



Planning Department

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MEMORANDUM

To: Planning Board **Date:** October 10, 2008
From: Roland Bartl, AICP, Planning Director *Roland Bartl*
Subject: RQR – Supplemental Decision Document

After the 9/23 meeting I had intended to send a report to Town Counsel summarizing the Planning Board's actions and efforts on the RQR Supplemental hearing and decision matter, that he could forward to the court by the 9/30 deadline as a way of reporting back from the remand proceedings. Town Counsel advised me that there needs to be a more formal decision document that is filed with the Town Clerk and then with the court. Although, the document could be written and signed by the Chairman, Counsel advises that the document should be vote by the Board to ensure that members agree that it accurately reflects the proceedings and the votes taken. To that end, Town Counsel filed a motion with the court to further extend the reporting deadline to October 21, 2008. The other parties to the suit agreed and the court accepted.

In a parallel development, the Board has received today by way of counsel to counsel communication a settlement offer from the Acorn Park Condominium Association by which Acorn Park would accept a compromise decision as it was on the table at the 9/23 meeting and amended by the Board deleting the ending phrase of paragraph 3.6. By that draft decision Palmer Lane would be gated and Hazelnut Street would have full and open two-way street access. If the Board can find a supermajority in favor of this settlement proposal, it would presumably end the Acorn Park litigation, and by extension also that of the developer, who at this point has no other stake in it than to be a party with a voice in the law suit. The Acorn Park settlement offer, if accepted by the Board, does of course not bind any individual resident in Acorn Park.

With this offer on the table, I would advise the Planning Board to reconsider the 9/23 votes taken on the draft decision. A motion to that effect would carry with a simple majority in favor. Then the Board could entertain a motion to issue the compromise decision itself. That motion will need a supermajority to carry, which is 5 of the eligible voting members in favor. If the motion succeeds with the required supermajority the matter is probably brought to an end, saving both sides much time and expense that further litigation and trial proceeding would entail. Compromise is where no party gets all it wants, but where each side finds it can live with the results. It is safe to assume that the settlement offer by Acorn Park is made in that spirit, and I would strongly recommend that the Board accepts it and votes to issue the decision as drafted and finalized – but then not issued - at the last meeting. I enclose this draft decision in the package with updates only as to date in title and footer.

In the unfortunate event that the Planning Board still cannot reach a supermajority on the compromise decision as suggested in the Acorn Park's settlement offer, the default remains the

same as it stood at the end of the 9/23 meeting. For that contingency, I have included in the package an alternative decision document that would default to the original decision with full access requirement at both Acorn Park connections, and otherwise report the Planning Board's proceedings, votes, and actions. If the sentiment of the Board requires consideration of this document, any discussion on it should be limited to whether or not the document accurately reflects history. Because votes on the substantive matter – what supplemental decision to make – have taken place already at the last Board meeting, approval of this “decision” document should not evoke a great deal of disagreement.

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