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October 10, 2008

Via Email and First Class Mail

Anderson & Kreigler, LLP
Steven D. Anderson, Esquire
43 Thorndike Street
Cambridge, MA 02141

Re: The Residences at Quail Ridge
Compromise Proposal on behalf of Acorn Park Condominium Association

Dear Attorney Anderson:

As you are aware, this office represents Acorn Park Condominium Association (Acorn Park) relative to an action filed against the Town of Acton Planning Board (Planning Board) known as Civil Action No. 08-908. This letter is written to you as an offer of settlement. The provisions of this letter shall not be admissible in any future action between the parties.

As you are aware, the Planning Board closed the public hearing relative to the Supplemental Special Permit Application on September 9, 2008. The purpose of the Supplemental Special Permit was to address the limited issue of access to the development known as Residences at Quail Ridge (RQR). As of this time the Planning Board has not signed a decision concerning access to the property. The Board has taken a number of Votes concerning the issue of access to the property; however as of this time they have not signed a Supplemental Decision. Consequently none of the former votes bind the Planning Board relative to the issue of access.

My clients have been informed that the Planning Board will reconsider its prior votes relative to access at RQR. This letter is written to inform you that Acorn Park will dismiss its appeal subject to a vote by the Planning Board which contains the following conditions:

1. The Planning Board will issue a decision which provides for gated emergency access at Palmer Lane;
2. The Planning Board will approve open access through Hazelnut Street;
3. The Planning Board will sign that document entitled "Supplemental Decision" dated September 23, 2008. (A copy of this draft decision is attached hereto as Exhibit 1).

4. All of the original restrictions placed on construction vehicles, as set forth in the Planning Board's Special Permit Decision known as 08-02 shall remain in full force and effect.

Should the Planning Board not adhere to the conditions set forth above, Acorn Park shall retain any and all rights that it may have concerning Civil Action N0. 08-908, plus any and all additional rights it may have in the future concerning any decision reached by the Acton Planning Board relative to the Supplemental Decision.

This letter is written to you with the understanding that the Planning Board is meeting on October 14, 2008, for the purpose of finalizing its vote and decision relative to the RQR's Supplemental Special Permit Application. This offer of settlement will expire on October 15, 2008, if the Planning Board fails to adopt the provisions of this letter.

Should you have any additional questions or concerns, please contact me.

Very truly yours,
Perkins & Anctil, PC

Robert W. Anctil

Rwa/tlc
Enclosures
cc: Board Members of Acorn Park Condominium Association
Attorney Steven Graham
Attorney Lou Levine

**Planning Board**

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# SUPPLEMENTAL DECISION
08-02

**The Residences at Quail Ridge**
Senior Residence Special Permit
September 23, 2008

GRANTED with SUPPLEMENTAL CONDITIONS

Decision of the Acton Planning Board (hereinafter the Board) on the supplemental application by Steven R. Graham (Applicant's attorney) filed on behalf of Quail Ridge Country Club, LLC (herein the Applicant) seeking action by the Board to supplement its decision for a Senior Residence special permit 08-02, dated February 12, 2008, for property in Acton, Massachusetts, owned by owned by the Applicant (hereinafter the Original Decision). The property is located at 354B Great Road, Skyline Drive, Acton, Massachusetts and shown on the 2007 Acton Town Atlas as D-4/4, D-4/9 and C-4/29 (hereinafter the Site). The Original Decision was appealed to Middlesex Superior Court by the Applicant (Civil Action No. 08-0874) and by the abutting Acorn Park Condominium (Civil Action No. 08-908), and both appeals were remanded to the Board by joint motions allowed on June 3, 2008, for further proceedings as to whether and what secondary means of access will be allowed or required to the Project Site.

The application to supplement the Original Decision as to secondary access was filed in the Acton Planning Department on May 1, 2008, pursuant to Section 9B of the Acton Zoning Bylaw (hereinafter the Bylaw) and the Rules and Regulations Senior Residence special permits (hereinafter the Rules). The Board held a duly noticed public hearing on the application and the remanded proceedings. It was opened on June 10, 2008. Due to pending Board member resignations and the recency of the remand order, the hearing was continued without presentation or discussion to July 8, 2008 in order to hear the matter with a fully constituted Board after soon anticipated new appointments. The hearing then began in earnest on July 8, 2008, and was further continued on July 22, 2008 and September 9, 2008, then closed.

Presenting for the Applicant were Attorney Steven R. Graham and Brian Beisel P.E. of Conley Associates, traffic consultant for the Applicant. The Board also heard comments from numerous abutters and testimony from Robert Woodland of Woodland Design Group, Inc., traffic consultant for the Acorn Park Condominium Associations. Further, the Board engaged Brian P. Duggan and Keith E. Hoyle of Municipal Resources, Inc. to advise the Board on fire and emergency access and services matters, and Sam Offei-Addo P.E. of the BSC Group, to advise the Board on matters of traffic management and circulation, and on street/intersection capacity and safety.

Board members Gregory E. Niemyski (Chairman), Bruce Reichlen (Vice Chairman), Ryan J. Bettez, Roland A. Bourdon, III, Ruth M. Martin, and Alan R. Mertz were present throughout the hearing. The chairman designated Leigh Davis Honn to sit on the Board to act on this application pursuant to section 10.3.9 of the Bylaw. Ms. Davis Honn was present throughout the hearing except for the July 8, 2008 session. She certified pursuant to Ch. 79 of the Acts of 2006 that she has viewed and examined a video tape of the missed session. The minutes of the hearing and submissions on which this decision is based upon may be referred to in the Planning Department or the Town Clerk's office at the Acton Town Hall.

## 1 SCOPE AND EFFECT OF SUPPLEMENTAL DECISION

The Original Decision granted a special permit for the proposed Residences at Quail Ridge (hereinafter RQR) with conditions and required Plan modification. In it the Board approved two fully open secondary accesses to the proposed development via public streets in the adjacent Acorn Park subdivision in addition to Skyline Drive, the primary access. The secondary accesses were at Hazelnut Street and at Palmer Lane. Neighbors in Acorn Park were concerned about potential deterioration of traffic conditions and safety on the streets in the Acorn Park subdivision resulting from the proposed development. The Original Decision, therefore, required the Applicant to investigate the feasibility, safety, reliability, and effects of other secondary access alternatives, such as gated emergency accesses and other secondary access routes, and to work with the Board through a supplemental application, hearing, and decision process to review these alternatives and to change, or not change, the secondary access configuration as the Board may then deem necessary and appropriate after this further investigation.

This Supplemental Decision only addresses and decides the matter of secondary access to the Development. It supplements and modifies the Original Decision only to the extent that the Board decides the secondary access configuration and requires directly related Plan modification and special permit conditions that directly relate to this decision. Except as modified and supplemented herein, the Original Decision shall remain in full force and effect.

For purposes of M.G.L. Chapter 40A, Section 9 (lapse time of special permit), the Town Clerk filing date of this Supplemental Decision, not the date of the Original Decision, shall be considered as the date when this special permit has been issued.

## 2 EXHIBITS

Exhibits on which this Supplemental Decision is based on:

2.1 A "Supplemental Application for a Senior Residence Special Permit - The Residences at Quail Ridge", dated May 1, 2008, prepared by Steven R. Graham on behalf of Quail Ridge Country Club LLC, including:

- Application form.
- Exhibit A – footnotes and clarifications regarding Great Road Condominium.
- Exhibit B – summary, details, correspondence, and legal evaluation related to potential secondary access through Great Road Condominium property.
- Abutters list.

2.2 Interdepartmental communication received from:

- Acton Tree Warden & Municipal Properties Dir., dated 5/29/08.
- Acton Treasurer's Office, dated 5/6/08.
- Acton Historical Commission, dated 5/15/08.

2.3 Peer reviews and Acorn Park access evaluations.

- Memorandum from BSC Group (Peer Review of Traffic Impact Assessment, Residences at Quail Ridge, Acton MA), dated 9/3/08, prepared for the Board by Sam Offei-Addo, P.E. regarding peer review of Applicant's traffic impact report and access considerations.
- Slide presentation by Mr. Offei-Addo (BSC Group) given on 9/9/08.
- RFQ for Transportation Engineering/Traffic Management (peer review/risk assessment) issued by the Acton Planning Department on 7/29/08.
- Residences at Quail Ridge - Special Permit Fire Services Analysis, September 2008, from Municipal Resource, Inc, prepared by Brian P. Duggan and Keith E. Hoyle.
- Slide presentation by Municipal Resources, Inc. given on 9/9/08.
- RFQ for Fire Service Consultant Review Services (risk analysis/assessment), issued by the Acton Planning Department on 7/28/09.

2.4 Correspondence received from:

- Carol Holley, 5/31/08.
- Alan Cathcart, Water/Sewer Superintendent, Concord Public Works, 7/22/08.
- Ian Moncrieff, 8/3/08.
- Roger Schneider, 9/2/08.
- James Russell, 9/6/08 (with attachment), 7/18/08, and 5/9/08.
- Jim Schmidt, 9/6/08.
- Bob Lutz, 9/7/08.
- Robert Hurdle, 9/8/08.
- Kevin Bolen, 9/9/08.
- Anu Krishnan, 9/9/08 and 6/18/08.
- John Nitzke, 9/9/08.
- Jeff Poulton, 9/9/08.

2.5 Other:

- Special Permit Decision 08-02, dated February 12, 2008 (the Original Decision).
- All exhibits referred to in the Original Decision.
- Allowed Joint Motions to Remand in the Middlesex Superior Court appeals by the Applicant (Civil Action No. 08-0874) and by the abutting Acorn Park Condominium (Civil Action No. 08-908).
- Deeds, plans, and prior Board decision relative to Acorn Park.

- "Traffic Impact Assessment" by Woodland Design Group, Inc. (Robert Woodland, P.E.) prepared for Acorn Park Condominium Association, dated 7/7/08 (Woodland on 7/22/08 also gave a slide presentation on this report supplemented with a demo of computer simulated traffic conditions on Great Road and its intersections with Acorn Park Drive and Skyline Drive).
- Slide presentation by Board member Bruce Reichlen given on 7/22/08.
- Slide presentation by Acorn Park Association given on 7/22/08.
- Certificate of the Secretary of Energy and Environmental Affairs on the Supplemental Environmental Impact Report (EOEA Number 12503), dated 8/29/08.

## 3 FINDINGS AND CONCLUSIONS

Based upon its review of the exhibits and the record of the proceedings the Board finds and concludes that:

3.1 The Applicant has made a diligent and good faith effort and negotiated in good faith with the Great Road Condominium Board of Directors or Trustees to secure a 2nd access through the Great Road Condominium property and has evaluated the legal, including zoning aspects of such an access. The Board of the Great Road Condominium was not receptive to providing access, and the Applicant found zoning barriers to such an access that were not clearly apparent earlier. Therefore, secondary access for RQR to Great Road through the Great Road Condominium property is not feasible.

3.2 The Board has heard expert testimony on matters of fire/emergency access and operations as applied to the proposed development; emergency access gate designs, and operational, maintenance, and enforcement requirements for them, and possible problems that might occur with them.

3.3 The Board has heard expert testimony on traffic impacts at affected intersection with Great Road and in the Acorn Park streets; travel distances, and projected traffic flows and distributions; street and intersection capacity; and design, function and safety of streets in the Acorn Park streets.

3.4 Gated emergency access as the only secondary access to RQR would be acceptable if no other alternatives existed. Here, secondary public street access is available to RQR and therefore full and open street access is feasible. Full and open streets are the most reliable emergency access. Their availability at all times does not depend on regulatory enforcements under the State Fire Code, enforcement of no-parking regulations, specialized regular maintenance and upkeep, special training, continuous monitoring, or remembering under the stress and hectic of emergency situations that they exist.

3.5 The streets in Acorn Park are designed and do function as safe residential streets. By way of their width, layout, curvatures, and general configuration they prevent unsafe vehicle speeds. There are sidewalks. Occasional vehicles parked on the street function like traffic calming devices. Slow vehicle speeds allow for accident avoidance.

3.6 The streets in Acorn Park have sufficient built-in volume capacity to safely accommodate traffic from RQR. While any additional traffic can increase the possibility of accidents, the risk here remains within generally acceptable limits.

3.7 The Great Road intersections of Acorn Park Drive and Skyline Drive are both in failure mode (Level of Service F) for side street traffic. They will remain so after the development of RQR. Traffic signals are not warranted for either intersection under built conditions. Side street peak hour queue lengths will increase with increased side street traffic. Measurements under current conditions and predictions for built conditions under various

access configurations indicate that peak hour queue length will not exceed those experienced throughout Acton at similar intersections.

3.8 All things considered, the most desirable traffic circulation pattern in the given context is one that provides open access between Acorn Park and RQR in at least one location.

3.9 The Hazelnut Street connection point is the most suitable choice for full and open access. This location can provide secondary street access to the parts of RQR and Acorn Park that are the farthest removed from Great Road. From this location Hazelnut Street and Acorn Park Drive provide a safe route to Great Road.

3.10 Palmer Lane has sharper curves and steeper grades that make it less desirable for use as full and open street access. There are no traffic circulation advantages to open access at Palmer Lane. However, the proximity to Palmer Lane of proposed multi-unit dwellings in RQR calls for an emergency access at the Palmer Lane connection point.

3.11 The Applicant proposes that the streets inside the proposed development remain private.

3.12 The Acton Finance Director has advised that property tax payments, fines, and other penalties for the RQR development Site are in arrears for payments due in prior months of 2008. Chapter O of the Town of Acton Bylaws provides for the denial, revocation, or suspension of licenses and permits where arrearage has exceeded 12 months.

## 4 BOARD ACTION

Therefore, the Board voted to issue this Supplemental Decision, which amends the Original Decision and the Plan approved thereunder with the following required Plan modifications and additional conditions.

### 4.1 PLAN MODIFICATIONS

The Building Commissioner and Zoning Enforcement Officer shall not issue a building permit, nor shall any construction activity begin on the Site, until and unless the Zoning Enforcement Officer finds that the Plan is revised to include the following additional, corrected, or modified information. Except where otherwise provided, all such information shall be subject to the approval of the Zoning Enforcement Officer. Where approvals are required from persons or agencies other than the Zoning Enforcement Officer, the Applicant shall be responsible for providing evidence of such approvals to the Zoning Enforcement Officer.

4.1.1 Show full and open street access projecting from proposed Quail Ridge Drive in RQR to Hazelnut Street in Acorn Park. The street connection shall include a sidewalk, shall have a 20-foot wide pavement, and shall be designed, and realigned as needed, to be in compliance with the Acton Subdivision Rules and Regulations. The Board reserves the right to grant specific waivers from the Subdivision Rules to effectuate the intent of this requirement.

4.1.2 Provide a turn-around on Quail Ridge Drive for Town of Acton Highway Department snow plows on the west side and in the immediate proximity of the Nagog Brook crossing.

4.1.3 In coordination with the Concord Department of Public Works relocate the existing gate far enough to the northwest to be outside of the pedestrian easement areas for the trail between Hazelnut and the Nagog Hill conservation land.

4.1.4 Show a 20-foot wide paved gated emergency access at the Palmer Lane connection point and a continuous open sidewalk between Palmer Lane and Skyline Drive. The design details of the gate and gate hardware, the operational system including back-up systems, and provisions for maintenance and maintenance reporting shall be subject to the approval of the Fire Chief.

## 3.3 CONDITIONS

The following conditions shall be binding on the Applicant and its successors and assigns. Failure to adhere to these conditions shall render this special permit null and void, without force and effect, and shall constitute grounds for the revocation of this special permit, and of any building or occupancy permit issued hereunder. The Town of Acton may elect to enforce compliance with this special permit using any and all powers available to it under the law.

3.3.1 Streets in RQR shall remain private ways.

3.3.2 All easement rights of Concord to access the Nagog Pond water treatment facility from Hazelnut Street shall be maintained.

3.3.3 Quail Ridge Drive and Skyline Drive between Hazelnut Street to Great Road shall be open and accessible for use by the general public for all purposes for which street and ways are used in the Town of Acton.

3.3.4 This Decision shall be recorded at the Middlesex South District Registry of Deeds or filed in the Land Court Registration Office as applicable prior to the issuance of a building permit on the Site.

## 3.4 LIMITATIONS

The authority granted to the Applicant under this special permit is limited as follows:

3.4.1 The foregoing required modifications and conditions have been stated for the purpose of emphasizing their importance, but are not intended to be all inclusive or to negate the remainder of the Bylaw and the Rules.

3.4.2 This special permit applies only to the Site identified in this decision and to the proposed use and activity as shown on the Plan.

3.4.3 Other approvals or permits required by the Bylaw, other governmental boards, agencies or bodies having jurisdiction shall not be assumed or implied by this decision.

3.4.4 This special permit shall lapse if substantial use thereof has not commenced within two years of the filing date of this Supplemental Decision with the Town Clerk, except for good cause, or if construction under this special permit is not continued through to completion as continuously and expeditiously as is reasonable. For substantial use to have commenced, clearing and grading of at least one street as approved hereunder must be under way. For construction to continue towards completion as continuously and expeditiously as is reasonable, construction activity shall not rest for more than 1 year. A request to extend said time limits must be made in writing to the Board at least 30 days prior to said expiration dates, and the Board herewith reserves its rights and powers to grant or deny such extension, to issue any appropriate changes to the special permit and to require any appropriate modifications of the Plan.

3.4.5 The Board hereby reserves its right and power to modify or amend the Plan and the terms and conditions of this special permit with or without a public hearing upon the request of the Applicant, his designees or assigns, or upon its own motion.

## 4 APPEALS

Appeals, if any, shall be made pursuant to MGL, Ch. 40A, S. 17 and shall be filed within 20 days after the date of filing this decision with the Town Clerk.

The Town of Acton Planning Board

| | |
|---|---|
| Gregory E. Niemyski, Chairman | Bruce Reichlen, Vice Chairman |
| Ryan J. Bettez | Roland A. Bourdon, III |
| Ruth M. Martin | Alan R. Mertz |
| Leigh Davis Honn, Associate | |

(or)
Signed on behalf of the Acton Planning Board

Roland Bartl, AICP, Planning Director
for the Town of Acton Planning Board

This is to certify that the 20-day appeal period on this decision has passed and there have been no appeals made to this office.

Eva Bowen, Town Clerk Date

Copies furnished:

| | | |
|---|---|---|
| Applicant - certified mail # | Building Commissioner | Zoning Enforcement Officer |
| Municipal Properties Director | Health Director | Town Engineer |
| Town Manager | Town Clerk | Conservation Administrator |
| Concord Public Works | Fire Chief | Police Chief |
| Assistant Assessor | Owner | Historical Commission |
| | MAGIC | |

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