

**Kristin Alexander**

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**From:** Kristin Alexander  
**Sent:** Monday, September 14, 2009 5:50 PM  
**To:** Board of Appeals  
**Cc:** 'b-choate@rcn.com'; 'Isabella Choate'  
**Subject:** 93 Central Street - Marsh View - Ch. 40B proposal  
**Importance:** High

Dear Board of Appeals members:

Today I spoke with Town Counsel regarding the use of Pine Ridge Road for the proposed 93 Central Street 40B project (Marsh View). Below is Town Counsel's responses to my three questions (my questions are italicized). I hope you find this information useful. If you have any questions, or need additional information from Counsel, please let me know tonight at the hearing.

Best Regards,

Kristin Alexander  
Assistant Town Planner  
Acton Planning Department

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**From:** Ryan D. Pace  
**Sent:** Monday, September 14, 2009 5:36 PM  
**To:** Kristin Alexander  
**Cc:** Stephen Anderson  
**Subject:** RE: Acton/GenZBA - Applications for a Comprehensive Permit

Kristin -

I am writing to follow up on our conversation and to provide brief answers to each of the questions that you have posed. As I mentioned, I am happy to follow up with a detailed memorandum, and I understand that you will let me know if such a document is required. I will also review the Acton Zoning Bylaws and Subdivision Rules and Regulations to determine if the owners of Pine Ridge Road must sign off on the 40B application that has been submitted for Marsh View.

- 1. Does the applicant have the right to use Pine Ridge Road (labeled "Private Driveway Lawrence Donnelly") for access to Lot 2A on the attached plan?* Yes, provided the applicant is the successor in title to Charles D. Micol. In a deed dated April 18, 2006, Mr. Micol acquired ownership of Lot 2A as well as an easement for "the unobstructed right to use the parcel entitled 'Private Driveway' on said plan for all purposes for which streets and ways may be used in the Town of Acton in common with others entitled thereto." Based on this deed and without any independent title review, Mr. Micol and his successors in title have the right to use Pine Ridge Road.
- 2. Does the right to use Pine Ridge Road include the right to access four lots or does such use constitute overburdening of the easement?* As you know, the development will result in an additional three lots using Pine Ridge Road and, based on the facts that you have detailed for me, I believe that a court will conclude that the use of Pine Ridge Road by three additional lots will not constitute overburdening of the easement. The determination of whether an easement is overburdened is a fact-based determination and, in this case, the court will consider the impact of the creation of additional lots on the property that is burdened by the easement and the individuals who have a right to use the easement area.
- 3. Can the applicant improve Pine Ridge Road, and does the applicant need permission from the owners of the road and others who are entitled to use that way, if any, to make improvements?* The right to use a private road

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includes the right to make reasonable repairs and improvements. I believe that the paving of the right of way is reasonable and lawful in this case based on the facts that you have described to me. The applicant does not need to obtain permission from the owners of Pine Ridge Road and others who are entitled to use that way before making improvements. However, the applicant proceeds at its own risk by making improvements to the road, and the applicant may be subject to a legal challenge by the neighbors if they believe that the applicant's improvements are unreasonable in relation to their rights in Pine Ridge Road.

I hope that this initial response is helpful as you prepare for tonight's meeting. Of course, please feel free to call or e-mail with any questions.

Regards,  
Ryan

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