

GRAHAM & HARSIP, P.C.

ATTORNEYS AT LAW  
STRAWBERRY HILL BUILDING  
289 GREAT ROAD, SUITE 101  
ACTON, MA 01720

STEVEN R. GRAHAM  
BARRY S. HARSIP\* \*\*

Tel: 978-264-0480  
Fax: 978-264-4990

sgraham@graham-harsip.com  
barryharsip@graham-harsip.com

AIMEE BONACORSI  
JAY R. PEABODY

abonacorsi@graham-harsip.com  
jpeabody@graham-harsip.com

January 8, 2008

VIA EMAIL AND REGULAR MAIL

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

Re: Residences at Quail Ridge (the "Project")  
Senior Residence Special Permit -  
Draft Decision 08-02

---

Dear Board Members:

Let me start by saying that my client and I appreciate the manner in which and speed with which you have processed the Application in connection with this matter. Although I understand that the draft Decision is just that, a "draft", I was taken aback and surprised by the direction taken by the Planning Director with regard to the second and/or alternative access to the proposed project.

I do not question that, given different circumstances, a second access would be "good planning" as suggested in Roland Bartl's memorandum to the Board. However, as the Board Members know, the issue of a second access to the project through two stubs which are part of the public way within the Acorn Park subdivision was discussed at length on at least two of the hearing dates. The original plans submitted by my client provided for full legal access at the two Acorn Park locations and it was only after discussion and consideration by the Planning Board that a preliminary revised plan was provided to the Board with emergency access, only through Acorn Park. Contrary to Mr. Bartl's statement in Section 2.17 of the draft

Planning Board  
January 8, 2008  
Page Two

Decision, that the impact is more in the nature of "nuisance", the abutters and the Board came to the conclusion that, in fact, given the standards to which the roads in Acorn Park were designed and constructed, full legal access through this project would in fact raise questions of safety for its occupants. The revised plan also addressed questions raised by the Board regarding internal traffic flow within the Project.

Certain Members of the Board requested that we explore other alternatives for a second access, including an access through The Great Road Condominium. Without regard to whether or not the Board can deny the Application or condition its decision on the Applicant obtaining access through The Great Road Condominium, the Applicant's traffic consultant has indicated that such an arrangement would not improve the issue of access onto Great Road for the occupants of The Residences at Quail Ridge, and may even detrimentally impact the residents at The Great Road Condominiums.

The Applicant addressed concerns by Board Members that the queuing for those turning into The Residences at Quail Ridge off of Route 2A heading in a westerly direction would have an adverse impact on the intersection at Route 2A and Route 27 and further proposed modifications to Skyline Drive to accommodate the queuing of vehicles coming out of The Residences of Quail Ridge onto Great Road.

As the Board is aware from its earlier involvement in the case of Sullivan v. Planning Bd. of Acton, and in a line with similar such cases, a Planning Board cannot impose conditions in a Decision which performance lays entirely beyond the Applicant's power.

It is my opinion that the conditional nature of the approval, as proposed in Mr. Bartl's draft Decision, is tantamount to a denial in that the Applicant would be forced to attempt to arrange a secondary access through a property over which it has no control, or, in the alternative, the Applicant

Planning Board  
January 8, 2008  
Page Three

would be required to revisit the issue of access through Acorn Park which access has already been carefully considered as noted above. Furthermore, each of the foregoing would require further application and public hearings.

The aforementioned conditions in my view impose conditions which are constructively a denial, and which as Mr. Bartl points out, Town Counsel has indicated, "it is remote at best that a court would uphold a denial premised upon an inadequate second means of access, even though that second access is overly narrow."

The aforementioned conditions are inconsistent with the guidance given the Applicant at the second hearing, at which Mr. Bartl was not present. It is also inconsistent with the direction the Applicant was led in dealing with the Acorn Park residents and therefore their resulting expectations.

I hope that the matter of access as outlined in the draft Decision is simply a misunderstanding by the Town Planning Director and not the intended direction of the Planning Board.

I would ask that the Planning Board consider my opinion and the Applicant's position as set forth herein in further proceeding in finalizing a Decision in this matter.

Respectfully submitted,



Steven R. Graham, Esq.

SRG/jm