

**TOWN OF ACTON**  
472 Main Street  
Acton, Massachusetts 01720  
Telephone (978) 264-9636  
Fax (978) 264-9630

Planning Department

**INTERDEPARTMENTAL COMMUNICATION**

**To:** Chairperson and Members  
Board of Appeals

**Date:** ~~October 15, 2009~~  
**Revised:** ~~November 12, 2009~~  
~~December 15, 2009~~  
**January 19, 2010**

**From:** Scott A. Mutch  
Zoning Enforcement Officer & Assistant Town Planner

**Subject:** *Board of Appeals Hearing #09-03*  
*Marsh View, LLC. – 93 Central Street - Comprehensive Permit*

I have reviewed the revised Marsh View (93 Central Street) Comprehensive Permit plans (dated 11/2/09; received 11/6/09) and the applicant's engineer's response letter dated 11/2/09 (from Acton Survey & Engineering, Inc.; received 11/6/09). Outstanding issues are below. The comments are organized by footnote number/letter from my 9/1/09 original comments (which were footnotes in the Acton Comprehensive Permit Policy Project Evaluation Summary form).

Key

9/1/09 original comments are in plain text  
10/15/09 comments are in italics  
11/12/09 comments (or outstanding comments from 10/15/09) are in bold italics  
12/15/09 comments (or outstanding comments from 11/12/09) are in red text  
1/19/10 comments (or outstanding comments from 12/15/09) are in red text and dated accordingly

If you have any questions, please do not hesitate to contact me.

**Outstanding Comments (based on 11/2/09 revisions)**

<sup>6</sup> Planning Department staff cannot determine whether low-water plantings are proposed. The Plan does state "consideration should be given to drought resistant grasses". Unfortunately, this statement does not require drought resistant grasses. The Board may want to consult with the Acton Water District or the Acton Tree Warden on this issue.

*The applicant's engineer letter (9/29/09) states that drought resistant grasses are recommended for the project. A note should be placed on the landscape plan (sheet 6 of 7) under the "Grass" notes that states drought resistant grasses shall be planted for the entire site where grass is proposed. If this is already stated on the plan and staff missed it, please indicate where it is written.*

***The applicant's engineer letter (11/2/09) states that the trees and shrubs specified on the plan should be considered drought resistant (unless a prolonged period of drought***

**occurs and there are stress factors). Planning Department staff defers to the Tree Warden, Dean Charter, on this issue.**

The Tree Warden, Dean Charter, finds that the proposed trees and shrubs specified on the plans are acceptable to be considered drought resistant.

***The applicant's engineer letter (11/2/09) states that drought resistant grasses may not allow sufficient grass cover to be established to prevent erosion. For that reason, they are proposing sod, which they state is not a drought resistant grass. The Board may want to consult with Dean Charter and the Engineering Department to determine whether there is a type of grass that is both drought resistant and establishes quickly to prevent erosion.***

The Tree Warden, Dean Charter, is comfortable with the installation of sod, but only in an instance where the subsurface is prepared correctly. The Tree Warden would be comfortable with the installation of sod as long as a minimum base of 6"-10" of loam is installed under the sod. This detail should be clearly shown and identified on the landscape plan. Additionally, there is a comment identified on Page 6 of 8 which refers to topsoil. It is the 3<sup>rd</sup> comment under the "Grass" notes which the Tree Warden would like to be modified to read loam instead of topsoil.

1/19/10 – The landscape detail which was requested to be added showing the 6-10" of loam to be provided beneath the sod has not been provided. However, a note has been added indicating that sod will be installed over 9" (inches) of loam. The wording which previously identified "topsoil" has also been modified to now read "loam".

- a. The side yard setbacks listed on Plan Sheet 2 (Master Plan) are different from the setbacks shown on Plan Sheet 7 (Site Development Plan). The side yard setbacks should be consistent on all Plan sheets.

*The applicant's engineer responded that the data is inconsistent between plan sheets because one sheet is based on the Town's GIS data which is inaccurate.*

*The Town's GIS data should not be used for development plans. The Town GIS website states on its front page:*

*"Areas depicted by this System are approximate, are for illustration purposes only and do not take the place of a professional survey. The data are not necessarily accurate to mapping, survey, or engineering standards. Areas depicted by this System are not suitable for site-specific decision-making and have no legal bearing on the true shape, size, location, or existence of a geographic feature, property line, or political boundary line representation."*

*It is the responsibility of the applicant's engineering/surveying firm to provide accurate surveys of the development site in order for Town boards/committees and staff to determine compliance with regulations and the full implications of a proposal.*

*Staff cannot complete its review of the project until surveys of the property have been completed, certified by a professional land surveyor, and shown accurately and consistently on all plan sheets/application materials.*

***It appears the property has now been surveyed since plan sheets 2 and 3 are stamped by a professional land surveyor and setbacks are consistent on plan sheets. However, the professional land surveyor should certify/stamp all plan sheets that show existing conditions information (i.e. elevations, existing houses, setbacks, etc.), which are most plan sheets.***

This item has not yet been addressed by the applicant.

1/19/10 – All submitted sheets have now been stamped, signed and dated 1-6-10 by the Land Surveyor of record for the project.

- b. The applicant should consider planting some landscaping between Units 1 and 2 and between Units 3 and 4 to help provide screening and privacy between the units since windows are proposed on the ends of each unit.

*Landscaping has been added to the plan between the units to provide screening and privacy.*

*After re-examining the application materials, staff has concluded that much of the site will be cleared, leaving very little vegetation between the project and the properties north and east of the site (the Tuttle Drive neighborhood). Additional screening should be provided around the perimeter of the property to minimize the visual impacts of the project on these neighboring properties.*

***Additional landscaping has been provided on the 11/2/09 plan near the units on-site, around the perimeter of the site, and on abutters' properties. The only remaining question is – will 8' high (at time of planting) evergreen trees provide screening for abutters once the trees are mature? I do not know much about trees, but I have noticed that some mature evergreen trees do not have branches at the bottom of the tree; making screening minimal.***

The Tree Warden, Dean Charter, would be comfortable with the installation of either the Canadian Hemlock or arborvitae as an adequate screening material. The use of Pine trees is not an acceptable screening material. Over a longer period of time, the Canadian Hemlocks and arborvitae provide a denser screen/buffer at grade level than pine trees. As Pine trees grow and mature they lose their bottom branches and only the trunk of the tree is left.

1/19/10 – The landscape plan indicates that arborvitae plant material is to be installed between units 1 and 2 & 3 and 4.

- c. It appears that most common driveway standards in the Acton Zoning Bylaw (Section 3.8.1.5) would need to be waived if the project proceeds as proposed. The waiver request in Section 5 of the Application should be changed to include all of Bylaw Section 3.8.1.5. Planning Department staff defers to the Acton Fire Department and Acton Engineering Department for comments regarding access and traffic flow to/from the site and on-site.

*The applicant has now asked for a waiver from Bylaw Section 3.8.1.5 and added a SU-30 vehicle turning area to the plan. Staff still defers to the Acton Fire Department and Acton Engineering Department for comments on access and traffic flow.*

***The applicant's engineer letter (11/2/09) discusses emergency vehicle access under "Engineering Department, Item 1." Planning Department staff continues to defer to the Engineering Department to determine whether the proposal satisfies access/traffic safety concerns.***

***On plan sheet 3 (11/2/09 plan), a "7' wide access and utility easement" is shown between Units 3 and 4 leading to Parcel A. Staff does not understand why the easement (1) is needed since the Pine Ridge Road common driveway abuts Parcel A, and (2) is labeled as 7' wide since it appears to be 14' wide (and 14' wide would seem more appropriate/adequate). This should be clarified by the applicant.***

This item has not yet been addressed by the applicant.

1/19/10 – The proposed SU-30 turn around at the rear of the property IS NOT satisfactory to the Fire Chief as currently depicted. Further modifications to the pavement configuration are necessary in order to permit fire apparatus to maneuver in and out of the site.

The current configuration of pavement in front of units #1 & 2 does permit fire apparatus to adequately gain access to and from the site. However, the current configuration creates an expansive amount of asphalt in front of Unit #1 (+/- approximately 30'-0" in width). Another alternative to achieve the same result, would be a small widening of the existing driveway and modification to the radii of pavement where Pine Ridge Road and Central Street meet could reduce the need for the expansive asphalt area.

- d. It is unclear where Pine Ridge Road will end and Marsh View Way will begin (Marsh View Way is referenced in the legal documents). It is also unclear who will maintain Pine Ridge Road if this project is built. Reading through the deeds, it appears the current property owner (Micol) and the owner(s) of tax map G-2, parcel 123-1, both have rights to use Pine Ridge Road. Does the owner of G-2/123-1 have to sign off on the proposed changes to Pine Ridge Road? This may be a Town Counsel question. Marsh View Way should be labeled on the Plans and the differences between the two access ways (and maintenance responsibilities of each) should be clarified in the legal documents.

*The legal documents and/or the plan still need to be amended to distinguish between Pine Ridge Road and Marsh View Way and the maintenance responsibilities for each.*

*Town Counsel addressed staff's question regarding if the property owner of G-2/123-1 has to sign off on the proposed changes to Pine Ridge Road (please see Counsel's memo dated 10/16/09).*

***The revised legal documents (received 11/9/09) address Planning Dept. staff concerns. However, staff defers to Town Counsel for a complete review of all legal documents.***

1/19/10 – Planning Department Staff would still defer to Town Counsel for a thorough and complete review of all legal documents pertaining to this comprehensive permit.

- f. In the "Declaration of Common Driveway Covenant..." (Declaration) (Section 3 of the Application), Sections II(B) and VI(g) need to be revised to refer to this project; not Richardson Crossing.

*This issue has not been addressed.*

***This issue has now been addressed.***

***While re-reviewing the legal documents and plan, staff realized on Plan Sheet 3 (11/2/09 - Recordable Plan), the note stating "properties are subject to all covenants, restrictions, and easements recorded herewith" is too general. The note should specify the title, recording information, and purpose of each document (Acton Comprehensive Permits Rules and Regulations (Rules) Section 3.14.3.11).***

This item has not yet been addressed by the applicant.

1/19/10 – This item has now been addressed.

- h. In summary, this is a project that seems to fit without much needed justification into the existing neighborhood due to its small scale, moderate density, and single-family style. The biggest issues related to this project appear to be regarding access (see comments c.-e. above and any comments from the Acton Fire and Engineering Departments) and septic systems (see memo from Justin Snair, Acton Health Department, to Scott Mutch). If these issues can be resolved, this sort of 40B project is one good model that the Town might embrace for certification maintenance purposes should it ever succeed in reaching or exceeding the 10% threshold.

*In my opinion, the most significant issues that remain related to this project are:*

- *The site still has not been surveyed; therefore, compliance with Town Bylaws and regulations cannot be determined (see comment a. above);*
- *Outstanding Acton Fire, Engineering, and Health Department public health, safety, and welfare issues, if any, that still need to be addressed.*

*The public hearing should be continued until at least these issues are resolved.*

**At the previous hearing, Staff was asked to re-review the proposed FAR.**

1/19/10 - Staff has re-reviewed the submitted floor plans as they relate to calculating Floor Area Ratio for the proposed project. While the numbers are not exact, the project as currently proposed, does exceed the .25 FAR for projects which are outside of the Village Centers and Kelley's Corner. However, the .25 FAR is just a guideline for the BOA to refer to. It is the discretion of the BOA as how to proceed in this regard.

**The most significant planning-related issues related to this proposal have been addressed. The remaining outstanding planning issues can become conditions of a Board decision if the Board agrees.**

1/19/10 - Staff would recommend that any decision being drafted or rendered by the Board of Appeals have as few conditions as possible. Any and all outstanding items from any municipal discipline which require plan changes, modifications or additions, should be addressed and made by the applicant prior to the public hearing being closed or any Decision being rendered.

**However, if any other Town department or review agency still has significant health, safety, and/or legal concerns with the proposal (e.g. the Engineering Department and Fire Department with emergency access, the Health Department with sewage disposal, Town Counsel with legal documents, etc.), the Planning Department recommends continuing the public hearing.**

1/19/10 - This may still be the case, and/or necessary, pending the completion and submission of other Department's reviews.

**Cheryl Frazier**

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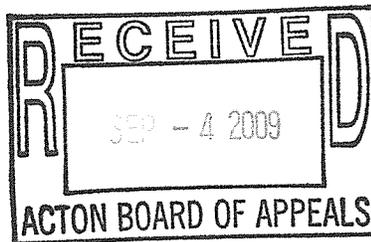
**From:** Robert Craig  
**Sent:** Friday, September 04, 2009 10:05 AM  
**To:** Scott Mutch  
**Cc:** Cheryl Frazier  
**Subject:** Board of Appeals Hearing #09-03 Marsh View LLC 93 Central Street

Please be advised that I have reviewed the above named plan and have concerns regarding access, turn-around, driveway width etc. I believe that there is a similar memo from the Engineering Department which I would concur with.

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**Robert C. Craig, Fire Chief**  
**Acton Fire Department**  
**371 Main Street - Acton, MA 01720**

**Phone: (978) 264-9645 / Fax: (978) 266-2885**  
[rcraig@acton-ma.gov](mailto:rcraig@acton-ma.gov)



## Cheryl Frazier

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**From:** Justin Snair  
**Sent:** Friday, November 13, 2009 5:32 PM  
**To:** Kristin Alexander  
**Cc:** Cheryl Frazier; Doug Halley  
**Subject:** 93 Central St. Health Dept Comments

~~RE: 93 Central St.~~  
~~11/13/09~~

The Health Dept. finds that no variance from ABOH rules and regulations is required for 93 Central St as proposed however following issues are still of concern:

- Note indicating stripping of soil cover over 89 Central St's SAS and placement of paving. Suggests that entire SAS will be stripped. Should be clear that only a corner of the of SAS will be effected and a vent will be moved.
- As noted in earlier comments from the Health Dept, Title 5 allows placement of impervious surfaces of SAS when no other option is available/feasible. Is it possible to move the proposed drive way 4-5 ft? This would allow for no changes/paving over 89 Centrals SAS.
- Town counsels explanations of right to improve the road in the right of way was not clear regarding improvements that would effect sub-surface disposal systems. Could a clarification be provided?
- Would an agreement be warranted between both parties detailing responsibility of repair if the SAS serving 89 Central St is damaged during this process or found to have been damaged by this process in the future?

Regards;

Justin Snair

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**From:** Kristin Alexander  
**Sent:** Friday, November 13, 2009 3:29 PM  
**To:** Justin Snair  
**Subject:** reminder - 93 Central St.

Just a reminder...don't forget to send your few comments on 93 Central St. 40B to Cheryl F. (and copy Planning Dept.).

Thanks!

Kristin

11/16/2009

## Cheryl Frazier

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**From:** Robert Craig

**Sent:** Monday, November 16, 2009 10:22 AM

**To:** Cheryl Frazier

**Cc:** Scott Mutch

**Subject:** Board of Appeals Hearing #09-03-Marsh View LLC- 93 Central Street , 40 B Comprehensive Permit

After reviewing this plan, I would concur with the comments of the Engineering Department, dated 11/13/09. Specifically, I am concerned once again with access, turning radii and ability of apparatus to get to the rear unit (# 3 and be able to turn around, once at the rear of the complex). I am also not interested in having apparatus, in an emergency situation, have to make small backing and turning maneuvers .

Chief Craig

**Cheryl Frazier**

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**From:** Scott Mutch  
**Sent:** Monday, November 16, 2009 8:58 AM  
**To:** Cheryl Frazier  
**Subject:** FW: Marsh View and Richardson Crossing on Central St.

FYI for the record.

Should you have any comments, questions or concerns regarding this matter or any other, please do not hesitate to contact me immediately. Sincerely,

Scott A. Mutch  
Zoning Enforcement Officer & Assistant Town Planner  
Town of Acton  
Planning Department  
472 Main Street  
Acton, MA 01720  
Tel: (978) 264-9636  
Fax: (978) 264-9630  
email: [planning@acton-ma.gov](mailto:planning@acton-ma.gov)

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**From:** Chris Allen [<mailto:Chris@actonwater.com>]  
**Sent:** Friday, November 13, 2009 8:19 AM  
**To:** Scott Mutch  
**Subject:** Marsh View and Richardson Crossing on Central St.

Scott,

~~Other than our previously submitted comments, we have nothing further to add to these 40B projects.~~

~~Please let me know if you require anything further.~~

Thank you

Regards,

Chris Allen  
District Manager  
Water Supply District of Acton  
**PO Box 953**  
**Acton, MA 01720**  
Ph # 978-263-9107  
Fax# 978-264-0148  
email: [chris@actonwater.com](mailto:chris@actonwater.com)

**"When the well's dry, we know the worth of water," --Benjamin Franklin 1774.**

# ACTON MUNICIPAL PROPERTIES DEPARTMENT

## INTERDEPARTMENTAL COMMUNICATION

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**To:** Scott Mutch, Planning Department

*Date:* 11/17/09

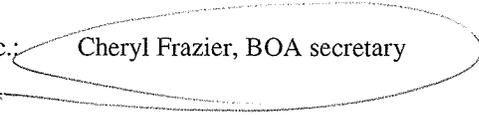
**From:** Dean A. Charter, Municipal Properties Director 

**Subject:** Marsh View LLC, 93 Central Street, revised plans

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The revised plans were not received by this Department until late in the day on Friday, November 6, with comments back required by noon on Friday, November 13. Considering that the week involved included a legal holiday, this gave us less than four days for a comment period.

The assumption seems to be that the only piece of work we are involved with is waiting for an opportunity to review these plans. This is not the case, and no attempt was made to conduct a review in the time specified.

cc.: Cheryl Frazier, BOA secretary 

**Cheryl Frazier**

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**From:** Justin Snair  
**Sent:** Monday, December 14, 2009 9:10 AM  
**To:** Cheryl Frazier  
**Subject:** FW: 93 Central St 12.10.09

As emailed last week.

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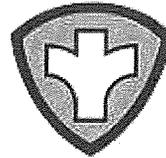
**From:** Justin Snair  
**Sent:** Friday, December 11, 2009 3:07 PM  
**To:** Scott Mutch  
**Subject:** 93 Central St 12.10.09

The Health Dept. has reviewed the plans provided for 93 Central St. and finds that previous issues have been resolved and recommends approval with the following conditions:

1. an application for permit for minor repair of the SSDS serving 89 Central St
2. A letter from the owner of 89 Central St granting permission to conduct the proposed work on the SSDS serving that dwelling must be received by the Health Dept. prior to the issuance of minor repair permit.



**Justin T. Snair**  
Environmental Health Agent  
Health Department  
Town of Acton  
P: 978-264-9634  
F: 978-264-9630



**Public Health**  
Prevent. Promote. Protect.

**Cheryl Frazier**

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**From:** Robert Craig  
**Sent:** Tuesday, December 15, 2009 12:40 PM  
**To:** Cheryl Frazier  
**Subject:** FW: 93 Central St  
**Attachments:** 6730-40B\_SP\_email 12-15-09.pdf

Cheryl,

I met with Mark Donahue and Jim D'Agostine this morning regarding this plan. They have made revisions as discussed and the revisions are acceptable. Thanks.

Chief Craig

Robert C. Craig  
Fire Chief  
Acton Fire Department  
978-264-9645  
978-266-2885(FAX)

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**From:** Brien Andrysick [mailto:[BAndrysick@actonsurvey.com](mailto:BAndrysick@actonsurvey.com)]  
**Sent:** Tuesday, December 15, 2009 10:35 AM  
**To:** Robert Craig; Corey York  
**Subject:** 93 Central St

Please find attached the 40B site plan for 93 Central Street showing the driveway revised per your conversation with Mark.

Brien Andrysick  
*Acton Survey & Engineering, Inc.*  
978-263-3666  
[bandrysick@actonsurvey.com](mailto:bandrysick@actonsurvey.com)





**TOWN OF ACTON**  
472 Main Street  
Acton, MA 01720  
Telephone (978) 264-9628  
Fax (978) 264-9630

**Engineering Department**

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**INTERDEPARTMENTAL COMMUNICATION**

**To:** Planning Department  
**From:** Engineering Department  
**Date:** January 14, 2010  
**Subject:** Board of Appeals Hearing #09-03 – Marsh View LLC - 93 Central Street  
40B Comprehensive Permit

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1The Engineering Department has the following comments regarding the above-mentioned Site Development Plan dated June 19, 2009, with revision dates September 29, 2009, November 2, 2009, December 9, 2009 & January 6, 2010 for the Comprehensive Permit at 93 Central Street. The original comment is in regular font, the intermittent comments are in italics, and underlined & boldface with the dates indicating the interdepartmental communication. The most recent comments are in italicized-bold text with the date. We removed comments from this memo that are no longer an issue for the Engineering Department.

1. The Applicant has requested a waiver from the common driveway requirements for a turnaround for an emergency SU-30 design vehicle (fire truck). We would defer comment to the Fire Chief on this issue. The engineer indicated the use of the guest parking spaces and the driveway for units #3 & #4 to serve as a turnaround for the fire truck. Assuming there could always be vehicles parked in the parking area, we do not see this as an acceptable alternative. We checked this option with our turning template for a SU-30 vehicle and found that the layout of the parking area and driveway is not adequate for a fire truck. We also noted that a fire truck cannot maneuver onto the driveway for unit #2 without driving over the grass and/or the driveway recharge trench. The 10-foot wide driveway for unit #3 seems very tight for the fire truck, as well. The engineer should show the edge of road pavement on both sides of Central Street so that we can ensure a fire truck can maneuver in and out of the site without driving over the road shoulder or obstructing oncoming traffic on Central Street.

## Engineering Department

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*This item has been partially completed; the applicant has modified the design to include a turn around at the rear of the property and the driveway serving unit 4 has been widened, however the driveway serving unit 2 remains the same (10/14/09).*

**An alternate design has been included showing a 15-foot width for the driveway (11/13/09).**

**In order for an emergency SU-30 vehicle to maneuver within the turnaround at the rear of the site, it appears that the fire truck will need to partially drive over the grass shoulder. (12/14/2009)**

**It seems that modifying the width and pavement radiuses for Pine Ridge Road at Central Street and the driveway for Unit #2 could accommodate a fire truck without the need to the extensive amount of additional pavement in front of Unit #1 as shown in the alternate driveway detail (12/14/2009).**

***I would defer to the Fire Chief on the final approval for the accessibility of an emergency SU-30 vehicle (fire truck) within the site. The turnaround at the rear of the site is not adequate for a fire truck to make a standard 3-point turn. It is also our opinion that the engineer could modify the width of Pine Ridge Road at Central Street so that the driveway for Unit #2 could accommodate a fire truck without the need for the extensive amount of additional pavement in front of Unit #1 as shown on the plan (1/14/2010).***

2. The applicant has requested a waiver to eliminate the need for access and utility easements. The applicant will need to reserve rights for each of the individual units so that they can provide access and utilities across the abutting lots as shown the plans.

*This item has not been completed; however the applicant states that the required rights will be reserved (10/14/09).*

***This item remains outstanding (11/13/09, 12/14/2009 & 1/14/2010).***

3. The applicant will need to propose and obtain final approval for the street addresses from the Engineering, Police and Fire Departments. The entire project could use 93 Central Street as the street address and each individual dwelling be identified by the assigned unit number as shown on the conceptual plan. It also appears that each unit could be assigned an individual Pine Ridge Way address.

**This item has not been completed; the applicant is willing to incorporate the addresses that are assigned (10/14/09).**

***It appears that the applicant will use 93 Central Street as the street address for the***

**Engineering Department**

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***entire project and each individual dwelling is identified by the assigned unit number as shown on the plan (12/14/2009 & 1/14/2010).***

4. The notes regarding cleaning the catch basin sump should also state that it will be cleaned following construction. The drainage system operation and maintenance schedule should be incorporated into the Private Way Maintenance Agreements recorded at the Registry so that the future homeowners clearly understand their responsibilities for the upkeep of the drainage system.

***The applicant assures that the maintenance agreements will be incorporated into a homeowner's agreement (10/14/09 & 1/14/2010).***

5. ***We would also recommend that the applicant incorporate some language for the private way into their legal documents and maintenance agreements so that future residents clearly understand the Town will not be responsible for snow plowing or any other related maintenance and that the roads will not become public ways (12/14/2009 & 1/14/2010).***
6. ***If the driveway for unit #2 remains as it is shown on the plans, the engineer will need to relocate the proposed drainage inlet structure so that it is not obstructing the access (1/14/2010).***

Cc: Cheryl Frazier, Board of Appeals Secretary

**Cheryl Frazier**

---

**From:** Robert Craig  
**Sent:** Thursday, February 18, 2010 8:48 AM  
**To:** Scott Mutch  
**Cc:** Cheryl Frazier  
**Subject:** Board of Appeals Hearing #09-03 Marsh View LLC

Good morning,

Please be advised that I have reviewed the revised site plan and consulted with the engineering department and I have no objections to modifications shown to provide turning for an SU-30 vehicle.

Robert C. Craig  
Fire Chief  
Acton Fire Department  
978-264-9645  
978-266-2885(FAX)



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Planning Department

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Zoning Enforcement Officer & Assistant Town Planner

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**Outstanding Comments (based on 11/2/09 revisions)**

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The Tree Warden, Dean Charter, finds that the proposed trees and shrubs specified on the plans are acceptable to be considered drought resistant. ✓

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Detail  
Wyd  
do

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*The Town's GIS data should not be used for development plans. The Town GIS website states on its front page:*

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*It is the responsibility of the applicant's engineering/surveying firm to provide accurate surveys of the development site in order for Town boards/committees and staff to determine compliance with regulations and the full implications of a proposal.*

*Staff cannot complete its review of the project until surveys of the property have been completed, certified by a professional land surveyor, and shown accurately and consistently on all plan sheets/application materials.*

***It appears the property has now been surveyed since plan sheets 2 and 3 are stamped by a professional land surveyor and setbacks are consistent on plan sheets. However, the professional land surveyor should certify/stamp all plan sheets that show existing conditions information (i.e. elevations, existing houses, setbacks, etc.), which are most plan sheets.***

This item has not yet been addressed by the applicant. OK delay  
will do.

- b. The applicant should consider planting some landscaping between Units 1 and 2 and between Units 3 and 4 to help provide screening and privacy between the units since windows are proposed on the ends of each unit.

*Landscaping has been added to the plan between the units to provide screening and privacy.*

*After re-examining the application materials, staff has concluded that much of the site will be cleared, leaving very little vegetation between the project and the properties north and east of*

the site (the Tuttle Drive neighborhood). Additional screening should be provided around the perimeter of the property to minimize the visual impacts of the project on these neighboring properties.

**Additional landscaping has been provided on the 11/2/09 plan near the units on-site, around the perimeter of the site, and on abutters' properties. The only remaining question is – will 8' high (at time of planting) evergreen trees provide screening for abutters once the trees are mature? I do not know much about trees, but I have noticed that some mature evergreen trees do not have branches at the bottom of the tree; making screening minimal.**

The Tree Warden, Dean Charter, would be comfortable with the installation of either the Canadian Hemlock or arborvitae as an adequate screening material. The use of Pine trees is not an acceptable screening material. Over a longer period of time, the Canadian Hemlocks and arborvitae provide a denser screen/buffer at grade level than pine trees. As Pine trees grow and mature they lose their bottom branches and only the trunk of the tree is left.

*Woods*

- c. It appears that most common driveway standards in the Acton Zoning Bylaw (Section 3.8.1.5) would need to be waived if the project proceeds as proposed. The waiver request in Section 5 of the Application should be changed to include all of Bylaw Section 3.8.1.5. Planning Department staff defers to the Acton Fire Department and Acton Engineering Department for comments regarding access and traffic flow to/from the site and on-site.

*The applicant has now asked for a waiver from Bylaw Section 3.8.1.5 and added a SU-30 vehicle turning area to the plan. Staff still defers to the Acton Fire Department and Acton Engineering Department for comments on access and traffic flow.*

**The applicant's engineer letter (11/2/09) discusses emergency vehicle access under "Engineering Department, Item 1." Planning Department staff continues to defer to the Engineering Department to determine whether the proposal satisfies access/traffic safety concerns.**

**On plan sheet 3 (11/2/09 plan), a "7' wide access and utility easement" is shown between Units 3 and 4 leading to Parcel A. Staff does not understand why the easement (1) is needed since the Pine Ridge Road common driveway abuts Parcel A, and (2) is labeled as 7' wide since it appears to be 14' wide (and 14' wide would seem more appropriate/adequate). This should be clarified by the applicant.**

*Will do*

This item has not yet been addressed by the applicant.

- d. It is unclear where Pine Ridge Road will end and Marsh View Way will begin (Marsh View Way is referenced in the legal documents). It is also unclear who will maintain Pine Ridge Road if this project is built. Reading through the deeds, it appears the current property owner (Micol) and the owner(s) of tax map G-2, parcel 123-1, both have rights to use Pine Ridge Road. Does the owner of G-2/123-1 have to sign off on the proposed changes to Pine Ridge Road? This may be a Town Counsel question. Marsh View Way should be labeled on the Plans and the differences between the two access ways (and maintenance responsibilities of each) should be clarified in the legal documents.

*The legal documents and/or the plan still need to be amended to distinguish between Pine Ridge Road and Marsh View Way and the maintenance responsibilities for each.*

*Town Counsel addressed staff's question regarding if the property owner of G-2/123-1 has to sign off on the proposed changes to Pine Ridge Road (please see Counsel's memo dated 10/16/09).*

***The revised legal documents (received 11/9/09) address Planning Dept. staff concerns. However, staff defers to Town Counsel for a complete review of all legal documents.***

- f. In the "Declaration of Common Driveway Covenant..." (Declaration) (Section 3 of the Application), Sections II(B) and VI(g) need to be revised to refer to this project; not Richardson Crossing.

*This issue has not been addressed.*

***This issue has now been addressed.***

***While re-reviewing the legal documents and plan, staff realized on Plan Sheet 3 (11/2/09 - Recordable Plan), the note stating "properties are subject to all covenants, restrictions, and easements recorded herewith" is too general. The note should specify the title, recording information, and purpose of each document (Acton Comprehensive Permits Rules and Regulations (Rules) Section 3.14.3.11).***

*Mitch.*

This item has not yet been addressed by the applicant.

- h. In summary, this is a project that seems to fit without much needed justification into the existing neighborhood due to its small scale, moderate density, and single-family style. The biggest issues related to this project appear to be regarding access (see comments c.-e. above and any comments from the Acton Fire and Engineering Departments) and septic systems (see memo from Justin Snair, Acton Health Department, to Scott Mutch). If these issues can be resolved, this sort of 40B project is one good model that the Town might embrace for certification maintenance purposes should it ever succeed in reaching or exceeding the 10% threshold.

*In my opinion, the most significant issues that remain related to this project are:*

- *The site still has not been surveyed; therefore, compliance with Town Bylaws and regulations cannot be determined (see comment a. above);*
- *Outstanding Acton Fire, Engineering, and Health Department public health, safety, and welfare issues, if any, that still need to be addressed.*

*The public hearing should be continued until at least these issues are resolved.*

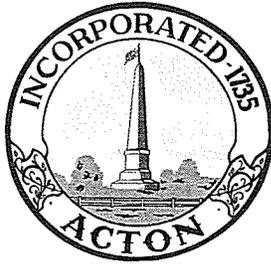
***The most significant planning-related issues related to this proposal have been addressed. The remaining outstanding planning issues can become conditions of a Board decision if the Board agrees.***

Staff would recommend that any decision being drafted or rendered by the Board of Appeals have as few conditions as possible. Any and all outstanding items from any municipal discipline which require plan changes, modifications or additions, should be addressed and made by the applicant prior to the public hearing being closed or any Decision being rendered.

*low*

***However, if any other Town department or review agency still has significant health, safety, and/or legal concerns with the proposal (e.g. the Engineering Department and Fire Department with emergency access, the Health Department with sewage disposal, Town Counsel with legal documents, etc.), the Planning Department recommends continuing the public hearing.***

This may still be the case, and/or necessary, pending the completion and submission of other Department's reviews.



**TOWN OF ACTON**  
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**Engineering Department**

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**INTERDEPARTMENTAL COMMUNICATION**

**To:** Planning Department  
**From:** Engineering Department  
**Date:** December 14, 2009  
**Subject:** Board of Appeals Hearing #09-03 – Marsh View LLC - 93 Central Street  
40B Comprehensive Permit

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The Engineering Department has the following comments regarding the above-mentioned Site Development Plan (sheet 5 of 8) dated June 19, 2009, with revision dates September 29, 2009, November 2, 2009, and December 9, 2009 for the Comprehensive Permit at 93 Central Street. The original comment is in regular font, the intermittent comment is in itali**c**, and the most recent comments are underlined & boldface with the dates indicating the interdepartmental communication.

1. The Applicant has requested a waiver from the common driveway requirements for a turnaround for an emergency SU-30 design vehicle (fire truck). We would defer comment to the Fire Chief on this issue. The engineer indicated the use of the guest parking spaces and the driveway for units #3 & #4 to serve as a turnaround for the fire truck. Assuming there could always be vehicles parked in the parking area, we do not see this as an acceptable alternative. We checked this option with our turning template for a SU-30 vehicle and found that the layout of the parking area and driveway is not adequate for a fire truck. We also noted that a fire truck cannot maneuver onto the driveway for unit #2 without driving over the grass and/or the driveway recharge trench. The 10-foot wide driveway for unit #3 seems very tight for the fire truck, as well. The engineer should show the edge of road pavement on both sides of Central Street so that we can ensure a fire truck can maneuver in and out of the site without driving over the road shoulder or obstructing oncoming traffic on Central Sheet.

## Engineering Department

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*This item has been partially completed; the applicant has modified the design to include a turn around at the rear of the property and the driveway serving unit 4 has been widened, however the driveway serving unit 2 remains the same (10/14/09).*

**An alternate design has been included showing a 15-foot width for the driveway (11/13/09).**

**In order for an emergency SU-30 vehicle to maneuver within the turnaround at the rear of the site, it appears that the fire truck will need to partially drive over the grass shoulder. (12/14/2009)**

**It seems that modifying the width and pavement radiuses for Pine Ridge Road at Central Street and the driveway for Unit #2 could accommodate a fire truck without the need to the extensive amount of additional pavement in front of Unit #1 as shown in the alternate driveway detail (12/14/2009).**

2. The applicant has requested a waiver to eliminate the need for access and utility easements. The applicant will need to reserve rights for each of the individual units so that they can provide access and utilities across the abutting lots as shown the plans. *Will do*

*This item has not been completed; however the applicant states that the required rights will be reserved (10/14/09).*

**This item remains outstanding (11/13/09 & 12/14/2009).**

3. We recommend that the engineer conduct the necessary soil evaluations in the vicinity of the proposed recharge trenches to confirm the soil types and infiltration rates used in the drainage calculations. During the soil evaluation the engineer should also confirm the estimated high water groundwater elevation to ensure the recharge chambers will be above groundwater.

*This item has not been completed; the applicant states that the design eliminates the need for soil evaluations (10/14/09).*

**This item has been completed (11/13/09).**

4. The driveway recharge trench at the rear of the site is shown to be within about 12 feet from the existing leach field for 89 Central Street. The engineer needs to make sure that they comply with any applicable setbacks from the local Board of Health and state Title V regulations.

**No further comment necessary; the applicant states that the design is outside the 10-foot setback (10/14/09).**

## Engineering Department

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5. The engineer should submit copies of the pre- and post-development subcatchment maps so that we can analyze the drainage calculations that were submitted with the site plan.

**This item has been completed (10/14/09).**

6. The engineer stated that the peak rate of runoff for the proposed development will exceed pre-existing conditions for all the design storm events (2, 10, 25 & 100 year design storms) used in their drainage calculations. We recommend that the proposed drainage system be sized such that the post-development runoff does not exceed pre-existing conditions.

**This item has been completed (10/14/09).**

7. The engineer needs to submit their pipe sizing calculations for the 8" diameter PVC outlet pipe from the catch basin next to unit #1. The engineer should label the proposed slope of the pipe, inverts (in & out), etc... to ensure there is sufficient information for the contractor to install the drain pipe.

*This item has been partially completed; the pipe-sizing calculations were submitted, however they lack the slopes, inverts, etc. for construction (10/14/09).*

**The inverts have been added, but the slops remain unlabeled (11/13/09).**

**The proposed inverts for the outlet pipe from the catch basin next to Unit #1 have been added to the plan. This item has been completed (12/14/09).**

8. The engineer noted on the plan that the existing conditions were compiled from a previous conceptual drawing by Foresite Engineering Inc. The engineer also noted that the land surveyor still needs to perform a perimeter survey prior to recording any plans with the Registry of Deeds. We would recommend that the applicant's land surveyor field verify the property to ensure no other issues arise from the compilation of information from these other sources.

*This item has not been completed; however the applicant states that they will address these issues during their survey work (10/14/09).*

**This item has been completed (11/13/09).**

## Engineering Department

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9. According to the deeds, the applicant does not own the parcel for Pine Ridge Way, but they have the unobstructed right to use that parcel for all purposes which streets and ways are used in Town.

**No further comment necessary; the applicant will make efforts to protect the existing subsurface sewage disposal system (10/14/09).**

10. Topography and all elevations shall be referenced to the National Geodetic Vertical Datum of 1929 with the location and elevation of the starting bench mark plus at least two additional temporary benchmarks. The temporary benchmarks should be set on fixed objects that will not be disturbed during construction.

*This item has not been completed; however the applicant states that they will address these issues during their survey work (10/14/09).*

**This item has been completed (11/13/09).**

11. The Town has a sidewalk on the opposite side of Central Street at this location. There is another sidewalk that exists along the northwesterly sideline of the property adjacent to units #2 & #3. This sidewalk connects Central Street to Tuttle Drive. These sidewalks are within close proximity to the project and should be shown on the plans.

*This item has not been completed; however the applicant states that they will address these issues during their survey work (10/14/09).*

**This item has been completed (11/13/09).**

12. The applicant will need to propose and obtain final approval for the street addresses from the Engineering, Police and Fire Departments. The entire project could use 93 Central Street as the street address and each individual dwelling be identified by the assigned unit number as shown on the conceptual plan. It also appears that each unit could be assigned an individual Pine Ridge Way address.

**This item has not been completed; the applicant is willing to incorporate the addresses that are assigned (10/14/09).**

**It appears that the applicant will use 93 Central Street as the street address for the entire project and each individual dwelling be identified by the assigned unit number as shown on the plan (12/14/2009).**

13. The Recordable Plan should show existing survey monumentation to allow sufficient data to reproduce the boundary lines on the ground.

## Engineering Department

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*This item has not been completed; however the applicant states that they will address these issues during their survey work (10/14/09).*

**This item has been completed (11/13/09).**

14. Sufficient space for the date and the signatures of the Acton Planning Board, or its designee, should be included on the Recordable Plan Sheet.

**No further comment (10/14/09).**

15. The engineer needs to label the affordable unit on the plans.

**This item has been completed (10/14/09).**

16. There are existing stone walls along the Central Street frontage and the side property line adjacent to units #2 & #3 that need to be shown on the plan.

*This item has not been completed; however the applicant states that they will address these issues during their survey work (10/14/09).*

**This item has been completed (11/13/09).**

17. There is also an existing ditch that runs along the front of the stone wall on Central Street to a pipe inlet next to the driveway within the parcel for Pine Ridge Way that should be shown on the plan and labeled to remain. The existing pipe inlet and the drainage system in Central Street should be field located and shown on the plans. The engineer should add some notes requiring the contractor to cleanout the ditch and the pipe inlet to prevent any runoff from the proposed site from discharging onto Central Street and potentially causing an icing situation during the winter months.

*This item has not been completed; however the applicant states that they will address these issues during their survey work (10/14/09).*

**This item has been completed (11/13/09).**

18. The applicant should also be responsible to install a curb similar to the curbing on Central Street to fill-in the gap which exists for the driveway that will be removed.

**This item has been completed (10/14/09).**

19. The edge of wetlands shown on these plans is labeled "assumed". The engineer needs to have the actual edge of wetlands identified on the plans.

## Engineering Department

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*This item has not been completed; however the applicant states that they will address these issues during their survey work (10/14/09).*

**This item has been completed (11/13/09).**

20. The engineer should label the existing wooded areas, the parking area and walkways for 89 Central Street that extends to the driveway within the parcel for Pine Ridge Way. The engineer should also show the existing plantings that the homeowners at 89 Central Street have along the side the driveway that will be reconstructed. The plans should clearly note if these plantings are too remain or be removed.

*This item has not been completed; however the applicant states that they will address these issues during their survey work (10/14/09).*

**This item has been completed (11/13/09).**

21. The engineer should show the existing sewage disposal system for 93 Central Street and labeled it to be removed in accordance with any applicable local Board of Health and state Title V regulations. We would this defer this issue to the Acton Health Department.

*This item has not been completed (10/14/09).*

**The applicant has included a note addressing the proper removal of the existing system, however it is not shown on the plans (11/13/09).**

*Wetlands.*

22. The proposed driveway for the project is shown on top of the existing leach field for 89 Central Street. The engineer also proposes to relocate the existing vent that is located within the driveway for unit # 4. The engineer needs to make sure that they comply with any applicable local Board of Health and state Title V regulations. We would this defer this issue to the Acton Health Department.

**No further comment (10/14/09).**

23. The parking spaces should be labeled on the plans and identified as either standard size or handicapped parking spaces along with the dimensions. The location of any signs intended to be used for identification of handicapped parking spaces must be shown. The parking space should be delineated by pavement markings.

**The parking spaces have been removed. No further comment (10/14/09).**

24. Include a note explaining how the APPLICANT will provide fire protection to the SITE. The engineer also needs to show any fire hydrants within 500 feet of the site.

## Engineering Department

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*This item has not been completed (10/14/09).*

**This item has been completed (11/13/09).**

25. The notes regarding cleaning the catch basin sump should also state that it will be cleaned following construction. The drainage system operation and maintenance schedule should be incorporated into the Private Way Maintenance Agreements recorded at the Registry so that the future homeowners clearly understand their responsibilities for the upkeep of the drainage system.

**The applicant assures that the maintenance agreements will be incorporated into a homeowner's agreement (10/14/09).**

26. The engineer has indicated the proposed walkways will be crushed stone. The applicant will need to ensure the surface is accessible for all persons. The engineer should include some notes to label the maximum cross slope, etc...

**The sidewalks have been removed. No further comment (10/14/09).**

27. The engineer might need to modify the pavement radius for the driveway closest to unit #2 to allow easier access for the unit owner to the 2-car garage.

**This item has been completed (10/14/09).**

28. The engineer should clarify the locations for the vertical granite or reinforced concrete curbs on the plans. There is a label for granite curb at the guest parking area, but it is unclear where the curbing should start and stop.

**The parking spaces have been removed. No further comment (10/14/09).**

29. The Town requires a minimum of 12-inches of gravel underneath the 3-inch layer of bituminous concrete. The engineer only labeled 8-inches of gravel underneath the pavement.

**This item has been completed (10/14/09).**

30. There appears to be no plans to reconstruct or repave the existing driveway within Pine Ridge Way at Central Street. We recommend that the entire driveway to be reconstructed along with the project to ensure there is an adequate gravel base, thickness of pavement, width and pavement radiuses to ensure safe movement of vehicles and fire trucks within the site. The engineer should label the proposed pavement width for this section of the access to be consistent on the plans.

**Engineering Department**

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*This item has not been completed; the applicant included a note to reconstruct Pine Ridge Road as required (10/14/09).*

**This item has been completed (11/13/09).**

31. The plans should show the location of any existing utilities on the site.

*This item has not been completed (10/14/09).*

**This item remains outstanding (11/13/09).**

**Prior to obtaining a demolition permit for 93 Central Street, the applicant will be required to locate & disconnect any existing utilities per the State Building Code requirements (12/14/2009). No further comment is necessary.**

32. The Trench Step Detail on sheet 7 of 7 indicates a minimum and maximum depth for the trench to be 1 foot. The Driveway Trench Detail on sheet 5 of 7 requires the depth of the trench to be no less than 2 feet.

**This item has been corrected (10/14/09).**

33. If the applicant intends to have a sign identifying the development, the engineer should show the location of this sign on the plans.

**This item has been completed (10/14/09).**

34. **We would also recommend that the applicant incorporate some language for the private way into their legal documents and maintenance agreements so that future residents clearly understand the Town will not be responsible for snow plowing or any other related maintenance and that the roads will not become public ways (12/14/2009).**

*already  
Tab 3  
P2  
Dustin F.*

Cc: Cheryl Frazier, Board of Appeals Secretary

**Cheryl Frazier**

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**From:** Justin Snair  
**Sent:** Friday, November 13, 2009 5:32 PM  
**To:** Kristin Alexander  
**Cc:** Cheryl Frazier; Doug Halley  
**Subject:** 93 Central St. Health Dept Comments

**RE: 93 Central St.**  
**11/13/09**

The Health Dept. finds that no variance from ABOH rules and regulations is required for 93 Central St as proposed however following issues are still of concern:

- Note indicating stripping of soil cover over 89 Central St's SAS and placement of paving. Suggests that entire SAS will be stripped. Should be clear that only a corner of the of SAS will be effected and a vent will be moved.
- As noted in earlier comments from the Health Dept, Title 5 allows placement of impervious surfaces of SAS when no other option is available/feasible. Is it possible to move the proposed drive way 4-5 ft? This would allow for no changes/paving over 89 Centrals SAS.
- Town counsels explanations of right to improve the road in the right of way was not clear regarding improvements that would effect sub-surface disposal systems. Could a clarification be provided? *Town Council*
- Would an agreement be warranted between both parties detailing responsibility of repair if the SAS serving 89 Central St is damaged during this process or found to have been damaged by this process in the future? *Town Council*

Regards;

Justin Snair

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**From:** Kristin Alexander  
**Sent:** Friday, November 13, 2009 3:29 PM  
**To:** Justin Snair  
**Subject:** reminder - 93 Central St.

Just a reminder...don't forget to send your few comments on 93 Central St. 40B to Cheryl F. (and copy Planning Dept.).

Thanks!

Kristin





**TOWN OF ACTON**  
472 Main Street  
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**Planning Department**

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**INTERDEPARTMENTAL COMMUNICATION**

**To:** Chairperson and Members  
Board of Appeals

**Date:** ~~October 15, 2009~~  
**Revised:** ~~November 12, 2009~~  
~~December 15, 2009~~  
~~January 19, 2010~~  
**February 19, 2010**

**From:** Scott A. Mutch  
Zoning Enforcement Officer & Assistant Town Planner

**Subject:** *Board of Appeals Hearing #09-03*  
*Marsh View, LLC. – 93 Central Street - Comprehensive Permit*

---

I have reviewed the revised Marsh View (93 Central Street) Comprehensive Permit plans (dated 11/2/09; received 11/6/09) and the applicant's engineer's response letter dated 11/2/09 (from Acton Survey & Engineering, Inc.; received 11/6/09). Outstanding issues are below. The comments are organized by footnote number/letter from my 9/1/09 original comments (which were footnotes in the Acton Comprehensive Permit Policy Project Evaluation Summary form).

Key

9/1/09 original comments are in plain text

10/15/09 comments are in italics

11/12/09 comments (or outstanding comments from 10/15/09) are in bold italics

12/15/09 comments (or outstanding comments from 11/12/09) are in red text

1/19/10 comments (or outstanding comments from 12/15/09) are in red text and dated accordingly

2/19/10 comments (or outstanding comments from 1/19/10) are in red text and dated accordingly

If you have any questions, please do not hesitate to contact me.

**Outstanding Comments (based on 11/2/09 revisions)**

- <sup>6</sup> Planning Department staff cannot determine whether low-water plantings are proposed. The Plan does state "consideration should be given to drought resistant grasses". Unfortunately, this statement does not require drought resistant grasses. The Board may want to consult with the Acton Water District or the Acton Tree Warden on this issue.

*The applicant's engineer letter (9/29/09) states that drought resistant grasses are recommended for the project. A note should be placed on the landscape plan (sheet 6 of 7) under the "Grass" notes that states drought resistant grasses shall be planted for the entire site where grass is proposed. If this is already stated on the plan and staff missed it, please indicate where it is written.*

***The applicant's engineer letter (11/2/09) states that the trees and shrubs specified on the plan should be considered drought resistant (unless a prolonged period of drought occurs and there are stress factors). Planning Department staff defers to the Tree Warden, Dean Charter, on this issue.***

The Tree Warden, Dean Charter, finds that the proposed trees and shrubs specified on the plans are acceptable to be considered drought resistant.

2/19/10 - No further comment necessary.

***The applicant's engineer letter (11/2/09) states that drought resistant grasses may not allow sufficient grass cover to be established to prevent erosion. For that reason, they are proposing sod, which they state is not a drought resistant grass. The Board may want to consult with Dean Charter and the Engineering Department to determine whether there is a type of grass that is both drought resistant and establishes quickly to prevent erosion.***

The Tree Warden, Dean Charter, is comfortable with the installation of sod, but only in an instance where the subsurface is prepared correctly. The Tree Warden would be comfortable with the installation of sod as long as a minimum base of 6"-10" of loam is installed under the sod. This detail should be clearly shown and identified on the landscape plan. Additionally, there is a comment identified on Page 6 of 8 which refers to topsoil. It is the 3<sup>rd</sup> comment under the "Grass" notes which the Tree Warden would like to be modified to read loam instead of topsoil.

1/19/10 – The landscape detail which was requested to be added showing the 6-10" of loam to be provided beneath the sod has not been provided. However, a note has been added indicating that sod will be installed over 9" (inches) of loam. The wording which previously identified "topsoil" has also been modified to now read "loam".

2/19/10 - No further comment necessary.

- a. The side yard setbacks listed on Plan Sheet 2 (Master Plan) are different from the setbacks shown on Plan Sheet 7 (Site Development Plan). The side yard setbacks should be consistent on all Plan sheets.

*The applicant's engineer responded that the data is inconsistent between plan sheets because one sheet is based on the Town's GIS data which is inaccurate.*

*The Town's GIS data should not be used for development plans. The Town GIS website states on its front page:*

*"Areas depicted by this System are approximate, are for illustration purposes only and do not take the place of a professional survey. The data are not necessarily accurate to mapping, survey, or engineering standards. Areas depicted by this System are not suitable for site-specific decision-making and have no legal bearing on the true shape, size, location, or existence of a geographic feature, property line, or political boundary line representation."*

*It is the responsibility of the applicant's engineering/surveying firm to provide accurate surveys of the development site in order for Town boards/committees and staff to determine compliance with regulations and the full implications of a proposal.*

*Staff cannot complete its review of the project until surveys of the property have been completed, certified by a professional land surveyor, and shown accurately and consistently on all plan sheets/application materials.*

***It appears the property has now been surveyed since plan sheets 2 and 3 are stamped by a professional land surveyor and setbacks are consistent on plan sheets. However,***

***the professional land surveyor should certify/stamp all plan sheets that show existing conditions information (i.e. elevations, existing houses, setbacks, etc.), which are most plan sheets.***

This item has not yet been addressed by the applicant.

1/19/10 – All submitted sheets have now been stamped, signed and dated 1-6-10 by the Land Surveyor of record for the project.

2/19/10 - No further comment necessary.

- b. The applicant should consider planting some landscaping between Units 1 and 2 and between Units 3 and 4 to help provide screening and privacy between the units since windows are proposed on the ends of each unit.

*Landscaping has been added to the plan between the units to provide screening and privacy.*

*After re-examining the application materials, staff has concluded that much of the site will be cleared, leaving very little vegetation between the project and the properties north and east of the site (the Tuttle Drive neighborhood). Additional screening should be provided around the perimeter of the property to minimize the visual impacts of the project on these neighboring properties.*

***Additional landscaping has been provided on the 11/2/09 plan near the units on-site, around the perimeter of the site, and on abutters' properties. The only remaining question is – will 8' high (at time of planting) evergreen trees provide screening for abutters once the trees are mature? I do not know much about trees, but I have noticed that some mature evergreen trees do not have branches at the bottom of the tree; making screening minimal.***

The Tree Warden, Dean Charter, would be comfortable with the installation of either the Canadian Hemlock or arborvitae as an adequate screening material. The use of Pine trees is not an acceptable screening material. Over a longer period of time, the Canadian Hemlocks and arborvitae provide a denser screen/buffer at grade level than pine trees. As Pine trees grow and mature they lose their bottom branches and only the trunk of the tree is left.

1/19/10 – The landscape plan indicates that arborvitae plant material is to be installed between units 1 and 2 & 3 and 4.

2/19/10 - No further comment necessary.

- c. It appears that most common driveway standards in the Acton Zoning Bylaw (Section 3.8.1.5) would need to be waived if the project proceeds as proposed. The waiver request in Section 5 of the Application should be changed to include all of Bylaw Section 3.8.1.5. Planning Department staff defers to the Acton Fire Department and Acton Engineering Department for comments regarding access and traffic flow to/from the site and on-site.

*The applicant has now asked for a waiver from Bylaw Section 3.8.1.5 and added a SU-30 vehicle turning area to the plan. Staff still defers to the Acton Fire Department and Acton Engineering Department for comments on access and traffic flow.*

***The applicant's engineer letter (11/2/09) discusses emergency vehicle access under "Engineering Department, Item 1." Planning Department staff continues to defer to the Engineering Department to determine whether the proposal satisfies access/traffic safety concerns.***

***On plan sheet 3 (11/2/09 plan), a "7' wide access and utility easement" is shown between Units 3 and 4 leading to Parcel A. Staff does not understand why the easement (1) is needed since the Pine Ridge Road common driveway abuts Parcel A, and (2) is***

**labeled as 7' wide since it appears to be 14' wide (and 14' wide would seem more appropriate/adequate). This should be clarified by the applicant.**

This item has not yet been addressed by the applicant.

1/19/10 – The proposed SU-30 turn around at the rear of the property IS NOT satisfactory to the Fire Chief as currently depicted. Further modifications to the pavement configuration are necessary in order to permit fire apparatus to maneuver in and out of the site.

2/19/10 – The applicant has submitted revised drawings dated February 1, 2010 which adequately address the Fire Chief and the Engineering Department's concerns regarding this matter. See email from Fire Chief dated February 18, 2010 as well as email from Engineering Department dated February 1, 2010. No further comment necessary.

The current configuration of pavement in front of units #1 & 2 does permit fire apparatus to adequately gain access to and from the site. However, the current configuration creates an expansive amount of asphalt in front of Unit #1 (+/- approximately 30'-0" in width). Another alternative to achieve the same result, would be a small widening of the existing driveway and modification to the radii of pavement where Pine Ridge Road and Central Street meet could reduce the need for the expansive asphalt area.

2/19/10 – The Fire Chief and Engineering Department conclude that this layout is acceptable. No further comment necessary.

- d. It is unclear where Pine Ridge Road will end and Marsh View Way will begin (Marsh View Way is referenced in the legal documents). It is also unclear who will maintain Pine Ridge Road if this project is built. Reading through the deeds, it appears the current property owner (Micol) and the owner(s) of tax map G-2, parcel 123-1, both have rights to use Pine Ridge Road. Does the owner of G-2/123-1 have to sign off on the proposed changes to Pine Ridge Road? This may be a Town Counsel question. Marsh View Way should be labeled on the Plans and the differences between the two access ways (and maintenance responsibilities of each) should be clarified in the legal documents.

*The legal documents and/or the plan still need to be amended to distinguish between Pine Ridge Road and Marsh View Way and the maintenance responsibilities for each.*

*Town Counsel addressed staff's question regarding if the property owner of G-2/123-1 has to sign off on the proposed changes to Pine Ridge Road (please see Counsel's memo dated 10/16/09).*

***The revised legal documents (received 11/9/09) address Planning Dept. staff concerns. However, staff defers to Town Counsel for a complete review of all legal documents.***

1/19/10 – Planning Department Staff would still defer to Town Counsel for a thorough and complete review of all legal documents pertaining to this comprehensive permit.

- f. In the "Declaration of Common Driveway Covenant..." (Declaration) (Section 3 of the Application), Sections II(B) and VI(g) need to be revised to refer to this project; not Richardson Crossing.

*This issue has not been addressed.*

***This issue has now been addressed.***

***While re-reviewing the legal documents and plan, staff realized on Plan Sheet 3 (11/2/09 - Recordable Plan), the note stating "properties are subject to all covenants, restrictions, and easements recorded herewith" is too general. The note should specify***

***the title, recording information, and purpose of each document (Acton Comprehensive Permits Rules and Regulations (Rules) Section 3.14.3.11).***

This item has not yet been addressed by the applicant.

1/19/10 – This item has now been addressed.

2/19/10 - No further comment necessary.

- h. In summary, this is a project that seems to fit without much needed justification into the existing neighborhood due to its small scale, moderate density, and single-family style. The biggest issues related to this project appear to be regarding access (see comments c.-e. above and any comments from the Acton Fire and Engineering Departments) and septic systems (see memo from Justin Snair, Acton Health Department, to Scott Mutch). If these issues can be resolved, this sort of 40B project is one good model that the Town might embrace for certification maintenance purposes should it ever succeed in reaching or exceeding the 10% threshold.

*In my opinion, the most significant issues that remain related to this project are:*

- *The site still has not been surveyed; therefore, compliance with Town Bylaws and regulations cannot be determined (see comment a. above);*
- *Outstanding Acton Fire, Engineering, and Health Department public health, safety, and welfare issues, if any, that still need to be addressed.*

*The public hearing should be continued until at least these issues are resolved.*

***At the previous hearing, Staff was asked to re-review the proposed FAR.***

1/19/10 - Staff has re-reviewed the submitted floor plans as they relate to calculating Floor Area Ratio for the proposed project. While the numbers are not exact, the project as currently proposed, does exceed the .25 FAR for projects which are outside of the Village Centers and Kelley's Corner. However, the .25 FAR is just a guideline for the BOA to refer to. It is the discretion of the BOA as how to proceed in this regard.

2/19/10 - No further comment necessary.

***The most significant planning-related issues related to this proposal have been addressed. The remaining outstanding planning issues can become conditions of a Board decision if the Board agrees.***

1/19/10 - Staff would recommend that any decision being drafted or rendered by the Board of Appeals have as few conditions as possible. Any and all outstanding items from any municipal discipline which require plan changes, modifications or additions, should be addressed and made by the applicant prior to the public hearing being closed or any Decision being rendered.

2/19/10 - No further comment necessary.

***However, if any other Town department or review agency still has significant health, safety, and/or legal concerns with the proposal (e.g. the Engineering Department and Fire Department with emergency access, the Health Department with sewage disposal, Town Counsel with legal documents, etc.), the Planning Department recommends continuing the public hearing.***

1/19/10 - This may still be the case, and/or necessary, pending the completion and submission of other Department's reviews.

2/19/10 - No further comment necessary.

**NOTE:** As per the Executive Office of Housing and Economic Development, 760 CMR 56, "The Board shall open a hearing within 30 days of its receipt of a complete application, and it shall thereafter pursue the hearing diligently. The Board shall open hearings for Projects in the order in which a complete application is filed. In order to further the purpose of M.G.L. c.40B, §§ 20 through 23 to provide a streamlined permitting process that overcomes regulatory barriers to the development of Low or Moderate Income Housing, a hearing shall not extend beyond 180 days from the date of opening the hearing, presuming that the Applicant has made timely submissions of materials in response to reasonable requests of the Board that are consistent with its powers under 760 CMR 56.05, except with the written consent of the Applicant."

Although the official Comprehensive Permit application was submitted to the Town on July 29, 2009, due to scheduling conflicts and with the applicant's acceptance, the hearing was scheduled for the first available date in September 2009. The Board opened the hearing on September 14, 2009 and therefore, based upon the above indicated timeframe, the 180 day period will expire on March 13, 2010.

**Kristin Alexander**

---

**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

---

**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

9/14/2009

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

Ryan D. Pace  
ANDERSON & KREIGER LLP  
One Canal Park, Suite 200  
Cambridge MA 02141

Direct Dial: 617-621-6528  
Direct Fax: 617-621-6628

Main number: 617-621-6500  
Main Fax: 617-621-6501

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# Acton Board of Health

472 Main St.  
Acton, MA 01720  
Phone: (978) 264-9634  
Fax: (978) 264-9630  
Email: Health@acton-ma.gov



**Public Health**  
Prevent. Promote. Protect.

Doug Halley, Health Director

To: Scott Mutch, Planning Dept.  
From: Justin Snair, Health Dept.  
RE: 93 Central St. Ver.1/6/10

January 21, 2010

The Acton Health Dept. has reviewed the proposed Comprehensive Permit 40B application for 93 Central St. The following issues were found:

1. In accordance with 310 CMR 15.290 - A Sewage Disposal System serving 2 or more facilities that resulted from division of facility shall be deemed a Shared System
2. Use of such Shared System requires the following:
  - a. Approval of the Local Approving Authority (Acton Board of Health) pursuant with 310 CMR 15.290(1)
  - b. Proposed operation and maintenance for system pursuant with 310 CMR 15.290(2)(b)
  - c. Description of form of ownership pursuant with 310 CMR 15.290(2)(c)
  - d. Description of financial assurance mechanism pursuant with 310 CMR 15.290(2)(d)
3. Pursuant with 310 CMR 15.292(a), a proof plan must be shown indicating the design flow from the facility or facilities to be served by the shared system does not exceed the design flow which could have been constructed in compliance with 310 CMR 15.000 with out the use of a shared system. Said proof plan requires the following:
  - a. Soil suitability testing, pursuant with 310 CMR 15.101 through 310 CMR 15.107 for each lot resulting from division of facility.
  - b. Delineated reserve area of land for each facility, with a demonstrated capacity for subsurface disposal upon which no permanent structure be constructed.
4. Prior to construction of any shared system, the applicant shall submit to the MA DEP (Department) the written approval of the local Approving Authority and said application for the shared system shall be deemed approved by the Department only when the provisions of 310 CMR 15.293 are satisfied.

✓

## Cheryl Frazier

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**From:** Robert Craig  
**Sent:** Friday, January 22, 2010 11:28 AM  
**To:** Cheryl Frazier; Scott Mutch; Corey York  
**Subject:** Board of Appeals Hearing #09-03-Marsh View LLC, 93 Central Street- 40B Comprehensive Permit  
**Importance:** High

Good Morning ,

After further review of the latest version of the above named plan, and consultation with Scott Mutch and Corey, I would offer the following comments. The turn-around at the rear of the project, was revised after consulting with myself and I was of the opinion that it could work for SU-30 apparatus, with a 3 point turn. Apparently the applicant's engineer feels that this is the case, however after placing templates on the plan yesterday , I am not sure that this is so and some additional revision may be required. The main entrance to the site has been widened to provide sufficient turning and access for an SU-30 vehicle to at least enter the first drive to the left. Corey, has suggested an alternative approach. I am fine with either as long as my objectives of access to the drive can be accomplished.

Robert C. Craig  
Fire Chief  
Acton Fire Department  
978-264-9645  
978-266-2885(FAX)

## Cheryl Frazier

---

**From:** K. Kozik [kiplaw@earthlink.net]  
**Sent:** Monday, March 01, 2010 8:11 AM  
**To:** Roland Bartl; Scott Mutch  
**Cc:** Cheryl Frazier  
**Subject:** Fw: RE: Acton/GenZBA - 40B procedural question

FYI

-----Forwarded Message-----

>From: "Stephen D. Anderson" <SAnderson@AndersonKreiger.com>

>Sent: Feb 28, 2010 7:13 PM

>To: "K. Kozik" <kiplaw@earthlink.net>

>Subject: RE: Acton/GenZBA - 40B procedural question

>

>Hi Ken:

>

>Sorry I was not able to get back to you earlier. The new 40B

>regulations provide as follows (760 CMR 56.0(8)(a)):

>

>"The Board shall render a decision, based on a majority vote of the

>Board, within forty days after termination of the public hearing,

>unless such time period is extended by written agreement of the Board

>and the Applicant. The hearing is deemed terminated when all public

>testimony has been received and all information requested by the Board

>that it is entitled to receive has been submitted. In making its

>decision, the Board shall take into consideration the recommendations

>of Local Boards, but shall not be required to adopt same. The Board

>shall file its decision within 14 days in the office of the city or

>town clerk, and it shall forward a copy of any Comprehensive Permit to

>the Applicant or its designated representative and to the Department when it is filed."

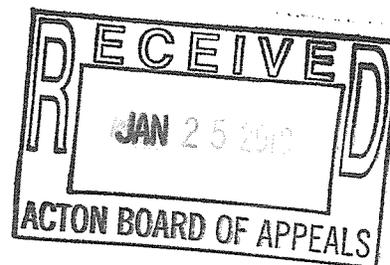
>

>Steve

**Roland Bartl**

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**From:** Ryan D. Pace [rpace@AndersonKreiger.com]  
**Sent:** Monday, January 25, 2010 4:58 PM  
**To:** Roland Bartl  
**Cc:** Matthew Roberts; Stephen Anderson  
**Subject:** ACT/GenZBA - 40B Projects on Central Street  
**Attachments:** Document.pdf



Roland -

As promised, here are handwritten comments on the Declaration of Common Driveway Covenant and Shared Maintenance Agreement for Marsh View. In the interest of time, we have not separately commented on the covenant and agreement for Richardson's Crossing because the draft covenant and agreement for that development are substantially similar to the draft that is attached (of course, the following comments should be addressed in the documents for both of these projects). As I mentioned previously, it is our opinion that substantial revisions are required in both the Marsh View and Richardson's Crossing documents.

As always, please feel free to call or e-mail with any questions.

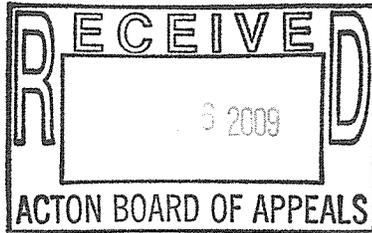
Ryan

Ryan D. Pace  
ANDERSON & KREIGER LLP  
One Canal Park, Suite 200  
Cambridge MA 02141

Direct Dial: 617-621-6528  
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[actonsurvey@actonsurvey.com](mailto:actonsurvey@actonsurvey.com)

October 14, 2009

ASE 6730

Tom Tidman, Director  
Conservation Department  
472 Main Street  
Acton, MA 01720

Re: 93 Central Street  
Marsh View 40 B Development

Dear Tom:

Thank you for the opportunity to meet with you at 93 Central Street and review the delineation of the bordering vegetated wetlands on the adjacent property.

I believe that we agreed that we have delineated the wetlands correctly and that the project as proposed will not require the alteration of wetlands. While the wetlands are located off our property and no alterations to the wetlands will occur, a Notice of Intent under the Wetlands Protection Act will be required as alterations are proposed within the 100 foot buffer zone.

Very truly yours,  
Seth Donohoe

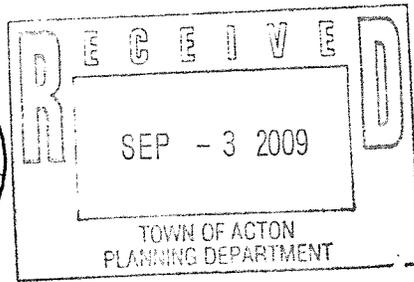
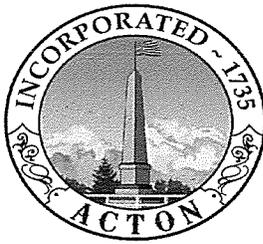
for:  
Acton Survey & Engineering, Inc.

cc: Acton Zoning Board of Appeals  
Marsh View, LLC

*Board of Appeals:*

*I walked 93 Central Street with Seth Donohoe  
on October 14<sup>th</sup>, 2009. The wetlands as flagged  
are accurate.*

*Tom Tidman 10/16/09*



TOWN OF ACTON  
472 Main Street  
Acton, Massachusetts, 01720  
Telephone (978) 264-9632  
Fax (978) 264-9630

Building Department

INTERDEPARTMENTAL COMMUNICATION

**To:** Fire Department, Water District, Conservation Commission, Board of Health, Planning Department, Engineering Department, Municipal Properties, Building Department, Board of Selectmen, Acton Community Housing Corporation, Acton Housing Authority, Design Review Board, Transportation Advisory Committee, Recreation, and Finance Committee.

**Date:** August 3, 2009

**From:** Cheryl Frazier, Board of Appeals Secretary

**Subject:** Board of Appeals Hearing #09-03  
Marsh View LLC 93 Central Street

I am in receipt of a Board of Appeals **40B Comprehensive Permit** application for the property located at 93 Central Street, Acton MA. The applicant is proposing four single family dwelling units with one being an affordable unit.

Please provide your comments to Scott Mutch in the Planning Department and cc; Cheryl Frazier, Board of Appeals Secretary no later than August 24, 2009.

Upon completion of your review, if you no longer need the application and plans please return them to the Building Department.

Scott:

- (i) We will need more information regarding the location of the off-site wetlands. "Assumed edge of wetlands" is not enough to base our comments on.
- (ii) Difficult to determine from the simplicity of the plan, whether or not they meet the requirements of DEP Stormwater guidelines.
- (iii) Has an actual survey been done of this property? Is the neighbor's leaching field under the driveway?

Will be addressed

Will be addressed

Tom Tidman.

MEMORANDUM

TO: Acton Board of Appeals  
FROM: Stephen D. Anderson, Town Counsel  
DATE: September 14, 2009  
RE: Application for a Comprehensive Permit  
93 Central Street – Marsh View, LLC

*defendant  
meet again*

---

You have asked for a brief review of the Application for a Comprehensive Permit at 93 Central Street, the Marsh View project.

**1. Jurisdictional Requirements**

There are three basic jurisdictional requirements for an applicant to be eligible to submit an application to the Board of Appeals for a Comprehensive Permit:

- (a) The Applicant shall be a public agency, a non profit organization, or a Limited Dividend Organization;
- (b) The Project shall be fundable by a Subsidizing Agency under a Low or Moderate Income Housing subsidy program; and
- (c) The Applicant shall control the site.

To satisfy the jurisdictional pre-requisites, the Applicant has offered at Tab 1 of its Application the following information:

- 1. A Certificate of Organization for Marsh View, LLC from the Massachusetts Secretary of State's Office;
- 2. A draft Regulatory Agreement for a Comprehensive Permit Project in which funding is provided other than through a state entity (the NEF Ownership Regulatory Agreement form dated 12/2/2008);
- 3. A Project Eligibility Letter dated June 23, 2008 from the Massachusetts Housing Finance Agency to Julian J. D'Agostine of Westchester Company regarding the Marsh View Project, with Attachment 1 (MassHousing's findings with respect to the Project);<sup>1</sup>

---

<sup>1</sup> The exact relationship between Westchester Company, Inc. (named in the Project Eligibility letter) and Marsh View, LLC (the Applicant to the ZBA) is not readily apparent from the face of the documents submitted in support of the jurisdictional pre-requisites. According to the Certificate of Organization, Julian J. D'Agostine III is the Manager of Marsh View, , LLC. According to the latest Annual Report for Westchester Company, Inc., dated



4. A letter from Westchester Company, Inc. to MassHousing Finance Agency dated June 18, 2009 seeking to modify the approved ownership status from Condominium Form of Ownership to Fee Simple Ownership;<sup>2</sup> and
5. A Certificate of Title prepared by Gould Law Offices dated July 24, 2009 certifying that record title to the subject property is held by Charles D. Micol; and
6. A Purchase and Sale Agreement between Charles D. Micol and Marsh View, LLC dated [M]ay 4, 2009 with an anticipated closing dated of November 15, 2009.

Jurisdictional Pre-requisite 1(a)

According to MassHousing's findings, "the applicant will be organized as a Limited Dividend Organization and it will meet the general eligibility standards for the NEF Housing Program." Under the 40B Regulations, 760 CMR 56.02, a "Limited Dividend Organization" is "any entity which proposes to sponsor a Project under the M.G.L. c.40B, §§20 through 23; and is not a public agency or a nonprofit; and is eligible to receive a Subsidy from a Subsidizing Agency after a Comprehensive Permit has been issued and which, unless otherwise governed by a federal act or regulation, agrees to comply with the requirements of the Subsidizing Agency relative to a reasonable return for building and operating the Project."

Accordingly, to the extent that Marsh View, LLC is such an entity which has proposed such a project subject to such an agreement, Marsh View, LLC is a Limited Dividend Organization and the first jurisdictional pre-requisite is satisfied.

Jurisdictional Pre-requisite 1(b)

According to MassHousing's findings, the Project "is eligible under the NEF Housing Subsidy Program and provides 25% of low-income limits for households earning at or below 80% of the Area Median Income."

Accordingly, the Project is fundable by a Subsidizing Agency under a Low or Moderate Income Housing subsidy program.

Jurisdictional Pre-requisite 1(c)

According to MassHousing's findings, "the Applicant controls the entire 1-acre site under an executed Purchase and Sale Agreement." The P&S is between the owner (Charles D. Micol) and the Applicant (Marsh View, LLC) and has an anticipated closing dated of November 15,

---

March 16, 2009 for the year ending December 31, 2008, Julian J. D'Agostine, III is the Treasurer, Secretary and a Director of Westchester Company, Inc. As is common with 40B projects, it is reasonable to infer that one of the principals of Westchester Company, Inc. has formed Marsh View, LLC as a limited liability company specifically to undertake this 40B project. To ensure that the Board's record is clear, however, I recommend that the Board ask the Applicant to clarify the relationship between Westchester Company, Inc. and Marsh View, LLC.

<sup>2</sup> I recommend that the Board require the Applicant to submit MassHousing's response to this letter.

2009. If the Board's hearings go beyond that time, the Board should require the submission of an extension of the P&S.

## **2. Submission Requirements**

The application generally satisfies the Submission Requirements of 780 CMR 56.05 in that the application generally contains the following information; however, to the extent the Board considers it necessary, the Board may request reasonable additional information relevant to its determination:

- (a) Preliminary site development plans;
- (b) Information on existing site conditions and conditions in the surrounding area (contained in the preliminary site development plans as allowed by the regulations);
- (c) Preliminary, scaled, architectural drawings;
- (d) A tabulation of proposed buildings and ground coverage;
- (e) A preliminary subdivision plan;
- (f) A preliminary utilities plan;
- (g) The Project Eligibility letter, and
- (h) A list of requested Waivers.

## **3. Consultant Review**

If the Board determines that, to review the application, it requires technical advice in such areas as civil engineering, transportation, environmental resources, design review of buildings and site, or review of financial statements that is unavailable from municipal employees, it may employ outside consultants whose reasonable fees are funded by the applicant.

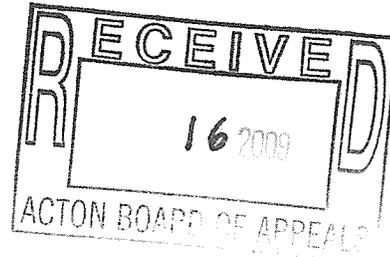
However, given the small size, nature and setting of this Project, the Board is not obligated to engage such consultants and the Board may rely on town staff for the necessary expertise to address issues of local concern.

## **4. Other Matters**

In the event the Board is inclined to approve the Project (with conditions), we will review the proposed Regulatory Agreement and other 40B project documents in more detail.

MEMORANDUM

TO: Kristin Alexander  
FROM: Ryan D. Pace  
Mina S. Makarious  
DATE: October 16, 2009  
RE: Comprehensive Permit Application  
93 Central St. – Marsh View, LLC



In your email of September 17, 2009, you explained that the Acton Board of Appeals requested legal analysis and further clarification concerning the following questions in the context of the captioned project. This memorandum contains that analysis and clarification.

1. Does the applicant have the right to use Pine Ridge Road for access to Lot 2A, as shown on the project plan?
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?
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?
4. Does paving the remainder of Pine Ridge Road—thereby doubling the amount of paved surface on the road—constitute a reasonable repair and improvement of the easement?
5. What other repairs and improvements would be considered reasonable presently and over time after the site is completed?
6. Do the owners of 89 Central Street have to sign the comprehensive permit application for the Marsh View project because they own the Pine Ridge Road parcel?

**1. Does the applicant have the right to use Pine Ridge Road for access to Lot 2A, as shown on the project plan?**

As set forth in the e-mail that Ryan sent to you on September 14, 2009, the applicant may use Pine Ridge Road for access to the property at 93 Central Street provided the applicant acquires title to that property from Charles D. Micol, the record owner. In a deed dated April 18, 2006, Mr. Micol acquired ownership of 93 Central Street from Brian J. Matthews, and Mr. Micol also acquired the right to use Pine Ridge Road “for all purposes for which streets and ways may



be used in the Town of Acton.” We presume that any transfer of 93 Central Street to the applicant will include the right to use Pine Ridge Road for access to Lot 2A.

We have not completed a detailed review of the chain of title to the Micol property and Mr. Micol’s easement rights in Pine Ridge Road. The applicant’s attorney should supplement his title certification by including a certification with respect to the validity and enforceability of Mr. Micol’s easement rights in 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?**

Based on the facts that you have detailed, we believe that a court will conclude that the use of Pine Ridge Road by three homes in addition to the home at 93 Central Street that currently uses Pine Ridge Road for access will not constitute overburdening of the easement.

The limits to which any right of way can be put to use “are not set by any per se rule, but rather by application of a reasonableness standard to the specific facts of each case.” King v. Nickerson, 3 Land Court Rptr. 26, 28 (1995). Where “use of an easement becomes so intensive that it reaches the point of constituting a tort” it “can be construed as overburdening the easement.” Lombardi, Bailin, Hovey, & Pill, Massachusetts Easements and Land Use Restrictions III-16 (Professional Education Systems Institute 2003). An “increase in the number of persons who [use] the easement in connection with going to and from” a property is “a change in degree only and would not overload the easement.” Guleserian v. Pilgrim Trust Co., 331 Mass. 431, 436 (1954). See also Dunham’s Corner Residents Assn., Inc. v. West, 12 Land Court Rptr. 163, 168 (2004) (holding easement not overburdened where the owners of the new lots “will use the [easement] in a manner similar to” other users of the easement).

Massachusetts courts have applied these principles broadly, allowing substantially more lots to utilize an easement in a number of cases. In Lane v. Zylinski, for instance, the Land Court held that the addition of *twenty* units to a lot through a Chapter 40B development did not constitute an overburdening of an easement. 12 Land Court Rptr. 127, 131 (2004). In Barrett v. Lyons, the Land Court similarly upheld a fivefold increase in the use of the easement. 4 Land Court Rptr. 235, 237 (1996). In that case, the easement owner added eight condominiums to a lot that did not originally abut the easement. However, since the non-abutting lot had come into common ownership with an appurtenant lot, the court found the easement could be used by the eight new units. Id. See also Dunham’s Corner, 12 Land Court Rptr. 163, 168 (2004) (“I do not find allowing the owners of the five lots to use the West Easement to be an excessive increase in use or burden on the servient estate.”) The Marsh View project, by comparison, adds only three units to the use of Pine Ridge Road. This increase is relatively small compared to the increases in Lane, Barrett, and similar cases and, as a result, we believe that a court will determine that the increase is reasonable and that it does not constitute overburdening of the easement.

**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?**

Because the applicant has a right to use Pine Ridge Road, the applicant also has a right to make reasonable repairs and improvements to the road, including paving the road, and the applicant does not need to obtain permission from the owners of Pine Ridge Road and others entitled to use it before making improvements. Prescott v. Williams, 46 Mass. 429, 435 (1843) (one who has easement also has “right to enter upon the land below, and in a reasonable and proper manner do all acts necessary to secure the enjoyment of his easement); Stagman v. Kyhos, 19 Mass. App. Ct. 590, 593 (1985) (paving of portion of an easement “did not constitute a trespass” under settled law because “owners of the dominant easement have a right reasonably to improve the surface of the way over which they have the right to pass.”).

The right to use a private road includes the right to make reasonable repairs and improvements thereon. Hodgkins v. Bianchini, 323 Mass. 169, 173 (1948). See also Chatham Conservation Foundation v. Faber, 56 Mass. App. Ct. 584, 590(2002) (“the right to make reasonable repairs or improve the passageway is incidental to the landowner’s right to pass and repass.”). “Whether improvements made are reasonable in view of the equal rights of others is largely a question of fact.” Guillet v. Livernois, 297 Mass. 337, 341 (1937). In determining reasonableness, “the usual and customary mode” of use of such ways in question “is good evidence.” Prescott v. White, 38 Mass.341, 342-343 (1838).

Maintaining a smooth surface and paving a right of way have routinely been held to constitute reasonable repairs and improvements. Glenn v. Poole, 12 Mass. App. Ct. 292, 296 (1981); Janetka v. Wilcox, Mass. App. Ct., No. 06-P-1099, at 2 (Oct. 17, 2007) (“Grant of a general right of way confers on the grantee rights to maintain the surface of the way, including paving of the surface, to install utility lines and to have ingress and egress.”).

The applicant will be entering Pine Ridge Road at its own risk to make improvements, and the applicant may be liable for any resulting damage to persons or property. Prescott v. Williams, 46 Mass. at 434 (in making repairs, easement owner “bound not only to exercise ordinary care and skill, but also to repair, as far as he could, whatever damage his labors might have caused to the servient tenement.”). See also Lombardi, Bailin, Hovey, & Pill at IV-9 (noting that easement holder may be liable for damage to the servient property or for injuries sustained by others due to negligent repairs and improvements).

**4. Does paving the remainder of Pine Ridge Road—thereby doubling the amount of paved surface on the road—constitute a reasonable repair and improvement of the easement?**

Yes. Paving the entire length and width of a road is considered a reasonable repair and improvement.

Where an easement is created by grant or reservation, the easement holder is entitled to reasonable use of the entire easement. Onorati v. O’Donnell, 3 Mass. App. Ct. 739, 739 (1975); Guillet v. Livernois, 297 Mass. 337, 340 (1937) (holding defendant had right to travel over entire

width of easement). The Land Court has applied this principle to a situation of a partially paved driveway. In Gustenhoven v. Smith, the Land Court held the easement holders had the right to “improve and pave over the entire 30 feet width and 180 feet length of the Easement.” 3 Land Court Rptr. 85, 86 (1995). Even where no road exists at all, the owner of the right of way “has the right to enter upon the servient estate on which no actual way has been prepared and constructed and to make such changes therein as will reasonably adapt it to the purposes of a way.” Walker v. E. William and Merrill C. Nutting, Inc., 302 Mass. 535, 543 (1939). Based on this precedent, the applicant has the right to pave the entire length of Pine Ridge Road as long as doing so is otherwise reasonable. For a discussion of repairs and improvements that are considered reasonable, please see Section 5 below.

**5. What other repairs and improvements would be considered reasonable presently or over time after the site is completed?**

Repairs and improvements are considered reasonable unless they burden the servient estate “to a greater extent than was contemplated or intended at the time of the grant.” Bechis v. Nicholi, Land Court, No. 133123, at 2 (Jan 13, 1992) (citing Doody v. Spurr, 315 Mass. 129, 133 (1943); Codman v. Wills, 331 Mass. 154, 158 (1954)). Although it is impossible to provide an exhaustive list of what may be considered reasonable, there are some common improvements which have regularly been held reasonable.

- (a) Improvements such as paving, clearing limbs from a roadway, smoothing the surface of a way, and placing gravel on a way are typically considered reasonable and incidental to the ability to render the way usable. Glenn v. Poole, 12 Mass. App. Ct. 292, 296 (1981). Providing ingress and egress to those entitled to use the way is also reasonable. Janetka v. Wilcox, Mass. App. Ct., No. 06-P-1099, at 2.
- (b) Safety improvements, such as the addition of guardrails, are also reasonable, especially where required by local laws. Barlow v. Chongris & Sons, Inc., 38 Mass. App. Ct. 297, 300 (1995). See also Stamell v. Hancock, 2004 WL 1924357 at \*6 (citing Glenn for the proposition that “improvements required for safety purposes...fall among the implicit rights of the holder of a prescriptive easement.”). “Flaring” the corners of a road “so that access can be less abrupt” and “so that the field of vision of drivers . . . is enlarged” is similarly reasonable. Glenn, 12 Mass. App. Ct. at 296.
- (c) Changing the grade of a way, where a grade is already established, is normally considered unreasonable. Draper v. Varnerin, 220 Mass. 67, 70 (1914). However, where a road is “unimproved and impassable” the owner of an easement can alter the level and grade so that “a usable way could be built.” Guillet, 297 Mass. at 341.
- (d) Abutters on a private way who “have by deed existing rights of ingress and egress upon such way or other private ways” have a statutory right to “place, install or construct in, on, along, under and upon said private way or other private way pipes, conduits, manholes and other appurtenances necessary for the transmission

of gas, electricity, telephone, water and sewer service.” G. L. c. 187 §5. This right is limited to installations which do not “unreasonably obstruct said private way” or “interfere with or be inconsistent with the existing use by others of such way or other private ways.” G. L. c. 187 § 5.

**6. Do the owners of 89 Central Street have to sign the comprehensive permit application for the Marsh View project because they own the Pine Ridge Road parcel?<sup>1</sup>**

No. Acton's Rules and Regulations for Comprehensive Permits contain relatively common provisions that require owners of properties that will be developed for affordable housing to sign applications that have been submitted by developers who do not own the underlying land. In accordance with this requirement, the applicant has obtained the signature of Charles Micol, the owner of Lot 2A, in this case.

In contrast to the provisions that expressly state that an applicant must obtain the signature of an owner of a property that will be developed using a comprehensive permit, the Rules and Regulations for Comprehensive Permits do not explicitly require the signature of the owner of a property that is subject to an easement that will be used for a development. In the absence of such a requirement, the Board of Appeals should not require the signature of the owner of the Pine Ridge Road parcel on the developer's Marsh View application.

As always, please feel free to call or email with any questions.

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<sup>1</sup> The Acton GIS map that is attached as Exhibit A does not show Pine Ridge Road as a separate parcel, nor does it show the correct boundaries of the parcel as illustrated on the plan attached hereto as Exhibit B. We recommend the review of this matter by the Acton Assessor's Department.

**EXHIBIT A**

GIS Plan

89 Central Street, Acton

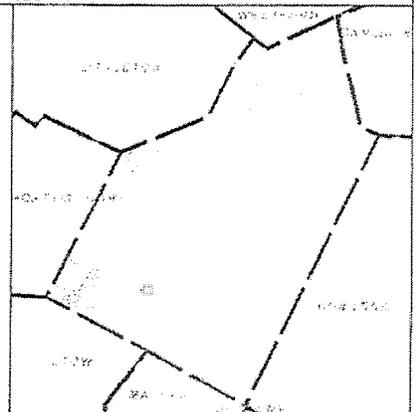


Property Information  
 Property ID G2-174  
 Location 89 CENTRAL ST



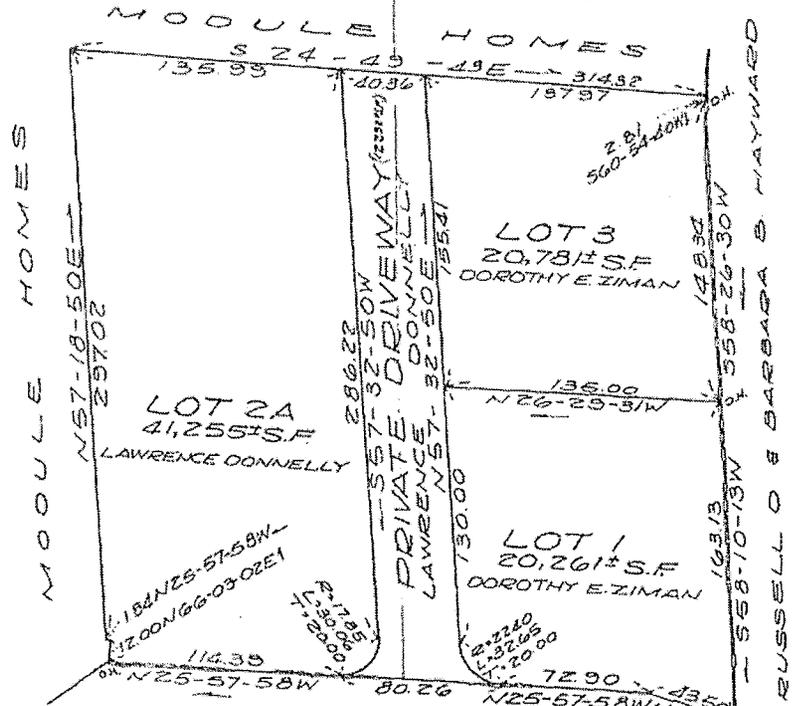
**MAP FOR REFERENCE ONLY  
 NOT A LEGAL DOCUMENT**

This data set/map is for planning purposes only and should not be used for larger scale analysis. The Town of Acton shall not be held liable for any use of the data or images shown on this map, nor is any warranty of accuracy expressed. All uses of this data set/map are subject to field verification.



**EXHIBIT B**

1972 Plan



I CERTIFY THAT THE PROPERTY LINES SHOWN ARE THE LINES DIVIDING EXISTING OWNERSHIP, AND THE LINES OF STREETS AND WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED, AND THAT NO NEW LINES FOR DIVISION OF EXISTING OWNERSHIP OR FOR NEW WAYS ARE SHOWN.

*Harlan E. Tuttle*  
REGISTERED LAND SURVEYOR



*Harlan E. Tuttle*

REFERENCES:  
 FOR DONNELLY OWNERSHIP SEE DEED RECORDED AT MIDDLESEX REGISTRY OF DEEDS SOUTH DISTRICT BOOK 623 PAGE 143  
 PLAN 'LAND IN ACTON, OWNED BY LAWRENCE DONNELLY AND ETHEL O DONNELLY, JUNE 10, 1962, HORACE F TUTTLE, CE SCALE 40 FEET = 1 INCH  
 PLAN OF LAND IN ACTON, MASS. OWNED BY DOROTHY D. ARBOTT SCALE 1/4 INCH = 40 FEET, NOVEMBER 24, 1971, HARLAN E. TUTTLE, SURVEYOR, RECORDED AS PLAN NO. 1397 OF 1971.  
 PLAN OF LAND IN ACTON, MASS. OWNED BY MODULE HOMES, ACTON, MASS. R. DONNELSON, ENGINEER, SCALE 1" = 30' OCT 29, 1971, RECORDED AS PLAN NO. 1333 OF 1971.  
 DEED LAWRENCE DONNELLY TO ALBERT R. ZIMAN AND DOROTHY E. ZIMAN, RECORDED AT MIDD REG. OF DEEDS (30-DIST) BOOK 11606 PAGE 365.

CENTRAL STREET  
(1967 TOWN LAYOUT)

FEES \$6.00  
BY JLF

PLAN OF LAND IN ACTON, MASS.  
 SURVEYED FOR LAWRENCE DONNELLY  
 SCALE 1/4 INCH = 40 FEET  
 JANUARY 7, 1972  
 HARLAN E. TUTTLE, SURVEYOR.

Massachusetts Registry of Deeds, So. Dist. CAMBRIDGE, MASS.  
 Plan Number 43 of 1972  
 Rec'd JAN 14 1972 at 12:40 P.M.  
 With DEED Doc No. 199  
 LAWRENCE DONNELLY  
 MARY E. SILVA  
 Recorded, Book 12143 Page 2

*Harlan E. Tuttle*