularities in the surface. But we cannot say that the master's conclusion ... that the steps did not materially interfere with the limited use of the passageway to which the defendant was entitled was ... plainly wrong. ... [T]he necessity for such steps for access from the plaintiffs' premises to the passageway in which they, as well as the defendant, had rights of passage are facts to be considered in determining the extent of the defendant's rights ... [Citations omitted.] Conceivably a passage for foot passage and the removal of ashes and garbage may not require the level surface essential in a passageway for ordinary vehicular traffic. [Citation omitted.] On the findings, therefore, the plaintiffs are entitled to maintain their steps.

281 Mass. at 226, 183 N.E. at 347.

If the equities are evenly divided between the dominant and servient estate owners, which side should prevail? Whose rights have priority? Massachusetts case law offers conflicting answers to this question.

One case suggests that if the competing interests are closely balanced, the servient estate owner should prevail: "[A] 'servient owner retains the use of his land for all purposes except such as are inconsistent with the right granted to the dominant owner' [citation omitted]; and ... doubts are to be resolved in favor of freedom of land from servitude. [Citation omitted.]" *Butler v. Haley Greystone Corp.*, 352 Mass. 252, 258, 224 N.E.2d 68; 688 (1967).

However, the Appeals Court stated in *Texon, Inc. v. Holyoke Machine Texon, Inc. v. Holyoke Mach. Co.*, 8 Mass. App. Ct. 363, 366, 394 N.E.2d 976, 978 (1979), that "Holyoke's right of use arising out of its easement is superior to Texon's property interest, and Texon must avoid activities which are inconsistent with Holyoke's use of the easement. [Citation omitted.]"

Since the earlier rule in the *Butler* case comes from the Massachusetts Supreme Judicial Court, presumably it would prevail under the holding in *Burke v. Toothaker*, 1 Mass. App. Ct. 234, 239, 295 N.E.2d 184, 186-187 (1973), where the Appeals Court stated: "This is an 'intermediate appellate court' (G.L. c. 211A, § 1 ...), and we do not regard it as one of our functions to alter established rules of law governing principles of substantive liability."

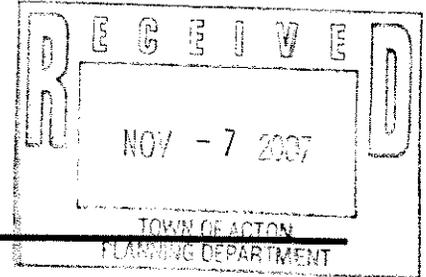
This topic is discussed briefly in:

Arthur L. Eno, Jr. & William V. Hovey, 28 Massachusetts Practice: Real Estate Law, §§8.11 & 8.13 at pages 179 & nn. 3-4 and 181 (3rd ed. 1995 & Supp. 2000);
7 Massachusetts Jurisprudence: Property, § 21:35 "Use of burdened land by servient estate owner" at pages

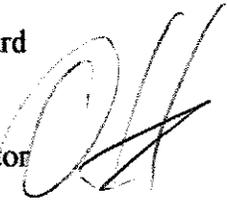


MEMORANDUM

Acton Board of Health - Telephone (978) 264-9634



TO: Planning Board

FROM: Doug Halley
Health Director 

RE: The Residences at Quail Ridge
Health Department Review to October 19th response

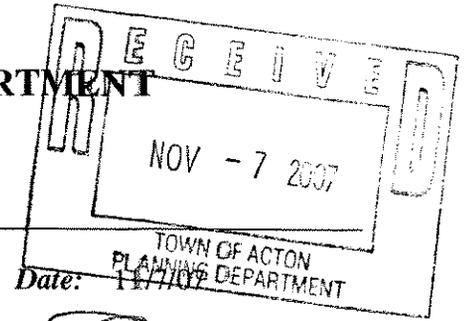
DATE: November 7, 2007

The Health Department has reviewed Stamski & McNary's response to Staff/Board comments regarding the Senior Residence Special Permit Application for the Residences at Quail Ridge and has the following comments:

- 1) As was noted in the Department's earlier comments the applicant has yet to make any submittals to the Health Department or the Massachusetts Department of Environmental Protection in regards to the design or construction of the wastewater treatment facility. At this time, without a proper submittal to the Health Department, the Department **cannot** definitively state that this project is able to be constructed under the current wastewater regulatory environment or that the project as currently proposed is viable.
- 2) The proposed leaching fields and wastewater treatment facility should be clearly shown on the plans, as well as, the grinder pump locations for the three - 12 unit structures.
- 3) The applicant should submit a written plan that details the provision of a supply of reserve pumps and spare parts to be maintained at the wastewater treatment facility.
- 4) The applicant should submit a written operations and maintenance manual for the treatment plant and including the service and maintenance on all pumps located in each dwelling unit and structure.
- 5) Until a submittal for the wastewater treatment facility is filed, the Health Department reserves the right to require additional soil testing.
- 6) If EUA's are not planned will the Association be responsible for the entire wastewater system up to the foundation of each unit? Will all the grinder pumps for each individual unit be located in their basements?

ACTON MUNICIPAL PROPERTIES DEPARTMENT

INTERDEPARTMENTAL COMMUNICATION



To: Kim DelNigro, Planning Department
From: Dean A. Charter, Municipal Properties Director & Tree Warden *me*
Subject: Landscape Review, "Residences at Quail Ridge" comments on applicant's response

I have reviewed the comments submitted by the applicant in response to my original review:

1. This proposed development will have great impact upon the adjacent residential properties, especially considering that those neighbors thought that they were going to be beside a Golf Course, and who supported the earlier development efforts accordingly. I suggest that an opaque landscape buffer as defined in section 10.4.3.6. ii of the Zoning Bylaw be installed in all areas where the new structures, including buildings and paved surfaces, are located within 200 feet of any lot line with a residential dwelling on it. *I note that the applicant has agreed to some added buffer plantings, but I suggest that my original comment be kept in case there are unexpected red line changes.*
2. The proposed street light system should be reviewed for compliance with the Outdoor Lighting Bylaw. *The applicant maintains that the outdoor lighting bylaw is not applicable to this project; I would like to see that statement verified by Town Counsel. If Town Counsel agrees that the bylaw is not applicable, I still maintain that the applicant should submit to a voluntary review of his project by the Outdoor Lighting Education Committee, and that the plans be revised to comply with their recommendations in so far as practicable.*

ACTON PLANNING DEPARTMENT
Inter-departmental Memo
978-264-9636

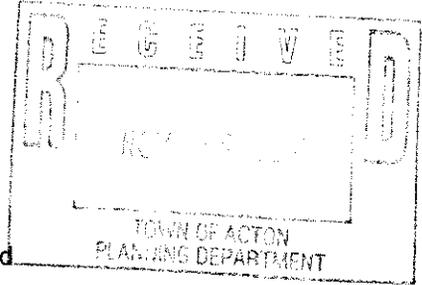
Date: 11/6/07

To: ACHC
Assessors
Conservation Commission
Fire Department
Municipal Properties
Acton Water District
Land Stewardship Committee
Concord Public Works

Acton Housing Authority
Building Commissioner
Engineering Administrator
Health Department
Police Department, fyi
Sidewalk Committee

From: Kim DelNigro, Secretary 

Subject: Revision of Senior Residence Special Permit Application entitled
"The Residence at Quail Ridge"

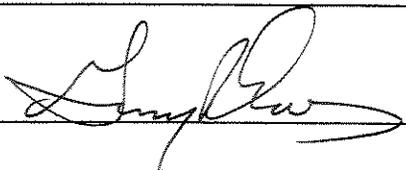


Attached are the applicant's response letter, revised traffic study and revised site layout plan to staff/agency comments for the Residences at Quail Ridge Country Club.

Please review these documents and provide comments no later than 5:00 PM, Monday, November 19, 2007.

Thank you.

Review Comments: please see previous comments

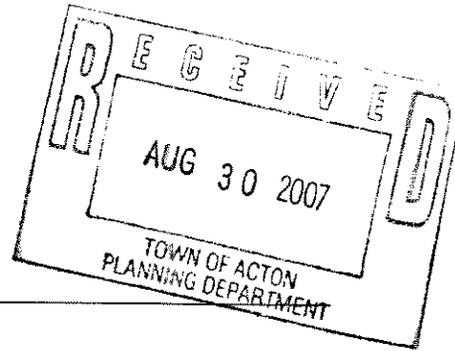
Signature: 

Date: 11/9

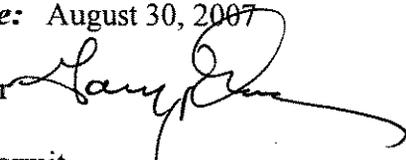
TOWN OF ACTON

Building Department

INTERDEPARTMENTAL COMMUNICATION



To: Roland Bartl, Town Planner **Date:** August 30, 2007

From: Garry A. Rhodes, Building Commissioner 

Subject: The Residence at Quail Ridge, Special Permit

In February of 2002, the Planning Board granted a Special Permit for an eighteen-hole golf course. This Senior Residence Special Permit request will decrease the existing golf course to nine-holes. A nine-hole golf course would not be allowed under the existing Special Permit therefore, must be incorporated within the new Senior Residence Special Permit as an accessory use. I would recommend if this Senior Residence Special Permit is granted provisions be made to abolish the Golf Course Special Permit and incorporate all appropriate conditions into the new permit.

Kim DelNigro

From: Robert Craig
Sent: Tuesday, November 20, 2007 5:37 PM
To: Kim DelNigro
Subject: Revision of Senior Residence Special Permit Application entitled "The Residence at Quail Ridge"
Importance: High

Please be advised that I have reviewed the submission named above and have the following comments:

1. Gated emergency access areas as shown are acceptable, provided that provisions are made for maintenance and year round access. As noted gates must meet the approval of this department.
2. In general, road widths appear to be acceptable. I have consulted with the Engineering Department and they will check and comment on turning radii.
3. As noted consultation is required for any fire alarm call boxes that may be required. In addition, this department should be consulted regarding any fire hydrant locations and/or re-locations.

Robert C. Craig
Fire Chief

11/20/2007