



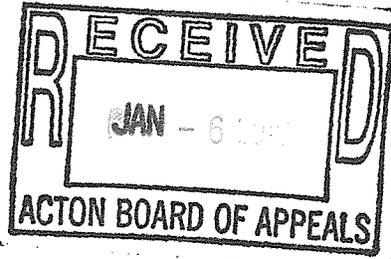
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ASE 6730W161

January 6, 2010

Acton Zoning Board of Appeals  
472 Main Street  
Acton, MA 01720

Re: Marsh View – Hearing 09-03  
93 Central Street



Dear Board Members:

The purpose of this letter is to describe revisions made to the plans for Marsh View in response to comments made at the Public Hearing and by Town Staff.

### ***Headlight Glare***

There appeared to be confusion as to the relationship of the three homes along Tuttle Drive that abut the site and the proposed driveway serving Unit 3 and we have prepared the enclosed "Locus Plan" to show the relationship.

The house at 44 Tuttle is located 130 feet from the end of the pavement provided for the turning of a fire truck and will be substantially screened from headlights by Unit 3.

The house at 42 Tuttle is located 120 feet from the driveway and over 40 feet of woods are to be preserved on Marsh View between the driveway and the property line in a direct line to the 42 Tuttle. To decrease headlight penetration six 6-8 foot tall arborvitae trees are proposed to be planted along the driveway.

The house at 40 Tuttle Drive is located 160 feet from the portion of the driveway from which headlights will be directed towards the back of its garage and additional plantings are not proposed.

We do not believe that additional shielding of headlights from a driveway serving a single family is warranted.

### ***Visual Impact***

The grading along the cross country side walk has been revised so that additional existing vegetation will be preserved. A similar change has been made along the rear of the site.

Units 1 and 2 will be orientated with their rear facades to Central Street and as shown on the attached drawings the basement walls will not be composed of concrete and will have the same siding and trim as the first and second floors.

The homes will be offset from the Central Street pavement a distance of 80 feet and will be six feet above the pavement. The existing vegetation within the right of way will be preserved and six pine trees and three maples trees are to be located between the homes and Central Street.

Houses with rear facades facing streets are an exception, but are present elsewhere in Acton. As an example we point to 2 Joseph Reed Lane that is viewed from Massachusetts Avenue across the Duck Pond. The three houses to the west of 2 Joseph Reed face on the Cedar Terrace common driveway and have their backs to Massachusetts Avenue. The house across from 2 Joseph Reed has its back to Deacon Hunt Drive.

Our client has instructed us to delay the preparation and presentation of the requested street view of the site.

### ***Landscape***

The white pines to be planted in the rear woods have been eliminated as the arborvitaes have been substituted.

The word topsoil has been changed to loam and we have added a note concerning the preparation of the based for sod.

### ***Existing Conditions Plan***

The septic system has been added to the Existing Conditions Plan

### ***Record Plan***

Reference to the Covenants and Restrictions and Zoning Classification have been added to the Record Plan.

### ***Easements***

The necessary easements have been added to the Record Plan.

### ***Tree Lost Analysis***

We have calculated the existing area of woods to be 22,300 square feet or 55 percent of the site and the wooded area to remain to be 5,900 square feet or 14 percent of the site.

### ***Fence for 89 Central Street***

The plans have been revised to show a six foot high fence locate five feet off the edge of the driveway to screen the backyard area of the house at 89 Central.

The wood posts have been moved closer to the septic system vent and we believe that the post will provide adequate protection from vehicles and ploughed snow.

***SU -30 Vehicle Access***

It is our understanding that Chief Craig is satisfied that the proposed driveways are now adequate for emergency vehicles to enter and leave the site.

***Certifications***

All plans have been endorsed by a Registered Professional Land Surveyor even through the endorsement is not required by State Law or regulations or common practice.

***Summary***

It is our understanding that the plans have been revised as required by comments received to date and we will make every effort to revise the plans prior to the next hearing if we receive requests for revisions in a timely manner.

We will meet with Staff if that will expedite resolution of any outstanding issues.

Eleven full scale and eleven reduced scale copies of the plans are enclosed. reduced scale

Very truly yours,  
Mark T. Donohoe, PE

for:

  
Acton Survey & Engineering, Inc.

cc: Marsh View, LLC

BY .....DATE .....

SUBJECT .....

SHEET NO. .... OF.....

CHKD. BY .....DATE .....

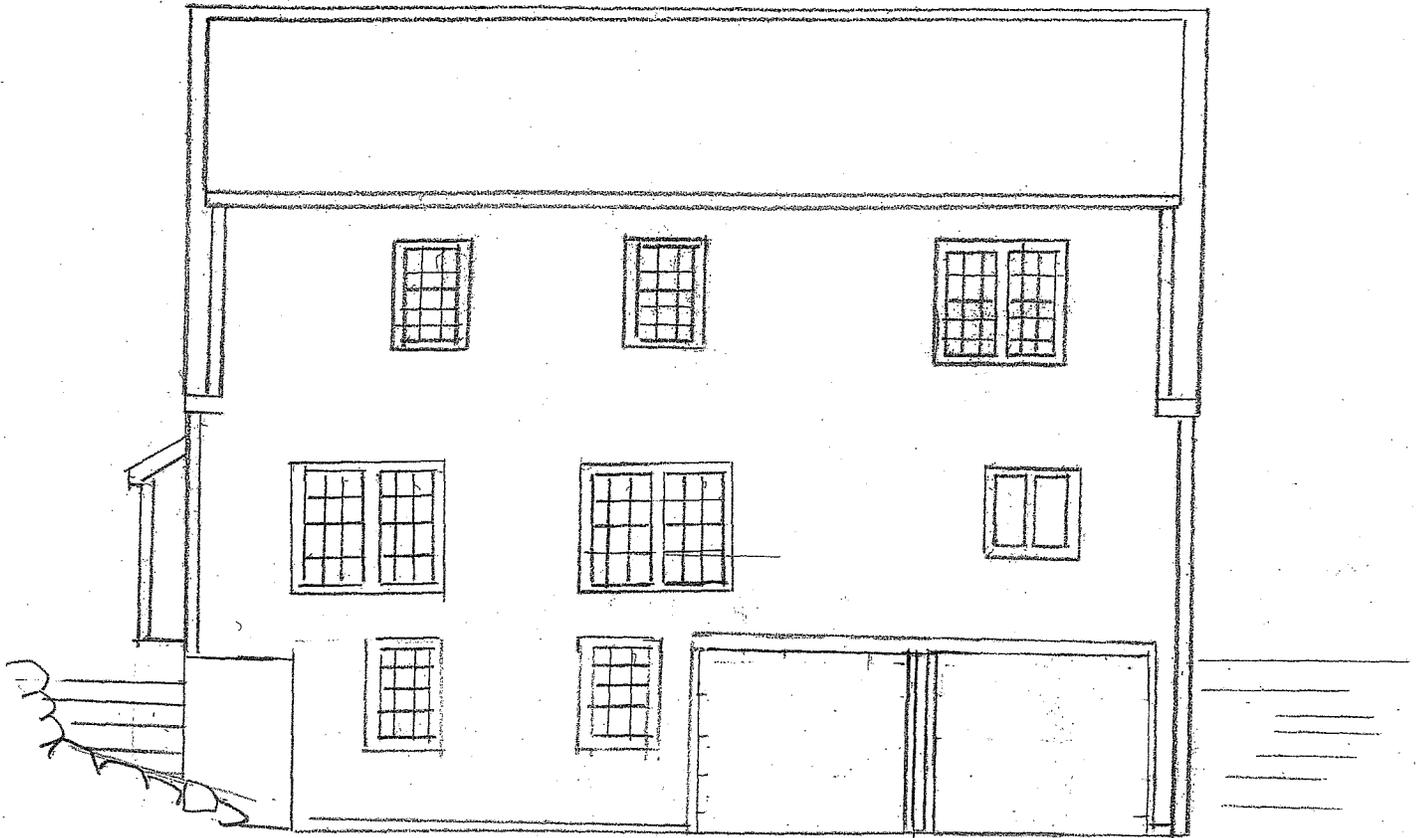
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Rear Façade Unit 2 Marsh View - 1/8" = 1'

Note: Facades are illustrative only, having been prepared by site engineer

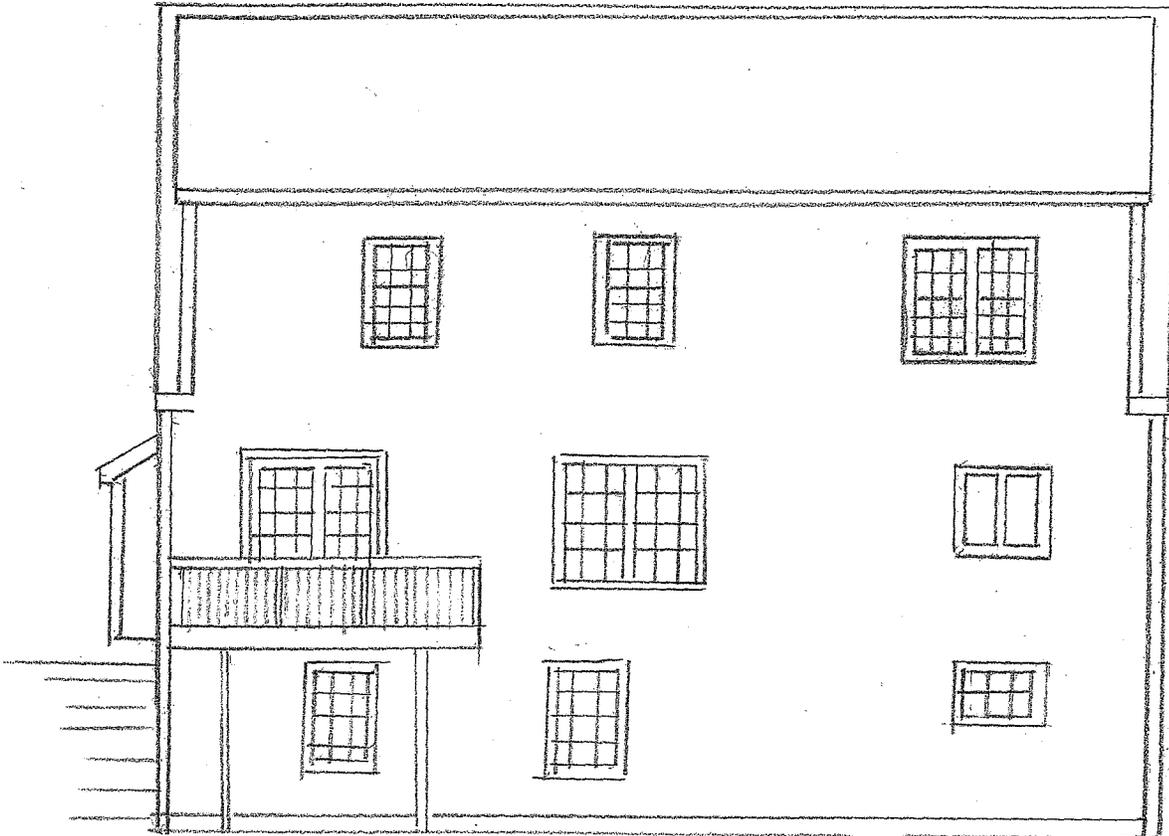
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Rear Façade Unit 1 Marsh View - 1/8" = 1'

Note: Facades are illustrative only, having been prepared by site engineer





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November 2, 2009

ASE 6730

Acton Zoning Board of Appeals  
472 Main Street  
Acton, MA 01720

Re: Marsh View – Hearing 09-03  
93 Central Street

Dear Board Members:

This office has received, through our client, Interdepartmental Communications from the Planning and Engineering Departments, and this letter will respond to their comments that are indicated to not have been answered or completed by the plans revised on September 29, 2009.

This letter utilizes the numbering system presented by the departmental comments.

***Planning Department***

Item 3: The calculation of the Floor Area Ratio on the Master Plan (Sheet 2 of 7) has been revised so as to be based on the Gross Floor Areas shown in the calculations. The Gross Floor Areas do not include garages.

Floor Area Ratio is defined in 1.3.9 as being the Net Floor Area divided by the Developable Lot Area.

Gross Floor Area [1.3.7] does not include interior parking spaces.

Item 6: The trees and shrubs specified should be considered drought resistant but might be adversely impacted if a prolonged period of drought occurs when they are under stress due to other factors, such as just having been planted.

The use of drought resistant grasses remains as being recommended, as sod is not available with drought resistant grass, and seeding with such grasses under certain conditions may not allow sufficient grass cover to be established to prevent erosion.

Item a: The Town's GIS data was only utilized for the preparation of the Master Plan Sheet to show the relationship of the site with other properties, Zoning Districts, streets, etc. This was not intended to replace the use of on-the-ground surveys to determine the legal boundaries of the site or to establish controls for construction. The necessary adjustments have been made in the GIS data.

Item b: It is our understanding that our client has met with abutters, and the Landscape Plan has been revised in an attempt to ameliorate their concerns.

Item c: A turning area for a SU-30 vehicle has been added at the end of the common driveway. The need for access to Unit 2 is addressed in our response to Item 1 of the Engineering Department's comments.

Item h: This item summarized the items that were significant in the reviewer's opinion and our responses are:

- This office has now performed property and topographic surveys and states that the data shown on the plans is correct.
- We believe the common driveway and individual driveways have been designed in conformance with all Town Bylaws, in keeping with good practice, and will provide for safe access to all dwelling units.
- To our knowledge only our recommendation for a use of a geo-grid over the soil absorption system constructed in the Pine Ridge right-of-way has been questioned by the Board of Health. The use of a geo-grid is not necessary and was proposed simply because it might provide some additional protection at a cost of less than \$500. The recommended geo-grid has been removed.
- This office does not know of any health, safety, and welfare issues that have not been addressed.

### ***Engineering Department***

Item 1: Pertains to the common driveway which was revised to provide a turning area for SU-30 vehicles at its end as required by 3.8.1.5 b), and notes that the driveway serving Unit 2 does not provide the necessary pavement layout required for a SU-30 vehicle to enter or exit.

To our knowledge the Fire Department has not commented on the revised drawings.

The Zoning Bylaw, with the exception of number of parking spaces, does not stipulate requirements for driveways serving single-family residences, and 3.8.1.5 requires that driveways serving more than two lots conform to the common driveway standards.

A detail showing the revision to the driveway serving Unit 2 necessary to accommodate a SU-30 vehicle has been added to the Site Development Plan (Sheet 5 of 7). The plans will be revised to increase the area of pavement if required by the Board or Fire Department. The pavement radius on the Central Street side of the driveway's intersection with the common driveway has been increased to 20 feet and the driveway recharge trenches have been designed to allow incidental vehicle traffic.

Given the proximity of Unit 2 to the common driveway and Central Street, we do not believe it necessary for the driveway which provides access for passenger vehicles to be designed to provide access for SU-30 vehicles in one turning movement. The driveway

will allow SU-30 vehicles to egress the house by making several small turning and backing movements.

Item 2: Rather than prepare a plan showing access and utility easements it has been decided that these rights should best be reserved by the Master Deed.

Item 3: As suggested under this item, three soil evaluations were performed by use of a hand auger at equally spaced intervals along each of the driveway recharge trenches. Soils classified as sandy loams were encountered and indications of the estimated high groundwater table were absent from the maximum 3 foot depth reachable by the auger.

These soil evaluations are consistent with the soil observations witnessed by the Board of Health in the area of the soil absorption system and with the parameters considered in selecting the depth and size of the recharge trenches, which have been designed to extend from the surface to a maximum depth of 2 feet.

Item 7: The elevations of the single structure and the slope of the single pipe in the stormwater management system are controlled by the requirements of the catch basin/discharge detail on the Site Development Plan (Sheet 5 of 7).

Pipe elevations and slopes have been added to this detail.

Item 8: Property and topographic surveys have been completed by this office.

Item 10: Has been complied with.

Item 11: The sidewalk to Tuttle Drive is shown as is a portion of the sidewalk across Central Street.

Item 12: All monumentation located during our surveys is now shown on the Existing Conditions Plan (Sheet 4 of 7) and the Site Development Plan (Sheet 5 of 7), and a Recordable Plan (Sheet 3 of 7) showing the proposed individual Lots will be submitted to the Board by November 6, 2009.

Item 17: The culvert in the Central Street right-of-way is now shown on the plans.

Item 19: The edge of bordering vegetated wetlands has been delineated by this office and verified by the Conservation Commission Administrator. A Notice of Intent will be filed with the Conservation Commission by November 6, 2009.

Item 20: Our client has met with the owner of 89 Central Street, and the Landscape Plan (Sheet 6 of 7) shows additional plantings to benefit 89 Central Street.

Item 21: The Existing Facilities note on the Site Development Plan (Sheet 5 of 7) has been expanded to specify the removal of the existing subsurface sewage disposal system.

Item 24: The distance to the water hydrant at 85 Central Street and a note concerning fire protection has been added to the Site Development Plan (Sheet 5 of 7).

Item 30: The existing Pine Ridge Road pavement is shown to be replaced for its full length as indicated by the proposed edge of pavement symbols and notes. A second note has been added to emphasize that this is to occur.

Item 31: All existing utilities are to be removed and there is no need to show locations garnered from archival sources, as these are best located by onsite excavations made by the contractor, who is obligated under DIGSAFE procedures to locate them before the time construction is to commence.

Item 32: The Trench Step Detail shown on the Site Development Plan (Sheet 5 of 7) stipulates the maximum drop, or step, between the bottoms of trench sections to be one foot, and also stipulates a minimum trench depth of 2 feet.

### ***Board of Health***

The use of a geotechnical grid for additional reinforcement over the soil absorption system has been eliminated.

Our on-the-ground instrument surveys have provided an accurate location of the existing SAS vent of the system serving 89 Central Street, and it appears possible that the driveway will not cross the soil absorption system. Plans detailing the subsurface sewage disposal system have been included with the plans previously submitted.

### ***Side and Rear Yard Offsets***

The division of the property into individual lots has resulted in Side and Rear Yard offsets from internal property lines that are less than those stipulated in the Table of Standard Dimensional Regulations. Please accept this letter as our client's request for a waiver, if they have not done so.

The Front, Side, and Rear Yard offsets measured from property lines shared with properties abutting the site conform to the Zoning Bylaw.

### ***Common Driveway***

Please accept this letter as a request for a waiver from the requirements of 3.8.1.5(c) to decrease the width of the gravel subbase to be placed under the driveway shoulders from 3 feet to 1 foot.

The common driveway has been designed to have a width of 18 feet to the end of the existing pavement of Pine Ridge Road, or the first 140 feet. The driveway then gradually decreases to a width of 17 feet at the driveway to Unit 4 and then to 14 feet at the driveway serving Unit 3.

These driveway widths exceed the 12 foot width required by 3.8.1.5(l) and negate the need for gravel subbase under the shoulders as the additional width provided lessens the chance of vehicles traveling outside the pavement area.

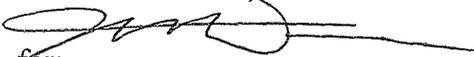
The gravel subbase extends one foot beyond the pavement to support the edge of pavement.

If prior to the continued public hearing the Board or Town Staff should require additional information or copies of plans please notify us.

We would be happy to meet with the Staff to discuss this matter.

Very truly yours,  
Mark T. Donohoe, PE

cc: Marsh View, LLC

  
for:

Acton Survey & Engineering, Inc.



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September 29, 2009

Acton Zoning Board of Appeals  
472 Main Street  
Acton, MA 01720

Re: Marsh View - Hearing 09-03  
93 Central Street  
6730

Dear Board Members:

The purpose of this letter is to respond to communications to the Board concerning the proposed development of the property at 93 Central Street, consisting of four single-family homes served by a common driveway and subsurface sewage disposal system.

Without performing actual on-the-ground instrument surveys, this office, appropriately, did not take responsibility for the accuracy of the data shown on plans prepared by other firms, even though we found the information acceptable for design purposes.

Our client has now authorized this office to undertake the necessary surveys and they should be completed prior to the continued hearing. The performance of these surveys will allow this office to verify construction and certify as to the accuracy of the wetlands demarcation.

For simplicity and ease of reference we will answer each Interdepartmental Communication [IDC] separately.

***Acton Water District***

The water services to each of the houses have been denoted to be 1 inch HDPE [High Density Polyethylene].

***Fire Chief***

The guest parking spaces have been eliminated and a turning area for a SU-30 vehicle has been provided at the end of the common driveway.

The turning area is shown to be comprised of grass pavers, but our client is willing to install the less costly alternative of providing a turning area constructed of bituminous concrete installed to the same standard as other portions of the driveway.

### ***Conservation – Wetlands***

To be comprehensive we are also addressing concerns raised by abutters under this general heading.

A Notice of Intent must be filed with the Conservation Commission prior to any alterations occurring within 100 feet of bordering vegetated wetlands. The wetlands will be demarcated prior to filing the Notice with the Commission, and the accuracy of the demarcation will be determined by the Commission.

We have enclosed a copy of an orthophoto from the MassGIS website which shows the edge of wetlands. The edge of wetlands shown on the site plan was taken from the sewage disposal system plan for 89 Central Street, and as shown, it is similar to that shown on the MassGIS orthophoto.

The MassGIS Website indicates there are no Certified or Potential Vernal Pools in the vicinity of the site. Alterations are allowed in upland areas within 100 feet of vernal pools under the Wetlands Protection Act and the Acton Non-Zoning Wetlands Bylaw.

Field observations by this office have confirmed that the wetlands are approximately as shown and that no alterations to the wetlands are proposed.

Also during field observations, a rock lined drainage swale to the west of the site was found. The swale is located across the cross-country sidewalk and discharges to a culvert under Central Street. Any alterations within 100 feet of the swale are also under the jurisdiction of the Conservation Commission.

The Massachusetts Stormwater Management Standards do not apply to projects consisting of four or fewer dwelling units.

The project is also exempt from the Stormwater Management Standards in that it does not create a new stormwater discharge within 100 feet of a wetland resource area.

The project has been designed to conform to the Standards to the maximum extent possible.

### ***Board of Health***

Title 5, under 310 CMR 15.240(7), allows soil absorption systems to be constructed under impervious areas when restrictions make the placement under impervious areas unavoidable. We believe that a variety of factors, including but not limited to, the need for access for a SU-30 vehicle, the desirability of constructing the soil absorption system at the flattest portion of the site removed from wetlands, and the placement of the homes on a common green makes the location of the driveway unavoidable.

Title 5, under the definition of Facility, requires a subsurface sewage disposal system to be located on the same property as the facility it serves. The soil absorption system that serves 89 Central Street is located partially within the right of way, placing the system outside of the property it serves.

It is our understanding that the deed pertaining to Pine Ridge Road use provides for the unobstructed use of the owners of the abutting properties for access purposes.

A subsurface sewage disposal system construction permit to be issued by the Board of Health will be required prior to the granting of Building Permits.

The purpose of the Tensar Grid is to spread wheel loads, and is akin to altering the pavement over the soil absorption system to be reinforced concrete. The type of pavement or other reinforcement materials are not subject to Title 5. This matter can be further discussed with the Board of Health if necessary.

### ***Engineering Department***

1. A SU-30 turning area is now proposed at the rear of the property and will be constructed with the installation of grass pavers or with a less expensive bituminous concrete surface. The recharge trenches have been designed to allow a SU-30 Vehicle to drive over them, although a 10 foot wide drive is of sufficient width for a fire truck. If the Board desires that a larger radius be provided at the intersection of the driveway serving Unit 2 and the common driveway, it will be increased.
2. Rights will be reserved for access and utilities over the individual lots and Parcel A.
3. The driveway has been designed so the recharge trenches can be constructed near the surface of the existing ground to insure that the facilities are situated above groundwater. The infiltration rate utilized is as required by the State Stormwater Management Standards for the soils encountered by explorations, for both the proposed soil absorption system and abutters' soil absorption systems. Soils requiring a lesser infiltration rate will not be encountered on this property.
4. Recharge trenches are required to be offset 10 feet from soil absorption systems [310 CMR 15.211], so the 12 foot offset is conforming.
5. Diagrams showing the pre and post development conditions drainage areas are enclosed with the revised stormwater management calculations.
6. The enclosed stormwater management system model shows that the system has been revised so that the peak rate of runoff for the 10-year storm event is not increased, as required by Subdivision Regulation 8.2.3.

7. Pipe sizing calculations are attached. pipe inverts are not required because elevations are controlled by the drainage system details.
8. The existing conditions and conceptual plans prepared by other firms were found to be adequate for the design of the project, and this office has been authorized to perform the surveys it believes necessary for verification of construction.
9. Our client's understanding is the same as the Engineering Department's, and they desire to utilize the Pine Ridge right of way for access and will make every reasonable effort to protect the existing subsurface sewage disposal system constructed in a portion of the right of way.
10. The datum utilized for the preparation of the plan will be confirmed as being NGVD [1929], or the elevations will be converted to that datum. Two or more permanent benchmarks will be established on or in the environs of the site.
11. The presence of the sidewalks on Central Street and to Tuttle Drive has no impact on the design of the site but the locations adjacent to the site will be located by this office's surveys and added to the plans.
12. The houses will be numbered as determined by the Engineering and Fire Departments. We suggest that we be informed of the desired numbering system so that it may be shown on the plans.
13. Existing monuments and any monuments installed by this office will be shown on the Record Plan.
14. The Recordable Plan will be prepared to Registry of Deeds Standards.
15. Unit 1 will be the affordable unit and has been labeled as such on the plans.
16. The walls will be shown on the plans once they are located by instrument surveys.
17. All visually apparent features of the site and the area between the site and Central Street will be shown on the existing conditions plan prepared by this office. Runoff from the site during and after construction will be controlled so that there is no impact on the Central Street drainage system during or after construction. A note will be added to the Erosion and Sediment Control Plan to require that the contractor clean and maintain the Town's drainage system during construction.
18. A note has been added to the plan to detail the removal of the existing driveway and the restoration of the area.
19. At the time of our instrument surveys the edges of bordering vegetated wetlands will be demarcated according to State standards and will be reviewed and

confirmed by the Conservation Commission when the required Notice of Intent is filed.

20. Our existing conditions survey will locate all relevant visually apparent features of the site and the Pine Ridge right of way.
21. A note concerning the status of the existing subsurface sewage disposal system, house and shed, driveway, water service, and other utilities has been added to the plans.
22. The vent for the existing soil absorption system that serves 89 Central Street will be relocated to be on the property it serves. The status of and the best method of protecting the system will be discussed with the Board of Health.
23. The guest parking spaces have been removed. Parking facilities with less than 15 spaces are exempted from the requirement of providing accessible spaces and routes.
24. Fire protection will be provided in the same manner as for all residences along Central Street. A fire hydrant is located before 85 Central Street and results in all the proposed homes being within 500 feet of a fire hydrant.
25. General Note 20 on the Site Development Plan speaks to the cleaning of catch basins and other drainage facilities. The maintenance of stormwater facilities, subsurface sewage disposal facilities, and other common facilities will be included in any "homeowners agreement."
26. Sidewalks leading to individual homes are now proposed.
27. The pavement radius has been removed and replaced with a tapered driveway transition.
28. The sidewalks across the soil absorption system from the guest parking spaces have been removed.
29. The pavement detail has been modified.
30. The existing paved portion of Pine Ridge Road is now proposed to be reconstructed for its full length.
31. All existing utilities are to be removed and terminated as required by the respective utility companies.
32. The trench detail has been corrected.
33. A location for the project sign has been added to the plans.

***Acton Planning Department***

We offer the following in regard to the footnotes contained in the Project Evaluation Summary:

1. No comment necessary.
2. No comment necessary.
3. This office has not received architectural plans and cannot compute the Net Floor Area. However, we note that building service areas are exempt by 1.3.8 and a portion of the basement should be considered as such.
4. The guest parking areas and sidewalks across the “green” have been eliminated. We suggest that connections from the end of the driveways to the adjacent sidewalk connecting Central Street and Tuttle Drive might be appropriate.
5. No comment necessary.
6. Drought-resistant grasses were recommended, as an irrigation system is not proposed.
7. The project was designed in keeping with the intent of the Town of Acton’s standards and good practice.
8. No comment necessary.

*Other Comments Contained in Planning Department footnotes*

- a. The Master Plan is based on the Town’s GIS Data and reflects the inaccuracies of that Data. The property lines derived from the GIS are sufficient to show the relationship of the property and buildings to adjacent lots, roads, and Zoning Districts, but not for determining property line offsets
- b. Three Arborvitaes located between the gabled ends of the homes have been added to the plans.
- c. As suggested, please accept this letter as our client’s request for a waiver from the requirements of 3.8.1.5 to allow the common driveway to be constructed as shown. As stated above, the SU-30 vehicle turning area will be constructed with grass pavers or bituminous concrete as determined by the Board.
- d. This matter should be determined by our client. It is our preference that the entire Common Driveway be designated as Pine Ridge Road, as the right of way is designated as such on a variety of Town Maps and other documents.

- e. The guest parking spaces have been removed, but were shown to have a depth of 24 feet as compared to the 18 foot [minimum] required by the Zoning Bylaw.
- f. No comment required by this office and it should be assumed that the incorrect reference will be corrected.
- g. No comment necessary from this office.
- h. No comment necessary from this office.

***Municipal Properties***

The sizes of the trees to be planted are now included on the Landscape Plan. .

***Public Hearing Comments***

Representatives from this office were not present for the entire public hearing. In response to abutters' comments as to the impact of the project on their properties and wetlands, we prepared the enclosed "Overview" based on MassGIS data.

MassGIS did not show any Certified or Potential Vernal Pools in the area presented by the Overview. The Wetland Protection Act allows alterations to occur in upland areas adjacent to Certified Vernal Pools. A Notice of Intent will be filed with the Acton Conservation Commission.

The residence at 40 Tuttle Drive is located approximately 140 feet from the common driveway.

Visual reconnaissance by this office confirmed that the location of the wetland boundary shown on the plan is sufficient for this office to stipulate that no alterations to the wetlands are proposed.

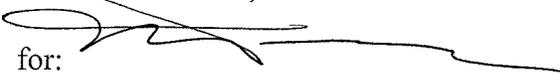
If this letter and the accompanying materials are found inadequate, we will make every effort to rectify the data prior to the public hearing if notified by Town staff in a timely manner.

We are happy to meet with staff to provide them with additional materials if they desire.

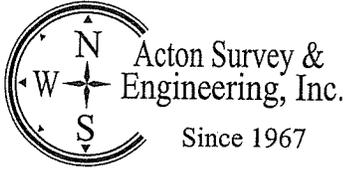
Thank you for any consideration you may give to the contents of this letter.

Very truly yours,  
Mark T. Donohoe, PE

cc: Marshview, LLC.

  
for:  
Acton Survey & Engineering, Inc.

**Acton Survey & Engineering, Inc.**  
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ASE 6729 & 6730

February 1, 2010

Acton Zoning Board of Appeals  
472 Main Street  
Acton, MA 01720

Re: Marsh View, 93 Central Street, 09-03  
Robinsons Crossing, 113 Central Street, 09-04

Dear Board Members:

Please find enclosed six full and six reduced scale copies of the Site Plan for the Marsh View residential project showing the revision to the SU-30 vehicle turnaround at the rear of the property.

The revised turnaround is the result of a "design session" attended by this writer, Cory York of the Engineering Department and Zoning Enforcement Officer Scot Mutch. Chief Robert Craig and James D'Agostine arrived after the enclosed design was arrived at.

A copy of the pencil sketch is also enclosed.

Mr. York informed us that he has not reviewed the revisions to the drainage system for 113 Central Street. If questions arise after his review we will be happy to meet with him.

If any interested party should have any questions or concerns about these matters please inform us and we will make every attempt to address them, promptly.

Very truly yours,  
Mark T. Donohoe, PE

for:  
Acton Survey & Engineering, Inc.

cc: Marsh View, LLC  
Chief Robert Craig  
Engineering Department

✓



Marsh View LLC.  
30 Nagog Park Drive, Suite 225  
Acton, MA 01720  
978-263-0428 Phone / 978-263-0447 Fax

February 24, 2010

Zoning Board of Appeals  
Town of Acton  
132 Main Street  
Acton, MA 01720

RE: 93 Central Street / Marsh View LLC

Dear Members of the Board:

In regard to the proposed Title V septic systems for our proposed Chapter 40B development in consultation with the health department staff, we suggest the following Condition:

**CONDITION**

The Applicant shall comply with all Title V requirements.

The Applicant's preference is to install a common septic system shared by all four (4) homes with the operation and maintenance of this common septic system controlled through a Homeowners Association consisting of the four fee simple lots. Approval of the common septic system and its control through a Homeowners Association shall be subject to all components of Title V 310CMR 15.400 under the purview of local BOH and DEP.

If such approvals as outlined in the paragraph above cannot be obtained, the Applicant shall install a common system for all four (4) units with the operation and maintenance of this common septic system controlled through a Condominium Association consisting of all four (4) units. Approval of the common septic system and its operation and maintenance through a Condominium Association shall be subject to all components of Title V 310CMR 15.400 under the purview of local BOH and DEP.

Respectfully requested,



Marsh View LLC by  
Jim D'Agostine  
Manager

CC: Doug Halley, BOH Town of Acton

✓

Marsh View LLC.  
30 Nagog Park Drive, Suite 225  
Acton, MA 01720  
978-263-0428 Phone / 978-263-0447 Fax

February 24, 2010

Zoning Board of Appeals  
Town of Acton  
132 Main Street  
Acton, MA 01720

RE: 93 Central Street / Marsh View LLC

Dear Members of the Board:

In regard to the proposed Title V septic systems for our proposed Chapter 40B development in consultation with the health department staff, we suggest the following Condition:

**CONDITION**

The Applicant shall comply with all Title V requirements.

The Applicant's preference is to install a common septic system shared by all four (4) homes with the operation and maintenance of this common septic system controlled through a Homeowners Association consisting of the four fee simple lots. Approval of the common septic system and its control through a Homeowners Association shall be subject to all components of Title V 310CMR 15.400 under the purview of local BOH and DEP.

If such approvals as outlined in the paragraph above cannot be obtained, the Applicant shall install a common system for all four (4) units with the operation and maintenance of this common septic system controlled through a Condominium Association consisting of all four (4) units. Approval of the common septic system and its operation and maintenance through a Condominium Association shall be subject to all components of Title V 310CMR 15.400 under the purview of local BOH and DEP.

Respectfully requested,



Marsh View LLC by  
Jim D'Agostine  
Manager

CC: Doug Halley, BOH Town of Acton

Marsh View LLC.  
30 Nagog Park Drive, Suite 225  
Acton, MA 01720  
978-263-0428 Phone / 978-263-0447 Fax

February 24, 2010

Zoning Board of Appeals  
Town of Acton  
132 Main Street  
Acton, MA 01720

RE: 93 Central Street / Marsh View LLC

Dear Members of the Board:

In regard to the proposed Title V septic systems for our proposed Chapter 40B development in consultation with the health department staff, we suggest the following Condition:

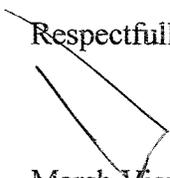
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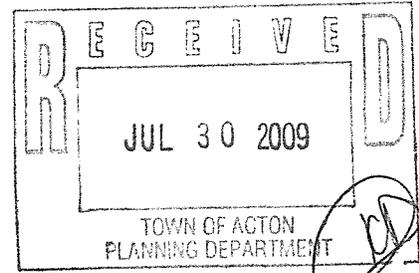
Respectfully requested,



Marsh View LLC by  
Jim D'Agostine  
Manager

CC: Doug Halley, BOH Town of Acton

Marsh View LLC  
30 Nagog Park Drive  
Acton, Ma 01720



Zoning Board of Appeals  
Acton, Ma 01720

Re: Marsh View Comprehensive Permit

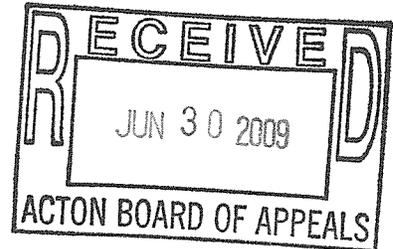
Dear Members of the Board,

July 30, 2009

Please be advised that we agree to hold the public hearing for the above mentioned project until September 14, 2009.

Thank you,

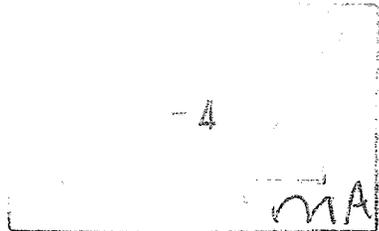
  
Julian J. D'Agostine  
Manager



HEARING # 09-03

- 4

COMPREHENSIVE PERMIT



PUBLIC HEARING NOTICE

In accordance with the provisions of M.G.L. c. 40B, §§ 20-23, the Acton Board of Appeals will hold a public hearing on **Monday, September 14, 2009** at **7:30 PM** in **Room 126** of the Acton Town Hall Acton, MA on the application of **Marsh View LLC** for approval of a Comprehensive Permit on a parcel located at **93 Central Street, Acton, MA,** Parcel 123 on Map G-2 of the Acton Town Atlas. The petitioner proposes four single family dwelling units with one of the units being affordable.

(above for newspaper legal advertisement only)

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(above and below notices to parties in interest)

The Board of Appeals may grant Comprehensive Permits under the provisions of M.G.L. c. 40B, §§ 20-23A. A copy of the application is also available for review at the office of the Board of Appeals, Town Hall between 8:00 AM and 5:00 PM, Monday through Friday.

At the hearing, the applicant or his/her representative will present the application and reason(s) why the permit should be granted. When the applicant or his/her representative has concluded, the Chairman of the Board will allow Board members to speak to the matter under consideration or to ask questions. Subsequently the Chairman will give the public the same opportunity to speak to the matter under consideration or to ask questions.

The Chairman will not allow any member of the public to interrupt anyone else while they are speaking. Each person wishing to speak at the hearing should be as brief as possible and should wait his/her turn. Each person speaking should avoid repeating the comments of those who preceded him or her. Each person speaking should state his or her name and address before speaking.

Any party may appear in person, by agent, or by attorney at any hearing. When all of the facts have been presented and all persons wishing to speak on the petition have been heard, the Chairman will close the hearing. No evidence shall be received by the Board after the hearing closes, unless the BOARD has specifically voted to reopen the public hearing for receipt of such information.



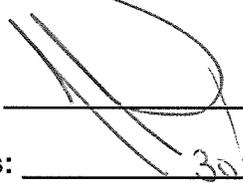
**TOWN OF ACTON**  
472 Main Street  
Acton, Massachusetts, 01720  
Telephone (978) 264-9632  
Fax (978) 264-9630

**Cheryl Frazier**  
**Board of Appeals Secretary**

---

TO: Beacon Community Newspapers  
Legal Notice Department

I hereby authorize Beacon Community Newspapers to bill me directly for the Legal Notice to be placed in connection with my permit/application on August 13, & August 20 in the Beacon.

Signed:  JAMES D'AGOSTINE

Address: 30 MAGAC PARK DRIVE SUITE 225

ACTON MA 01720

Phone: 508-259-9060

**Note:** This release is to be signed and submitted by the applicant to the Town at the time of initial submittal of every Permit/Application that requires Public Notice by Newspaper. Please leave the day on which date it will appear blank.



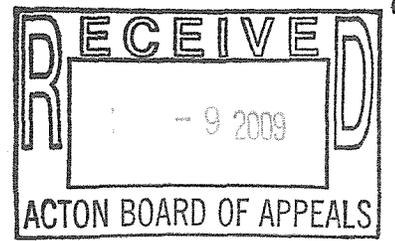
**TOWN OF ACTON**  
472 Main Street  
Acton, Massachusetts, 01720  
Telephone (978) 264-9632  
Fax (978) 264-9630

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**Board of Appeals  
Hearing # 09-03**

In accordance with the provisions of M.G.L. c. 40B §§ 20-23, the **Acton Board of Appeals** will hold a public hearing on Monday, September 14, 2009 at 7:30 P.M., in Room 126 of the Town Hall, Acton, MA on the application of Marsh View LLC for approval of a **COMPREHENSIVE PERMIT** on a parcel located at 93 Central Street, Acton, MA and shown on Town Atlas Map G-2/Parcel 123. The applicant proposes a development of four dwelling units, one of them qualifying as affordable.

**Marsh View LLC  
30 Nagog Park Drive Suite 225  
Acton, MA 01720**



November 6, 2009

Zoning Board of Appeals  
Town of Acton  
472 Main Street  
Acton, MA 01720

Re: Hearing # 09-03 Comprehensive Permit 93 Central Street

Members of the Board:

Revised plans along with a cover memo from Acton Survey & Engineering, covering the technical issues raised in planning and engineering department memos have been submitted for staff review.

Attached is a revised development schedule with new date of June 30, 2010.

The original list of waivers submitted has been expanded to cover issues related to the common drive standards. A revised version is included.

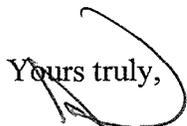
The legal documents have been revised to correct the name of the common drive to Pine Ridge from Marsh View. A revised copy is included.

Town Counsel's memo of 10/16/2009 corroborates our assertion of the right to use, including the right to rebuild, Pine Ridge in order to access the four proposed lots.

The title certification has been updated as suggested by Town Counsel's memo of 10/16/2009 to include certification of our continued right to use Pine Ridge.

Finally in Town counsel's initial comments the relationship between Westchester and Marsh View LLC was questioned. Town Counsel is correct in his assumptions. Marsh View LLC was created by the Westchester for the sole purpose of building this project.

Yours truly,

  
Julian J D'Agostine III  
Manager  
Marsh View LLC

Marsh View memo 110609

## COMPREHENSIVE PERMIT DEVELOPMENT SCHEDULE

	Phase 1	Phase 2	Phase 3	Total
Projected completion date:	6/30/2010			6/30/2010
Number of affordable units:	1			
Number of market units:	3			
Subtotal by phase:	4			4

For the last development phase, or if only one development phase is proposed, suggest below a building permit schedule by which affordable units will be completed. Generally, the Board will allow a staggered completion of market rate and affordable units but requires the completion of all affordable units before the issuance of the last building permit(s) in the project.

There is one affordable unit. We propose to complete all buildings at the same time, including the affordable unit.

**DECLARATION OF COMMON DRIVEWAY COVENANT SHARED MAINTENANCE  
AGREEMENT CONCERNING THE SEWAGE DISPOSAL SYSTEM, AND  
RESTRICTIVE COVENANTS AND CONDITIONS FOR MARSH VIEW, ACTON,  
MASSACHUSETTS**

**I. Creation**

(A) The undersigned, Marsh View, LLC, a Massachusetts Limited Liability Company, having a place of business at 411 Massachusetts Avenue, Suite 304, Acton, Massachusetts 01720 (the “Declarant”), being the sole owner of the land with the buildings thereon with the post office address of 93 Central Street, Acton, Middlesex County, Massachusetts, as described on a plan entitled “Recordable Plan Marsh View” (hereinafter the “Plan”) which is recorded simultaneously herewith and hereby incorporated herein by this reference and made a part hereof, does hereby, create this Declaration of Common Driveway Covenant and Shared Maintenance Agreement concerning the Sewage Disposal System.

(B) The purpose of this document is to document is to establish the respective rights and responsibilities of the parties relative to the Declarant and the future owners of Lots \_\_\_\_\_ as they relate to the both the common driveway known Pine Ridge as shown on the plan and the sewage disposal system.

(C) Every Owner of Lots \_\_\_\_\_ by the acceptance of a deed to a Lot within Marsh View hereby consents for himself, his heirs, administrators, executors, successors and assigns and all other persons claiming by, through or under him (including the holder of any mortgage or other encumbrance) or any other party whatsoever, to the terms and provisions of this document.

(D) Further, the Lot Owner(s) shall be responsible for the proper maintenance, repair, and replacement of Pine Ridge and the Sewage Disposal System and all portions and/or components of the same.

(E) All Lot Owners hereunder, in addition to any covenants set forth herein, shall be bound by the terms and conditions of the Town of Acton Zoning Board of Appeals Comprehensive Permit Decision \_\_\_\_\_ and Certificate of Action Relative to \_\_\_\_\_ Development dated \_\_\_\_\_ and recorded with the \_\_\_\_\_ Registry of Deeds at Book \_\_\_\_\_, Page \_\_\_\_.

(F) Neither the Declarant nor any of the future Lot owners shall Petition the Town of Acton for acceptance of the Driveway as a public way. In addition, no lot owner shall request that the Town of Acton perform snow plowing, maintenance, or any services associated with the Driveway.

## II. Description of Land

(A) Common Driveway: The common driveway known as Pine Ridge is shown on the Plan. The purpose of the common driveway is to provide access to Lots \_\_\_\_\_. Also located within Pine Ridge will be easements for various utilities including but not limited to electric, telephone, cable, and septic lines which will access the sewage disposal system.

(B) Declarant's Right of Access: The Declarant hereby expressly reserves to itself and its successors-in-title and their nominees, for a period three (3) years from the date of the last Lot sold in Marsh View the easement, license, right and privilege to pass and repass by vehicle and on foot in, upon, over Pine Ridge for all purposes including, but not limited to, transportation of construction materials in order to complete construction work on any of the Lots. Nothing in this paragraph shall be deemed to create any rights in the general public.

(C) Declarant's Right to Grant Easements: The Declarant reserves the exclusive right to grant easements over, under, through and across Lots \_\_\_\_\_ for the purpose of installing shared sewage disposal system and such other equipment as may be necessary for the installation and operation of the same. The Declarant further reserves the right to unilaterally grant to the Town of Acton and/or any of its Boards, Assigns and/or Designees (the "Town") any easement the Declarant deems necessary, in its sole discretion, to complete the development contemplated hereunder, included any requested access rights to the sewage disposal system.

(D) Common Rights to Use Pine Ridge: The Declarant further reserves the right and easement, in common with the individual Lot owners thereto, to use any and all roadways and walkways located upon the Land for all purposes for which roadways are commonly used in the Town of Acton, including, without limitation, the right and easement to bring construction vehicles and equipment over any such roadways.

(E) Declarant's Rights During Construction: The Declarant further reserves the right and easement for the benefit of the Declarant as well as their agents, servants, employees, contractors, workmen, work crews, successors and assigns to (a) further grant easements across the Land upon terms and conditions similar to those contained herein, to the extent reasonably necessary or convenient to further development; (b) restrict the use of the Land, including but not limited to the sewage disposal system; (c) park vehicles used in connection with construction work or sales and marketing upon the land hereunder; and (d) in general do all things necessary or desirable in order to construct and complete all the improvements located on any of the Lots.

The easements described hereunder shall be deemed to run with the Land and shall burden the Land and shall obligate and inure to the benefit of the owners and occupants of the Land hereunder as well as any adjoining land thereto.

Said easements may be assigned, transferred, sold and/or conveyed by the Declarant, to any entity, including but not limited to, the owner(s) of the abutting land.

(F) Each Lot Owner shall have an easement in common with the Owners of the other Lots to use all pipes, wires, flues, ducts, conduits, and plumbing lines for the purpose of obtaining access to the same in conjunction with sewage disposal system. The unit owners, pursuant to a vote of 51% of the Lot owners shall have a right of access to each Unit to inspect the same, to remove violations therefrom and to maintain, repair or replace any portions of the Common Areas and Facilities contained therein or elsewhere in the Buildings.

### **III. Care and Maintenance of the Sewage Disposal System**

A. **General Description** All future owners of Lots \_\_\_\_\_ hereby acknowledge that their properties shall be serviced by common sewage disposal system which is created pursuant to 310 CMR 15.00 (commonly referred to as Title 5). The owners of Lots \_\_\_\_\_ take their property subject to and accordance with the provisions of that certain document entitled, Grant of Title 5 Covenant and Easement which is recorded simultaneously herewith. To the extent that this is a conflict between the terms and provisions of this document and the Grant of Title 5 Covenant and Easement shall govern.

B. **Location of the Sewage Disposal System** The common sewage disposal system is shown on the Plan and is labeled "Sewage Disposal" the area shall also include that portion of land labeled "Reserves" , finally there is an area labeled "sewage disposal easement area." The last mentioned area is intended to provide access to the sewage disposal system. The system shall also include all pipes constituting the sewer collection system and their related appurtenances and easements for sewer lines and other appurtenances relating thereto.

C. **Components of the Sewage Disposal System** The components of the On-Site Subsurface Sewage Disposal System, which is hereby defined as follows: leaching areas to be constructed on the Common Areas, together with all pipes, conduits, controls, ducts, plumbing, cables, equipment and other facilities for the furnishing of on-site subsurface sewage disposal service and all sewer and drainage pipes, on-site subsurface sewage disposal tanks, and sewer disposal systems, tanks, leaching field and all appurtenances thereto located within the areas labeled on the plan. The on-site subsurface sewage disposal system shall serve the all four Lots.

D. **Care of the Sewage Disposal System** The responsibilities for the care and maintenance of the system are set forth in the Grant of Title 5 Covenant and Easement. Additional reference is made to the decision by the Acton Board of Health dated \_\_\_\_\_, and recorded

simultaneously herewith.

**E. Easements** In addition, all Lot owners shall have an easement to go in, upon, over and under all parts of the Sewage Disposal Easement area for the purposes of the operation, use, maintenance, repair and replacement of the on-site subsurface sewage disposal system. Notwithstanding the foregoing, it shall be the sole responsibility of each Unit Owner to maintain, repair and replace all elements of the on-site subsurface sewage disposal system located within their Lot and serving their Lot exclusively. All components that are not located exclusively on each Lot shall be deemed to be owned in common as a part of the sewage disposal system.

The owners of Lots \_\_\_\_\_, with the approval of the Board of Health of the Town of Acton, shall have the right at any time and from time to time to change the location of any portion of the on-site subsurface sewage disposal system, with unanimous consent of all Lot owners.

**F. Care of Parcel A** All lot owners shall a joint responsibility for the care and maintenance of the lawn are located on Parcel A as shown on the above described plan.

#### **IV. Care and Maintenance of Pine Ridge**

A. The owners of Lots 1,2, 3, and 4 shown the Plans shall bear the joint responsibility, subject to their percentage interest as set forth in Exhibit A of maintenance, repairs, reconstruction, and snow plowing of the common driveway known as Pine Ridge and each of the aforesaid lots shall bear its proportionate share of the responsibility and expenses as listed in Exhibit A, of the maintenance and repair, including any necessary reconstruction thereof, and the expense of snowplowing and driveway repairs, in order to maintain said common driveway in a good and passable condition.

B. Any necessary maintenance, repair or reconstruction of said common driveway shall be carried out so that the products of erosion as a result thereof shall not be carried into the storm drainage system.

C. The Declarant and its contractors shall have the right and easement to enter upon either Pine Ridge or the sewage disposal area with workers, vehicles, machinery and equipment for purposes of constructing, erecting, installing, operating, maintaining, repairing, modifying, rebuilding, replacing, relocating and removing structures and their appurtenances, utilities of every character, as the Declarant shall deem necessary or desirable to complete the development of the four units. This easement shall include the right to store within Pine Ridge, temporary structures, vehicles, machinery, equipment and materials used or to be used in connection with said development work for such periods of time as shall be conveniently required for said development work. The Declarant further reserves the right and easement, in common with the Lot Owners thereto, to use any and all roadways and walkways located upon the Land for all purposes for which roadways are commonly used in the Town of Acton including, without limitation, the right and easement to bring construction vehicles and equipment over any such roadways.

D. The owners of Lots shall restrict their use of the common driveway to that of ingress and egress to Central Street and shall not impede the passage of foot or vehicular traffic on said common driveway by parking upon it. The use of the common driveway shall be restricted to foot and private passenger vehicles or vehicles driven by guest and business invites and such vehicles as are necessary to maintain and repair said common driveway as provided above.

E. The Declarant and future owners, their successors and assigns, hereby agree that they shall, from time to time, if necessary, amend the foregoing agreement and covenant so as to have same conform with any applicable requirements of the Town of Acton any other governmental claiming authority or jurisdiction over and upon said common driveway so as to permit said common driveway to be used to service the lots hereinbefore referenced.

F. The Declarant, for itself, its successors and assigns, agrees to fully construct the common driveway on or before \_\_\_\_\_, except for one (1) resurfacing of which will be completed at Declarant's expense, in accordance with all applicable local, state rules, regulations, by-laws, laws and the like, so that said common driveway can be fully used as the sole access for Lots 1, 2, 3 and 4.

G. Each Buyer of market rate Lots shall make an initial capital contribution of \$\_\_\_\_ upon its purchase of the lot, shown on the aforesaid easement plan, which contribution shall be held in an interest bearing account for the benefit of the Pine Ridge Driveway and Sewage Disposal Fund. Said account(s) shall be established and controlled by Declarant, so long as it is the owner of at least one lot in the subdivision. After such time the account shall be controlled by the four unit owners. Thereafter the Lot owners agree to make quarterly payment of \$\_\_\_\_\_. The Lot owners acknowledge that this payment is only an estimate of the future expenses associated with the care and maintenance of the sewage disposal system and Pine Ridge.

H. Assessments for maintenance, improvements, (including capital improvements), repair or reconstruction of the common driveway, and septic system as shown on said plan, shall be made by Marsh View, LLC, so long as it is owner of at least one lot shown on the plan. Thereafter, Assessments shall be voted on by the Lot Owners, which lot owners may make an assessment so long as same is approved by a majority vote of all lot owners. The voter's interest shall be based upon each lot owner's proportionate share of said assessments shall be paid quarterly into the aforesaid account without limiting any of the provisions of any of the agreements, covenants, restrictions, easements or conditions hereinbefore set forth or referred to in this deed, by acceptance and recording of this deed the Grantee acknowledges that the aforesaid agreements, covenants, restrictions, easements conditions shall not only run with the land hereby, but also the Grantee, its successors and assigns, agree to comply with the provisions of said easements, covenants, restrictions, easements or conditions and the Grantee, its successors and assigns, agree to hold the Grantor, its successors or assigns, harmless and indemnify them in full from any and all liabilities or obligations which may arise out

of or on account of any violation or failure to comply with any provision or any of said agreements, covenants, restrictions, easements or conditions set forth or referred to in this deed.

**V. General Operation of this Agreement**

**A. Establishment of the Lot Owners Interest and Management**

The beneficiaries of this agreement shall be the Lot Owners within Marsh View. Each Lot owner's beneficial interest is set forth in Exhibit A. The beneficial interest of each Lot shall be held and exercised as a whole and shall not be divided among several Owners of any such Lot. To that end, whenever any of said Lot is owned of record by more than one person, the several Owners of such Lot shall: (i) determine and designate which one of such Owners shall be authorized and entitled to cast votes, execute instruments, and otherwise exercise the rights appertaining to such Lot.

**B. Meetings:**

The Lot Owners shall meet annually. The date of the annual meeting shall be the second Saturday in February at 10:00 AM. Other meetings may be called by any Lot Owner, provided, however, that written notice of each meeting shall be given at least five (5) days before such meeting to each Lot owner. A majority of the Lot owners shall constitute a quorum at all meetings.

At the Annual Meeting of the Lot Owners, the Lot Owners shall submit reports of the management and finances of Marsh View. The report shall include a summary of the costs associated with the care and maintenance of Pine Ridge. There also shall be a report concerning the sewage disposal system. Whenever at any meeting the Lot Owners proposes to submit to the Lot Owners any matter with respect to which approval of or action by the Lot Owners is necessary or appropriate, the notice of such meeting shall state and reasonably specify such matter. A quorum of Lot Owners shall consist of a majority in interest of Lot Owners. Unless set forth otherwise hereunder, any action taken at such meeting, at which a quorum has been established, shall only require a vote of plurality of the beneficial interest of Lot Owners in attendance at the same.

Any Lot Owner may, at any time, waive notice of any meeting in writing and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Lot Owner without objection to lack of notice at any meeting shall constitute a waiver of notice.

Any action taken by unanimous written consent of all of the Lot Owners shall be fully valid as though taken at a meeting.

**C. Notices to Lot Owners.**

Every notice to any Lot Owner required under the provisions hereof, shall be deemed sufficient and binding if a written or printed copy of such notice shall be given by leaving such notice with him at his residence in Marsh View, by mailing it, postage prepaid, addressed to such Lot Owner at least five (5) days prior to the date fixed for the happening of the matter, thing or event of which such notice is given.

**D. Inspection of Books - Reports to Lot Owners**

The Lot owners shall keep detailed records of their actions, minutes of their meetings, and financial records and books of accounts, including a chronological listing of receipts and expenditures, as well as a separate account for each Lot, which among other things, shall contain the amount of each assessment of Common Expenses against such Lot, the date when due, the amounts paid thereon, and the balance remaining unpaid. All of the foregoing records, accounts and documents shall be available for inspection by all Lot Owners, their authorized agents, and lenders, mortgagees, holders, insurers and guarantors of any mortgage on any Lot at all reasonable times. "Available" shall mean available for inspection, upon request, during normal business hours or under other reasonable circumstances.

**E. Checks and Notes.**

The Lot Owners, at the time of the annual meeting, shall appoint one of the Lot Owners to have authority to sign checks and deal with all financial matters associated with Marsh View.

**F. Amendment to this Agreement**

(A) This document may be amended by; (i) vote of the Owners of Lots entitled to not less than seventy-five percent (75%) of the undivided interests as set forth in Exhibit A. Any such amendment shall be effective when an instrument in writing, signed and acknowledged in proper form for recording by the Lot owners approving the change to this document, who certify under oath in such instrument that the amendment has been approved by the requisite vote of the Lot Owners, and provided that the document is duly recorded in the Middlesex South Registry of Deeds, provided, however that:

(i) No such instrument shall be of any force or effect unless and until the same has been recorded in the Middlesex South Registry of Deeds within six (6) months after the requisite vote of the Lot Owners;

(ii) No such instrument shall be inconsistent with any decision issued by any municipal board or entity of the Town of Acton.

(B) Notwithstanding anything to the contrary herein, so long as the Declarant owns any Lot within Marsh View, the Declarant reserves the right, at any time and from time to time, to unilaterally amend this document for the following purposes:

- (i). to meet the requirements of any governmental or quasi-governmental body or agency including, but not limited to, the Town of Acton, or any of its boards, bodies or agencies;
- (ii). or the requirements of any insurance company or insurance underwriting office or organization, or the requirements of Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Massachusetts Housing Finance Agency, the secondary mortgage market, or any lender; or
- (iii). To induce any such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering the ownership of a Unit; or
- (iv). to correct typographical, mathematical, clerical or scrivener's errors, or to cure any ambiguity, inconsistency or formal defect or omission in this document or any supplement or amendment thereto, including without limitation, the correction of measurements appearing on any plan recorded in connection with the road and sewage disposal system; or

All Lot Owners and mortgagees shall be deemed to have consented to any such amendments by the Declarant.

- (i) The Declarant shall have the right and easement in accordance with any decision by the Town of Acton to construct, erect and install on the Land in such locations as the Declarant shall in the exercise of its discretion determine to be appropriate or desirable:
  - (a) Roads, driveways, decks, garages, exterior parking spaces and parking areas, walks and paths;
  - (b) New or additional fences or decorative barriers or enclosures, and other structures of every character;
  - (c) The Declarant further reserves the right to unilaterally grant to the Town of Acton and/or any of its Boards, Assigns and/or Designees (the "Town") any easement the Declarant deems necessary, in its sole discretion, to complete the Development contemplated hereunder.

The Declarant further reserves the right to unilaterally grant to the Town of Acton and/or any of its Boards, Assigns and/or Designees (the "Town") any easement the Declarant deems necessary, in its sole discretion, to complete the development contemplated hereunder.

The easements described hereunder shall be deemed to run with the Land and shall burden the Land and shall obligate and inure to the benefit of the Owners and occupants of the Land hereunder as well as any adjoining land thereto.

Said easements may be assigned, transferred, sold and/or conveyed by the Declarant, to any entity including, but not limited to, the owner(s) of the abutting land.

**(G) Enforcement of Payment Obligations**

If any owner, his heirs, successors or assigns, shall fail or refuse at any time to bear such responsibility and make payment, and such failure or refusal shall continue for thirty days after written notice by registered mail, return receipt requested, has been delivered to said owner, his heirs, successors and assigns, the Grantor, or any other lot owner, shall have the right forthwith to bring suit at law or in equity against such owner, his heirs, successors or assigns by suit commenced in the Superior Court or District Court or any other court of the Commonwealth with appropriate jurisdiction and collect and enforce the same as in any other actions, and such right to sue shall exist on every successive default in such payments. Any owner who shall file suit to enforce this covenant shall be entitled to reasonable attorneys' fee incurred in such enforcement. The provisions of this paragraph shall be governed and controlled by the terms and provisions of Massachusetts General Laws Chapter 183 A. All rights and remedies afforded under Massachusetts General Laws Chapter 183 A relative to the collection of outstanding fees shall be available and applicable to any outstanding and unpaid fees.

**(F) Certification of Payment of Outstanding Fees**

At the time of the transfer of any of the Lots, the owner of said lot shall be responsible for obtaining certification that all fees associated with this agreement have been paid. The form used to confirm payment shall be the same form commonly used for condominiums pursuant to Massachusetts General Laws Chapter 183 A, Section 6. The Declarant shall have the authority to sign this document until such time as it has conveyed all Lots. After this period, the Lot owners shall be required to obtain the consent of greater than 51% of the Lot owners.

**VI. POWERS OF THE LOT OWNERS**

The Lot Owners shall have all power necessary for the administration of the affairs of the Marsh View and the sewage disposal system and, provided they obtain consent of those entitled to a 51% vote of the beneficial interest as set forth in Exhibit A, they may do any and all acts necessary or desirable for the administration of the affairs of Marsh View, and the sewage disposal system. Such powers and duties of the Trustees shall include, but shall not be limited to, the following:

- a. Operation, care, upkeep and maintenance of Pine Ridge and the sewage disposal system;
- b. Determination of the Common Expenses required for operation of the same;
- c. Collection of the Common Expenses from the Lot Owners;
- d. Employment and dismissal of the personnel necessary or advisable for maintenance

- and operation;
- e. Opening of bank accounts and designating the signatories required therefore;
  - f. Making of repairs, additions and improvements to, or alterations or restoration of, the sewage disposal system and Pine Ridge;
  - g. Conducting litigation as to any course of action involving either Pine Ridge or the sewage disposal system.
  - h. Granting permits, licenses and easements over Pine Ridge and the sewage disposal system and other purposes reasonably necessary or useful for the proper maintenance or operation of the Development;
  - i. Enforcing obligations of the Lot Owners, allocating income and expenses, and to do anything and everything else necessary and proper for sound management.

## VII. COMMON RESTRICTIONS AND COVENANTS APPLICABLE TO ALL LOTS

WHEREAS, the Declarant desires to provide for the preservation of the values and amenities of the Development and, to this end, desires to subject the Lots to the covenants and restrictions hereinafter set forth, each and all of which is and are for the benefit of the Subdivision and each Lot owner thereof.

NOW THEREFORE, the Declarant and its heirs, successors, grantees and assigns hereby agree that the Lots, are and shall be held, transferred, sold, conveyed, inherited and occupied subject to and with the benefit of the covenants and restrictions hereinafter set forth, which covenants and restrictions shall run with the Lots in perpetuity.

1. Use. Each Lot shall be subject to the terms and conditions of all terms and conditions established by the Town of Acton including but not limited to Comprehensive Permit Decision \_\_\_\_\_.

2. Miscellaneous Restrictions. With regard to any Lot located within the Subdivision, the following shall apply:

A. No business, trade or profession shall be conducted on or from any Lot. However, an office may be maintained in the dwelling located on a Lot if such office use is limited solely to the Lot owner's use. No business, trade or profession signage shall be allowed.

B. No horses or barnyard animals shall be stabled or maintained on any Lot. This restriction does not, however, apply to dogs, cats, birds, or household pets that are reasonable in number, and shall not cause a nuisance to the neighborhood.

C. Clotheslines, poles, outside television antennae, radio aerials and satellite dishes shall be located on or near the dwelling in such a way as to minimize their visibility from any public street and abutting lots.

D. No trailers, campers, mobile homes, boats, or other recreational vehicles, non-operative or unregistered automobiles, trucks, machinery, supplies, materials or equipment of any kind

shall be stored on a Lot, unless same are stored wholly within the dwelling or garage.

E. Homeowners to maintain their yard well cared for condition which at a minimum shall include cutting the grass regularly, maintaining all plants including shrubs trimmed and yard free of junk or clutter.

3. Enforcement of Covenants. These covenants are enforceable by a majority of the Lot Owners acting by way of majority vote. Failure to enforce the within Covenants shall in no way be deemed as a waiver by any benefited party to enforce the rights included herewith at a subsequent time.

4. Modification or Termination of Restrictions. For so long as the Declarant owns at least one Lot, it reserves the right to unilaterally, and without the consent of any owner of any other Lot located with the Subdivision modify, amend, change, or terminate any or all of the restrictions and covenants as herein contained; provided, however, that any such modification, amendment, change or termination shall not apply to any Lots located within the Subdivision which have previously been conveyed.

5. Indemnification. Any person who violates or otherwise fails to comply with these Covenants and Restrictions shall be liable to the person who seeks enforcement of the Covenants and Restrictions for all losses, costs and expenses (including reasonable attorney's fees) incurred by the party entitled to indemnification in connection with the enforcement of these Restrictions. Invalidation of anyone of these Covenants by judgment or court order, shall in no way affect any of the other provisions that shall remain in full force and effect.

6. In carrying out its duties pursuant to these Covenants, the Declarant, or its grantees or assigns, shall not be liable for any act it takes or refuses to take, as long as said act is made in good faith.

## **VII Invalidity**

The invalidity of any provision of this document shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder of this document, and in such event, all of the provisions of this document shall continue in full force and effect as if such invalid provision had never been included herein.

## **IX. Waiver**

No provision contained in this document shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

## **X. Captions**

The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this document or the intent of any provisions hereof.

**XI. Enforcement**

This Master Deed is set forth to comply with the requirements of Chapter 183A of the General Laws of the Commonwealth of Massachusetts. In case any of the provisions stated above conflict with the provisions of said statute, the provisions of said statute shall control.

**XII. Continuing Obligations of the Lot Owners**

Reference is made to the Town of Acton Zoning Board of Appeals Comprehensive Permit Decision number \_\_\_\_\_ and Certificate of Action Relative to \_\_\_\_\_ Development dated \_\_\_\_\_ and recorded with the Middlesex South District Registry of Deeds at Book \_\_\_\_\_, Page \_\_\_\_\_ (the "Comprehensive Permit"). Reference is also made to the Order of Conditions DEP File No. \_\_\_\_\_ dated \_\_\_\_\_, issued by the \_\_\_\_\_ Conservation Commission and recorded on \_\_\_\_\_ with the \_\_\_\_\_ Registry of Deeds at Book \_\_\_\_\_, Page \_\_\_\_\_ (the "Order of Conditions"). The Lot Owners shall be subject to and bound by the terms and conditions of the Comprehensive Permit and Order of Conditions. Further, to the extent that there is a continuing obligation set forth in either of these documents, these obligations, once any of the site work which has been constructed by the Declarant for the same.

EXECUTED as an instrument under seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
MARSH VIEW, LLC

By: Julian J. D'Agostine III, Its Managing Member

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, ss: \_\_\_\_\_, 20\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned notary public, personally appeared Julian J. D'Agostine III, proved to me through satisfactory evidence of identification, which was drivers license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as the Managing Member of Marsh View, LLC.

\_\_\_\_\_  
Official signature and seal of notary  
My Commission Expires: \_\_\_\_\_

EXHIBIT "A"

LOT DESIGNATION	PROPORTIONATE INTEREST OF UNIT IN COMMON AREAS AND FACILITIES
1	
2	
3	
4	



PO Box 666, 97 Great Road, Suite 6  
Acton, MA 01720  
Phone: 978-263-3666 Fax: 978-635-0218  
[actonsurvey@actonsurvey.com](mailto:actonsurvey@actonsurvey.com)

December 10, 2009

ASE 6730

Chief Robert Craig  
Acton Fire Department  
371 Main Street  
Acton, MA 01720

Re: Marsh View  
93 Central Street

Dear Chief Craig:

Thank you for the opportunity to meet with you to discuss the revisions to the common driveway serving the four single family homes to be constructed at 93 Central Street.

Please find enclosed two full scale and one reduced scale copies of the revised site plan.

The proposed driveway will have a width equal to the width of the existing pavement of Pine Ridge Road to the end of the existing pavement, or a minimum width of 18 feet.

The driveway will then reduced to a width of 14 feet and extend behind the rear two houses and terminate in a tee shape turnaround. The driveway width of 14 feet exceeds the width of 12 feet required by the Zoning Bylaw {3.8.1.5 } for a common driveway serving 3 or more homes.

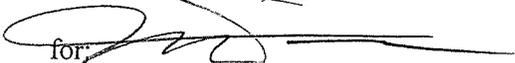
The tee turnaround will have inside turning radiuses of 45 feet as compared to the 28.4 foot minimum established by AASHTO [see enclosed diagram]. It is our opinion that the slight increase in impervious surface required justifies the increase in maneuverability provided.

It should be noted that the four foot wide recharge trench will be capable of supporting the tire loads of fire apparatus.

The plan contains a detail of an alternative layout for the driveway at the front of the site that serves the house [Unit 2] at the northwest corner of the site. The proposed rounding of the easterly edge of the driveway at the intersection of the common driveway will allow an SU-30 vehicle to enter and exit the driveway. The alternative driveway will be incorporated into the Site Plan if you or the Acton Engineering Department should require.

The Zoning Board of Appeals has continued the hearing on this matter to December 17, 2009.

Very truly yours,  
Mark T. Donohoe, PE

  
for:  
Acton Survey & Engineering, Inc.

cc: Marsh View, LLC  
Acton Zoning Board of Appeals

✓

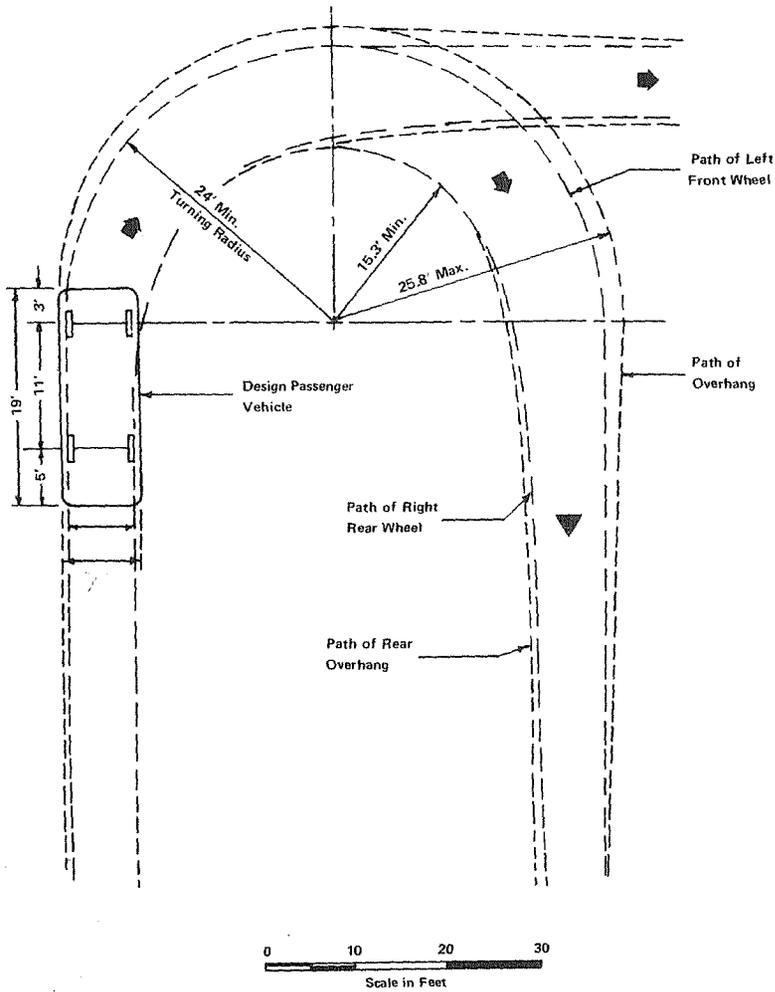


Figure II-1. Minimum turning path for P design vehicle.

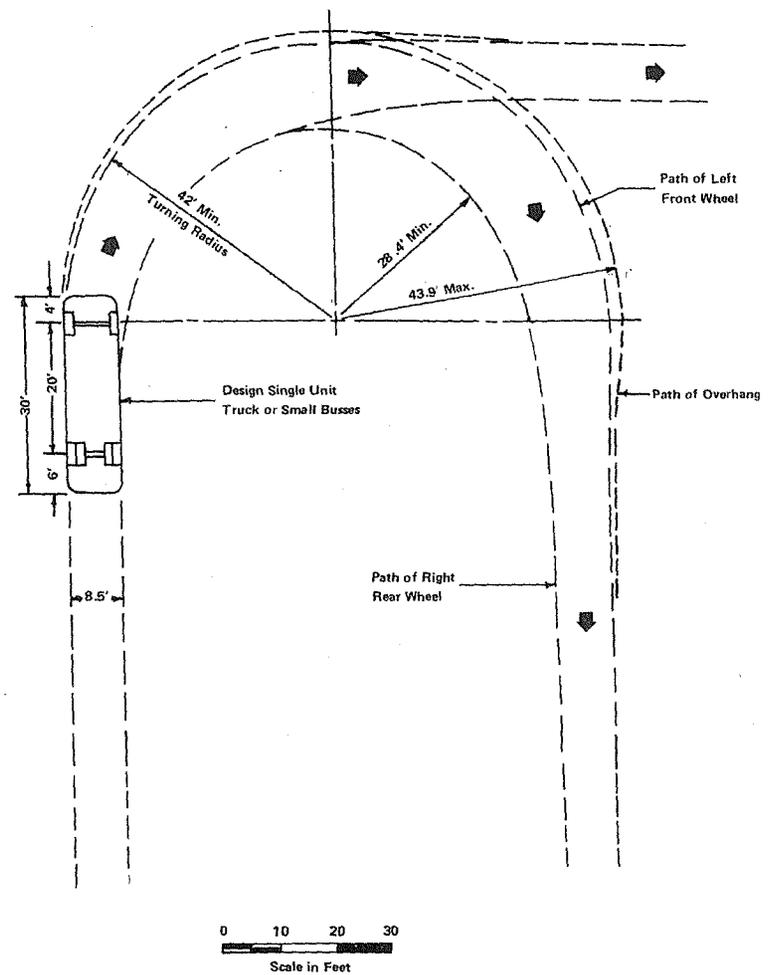


Figure II-2. Minimum turning path for SU design vehicle.

10-11-83



PO Box 666, 97 Great Road, Suite 6  
Acton, MA 01720  
Phone: 978-263-3666 Fax: 978-635-0218  
[actonsurvey@actonsurvey.com](mailto:actonsurvey@actonsurvey.com)

ASE 6730

December 10, 2009

Justin Snair  
Acton Board of Health  
472 Main Street  
Acton, MA 01720

Re: Marsh View  
93 Central Street

Dear Mr. Snair:

Please find enclosed a letter size portion of the Site Plan for the proposed Marsh View project at 93 Central Street which shows the location of the existing soil absorption system [SAS] as determined by this office by probing.

The plan also shows the revision of the location of the proposed driveway to avoid the driveway passing over the SAS as determined by probing and the assumed location shown on the previous site plan.

To protect the SAS from vehicles traveling off the pavement we propose that two 8"X8" pressure treated wood post be installed.

A note has also been added to the plan requiring the contractor to verify the location of the system and possible requirements to provide further protections, if the location determined by probing proves to be inaccurate.

It is our opinion that the requirements of 310 CMR 15..240(7) have been complied with.

This matter is to be considered by the Board of Appeals on December 17, 2009.

Please call if your desire to discuss this matter or meet on site to verify our location of the SAS.

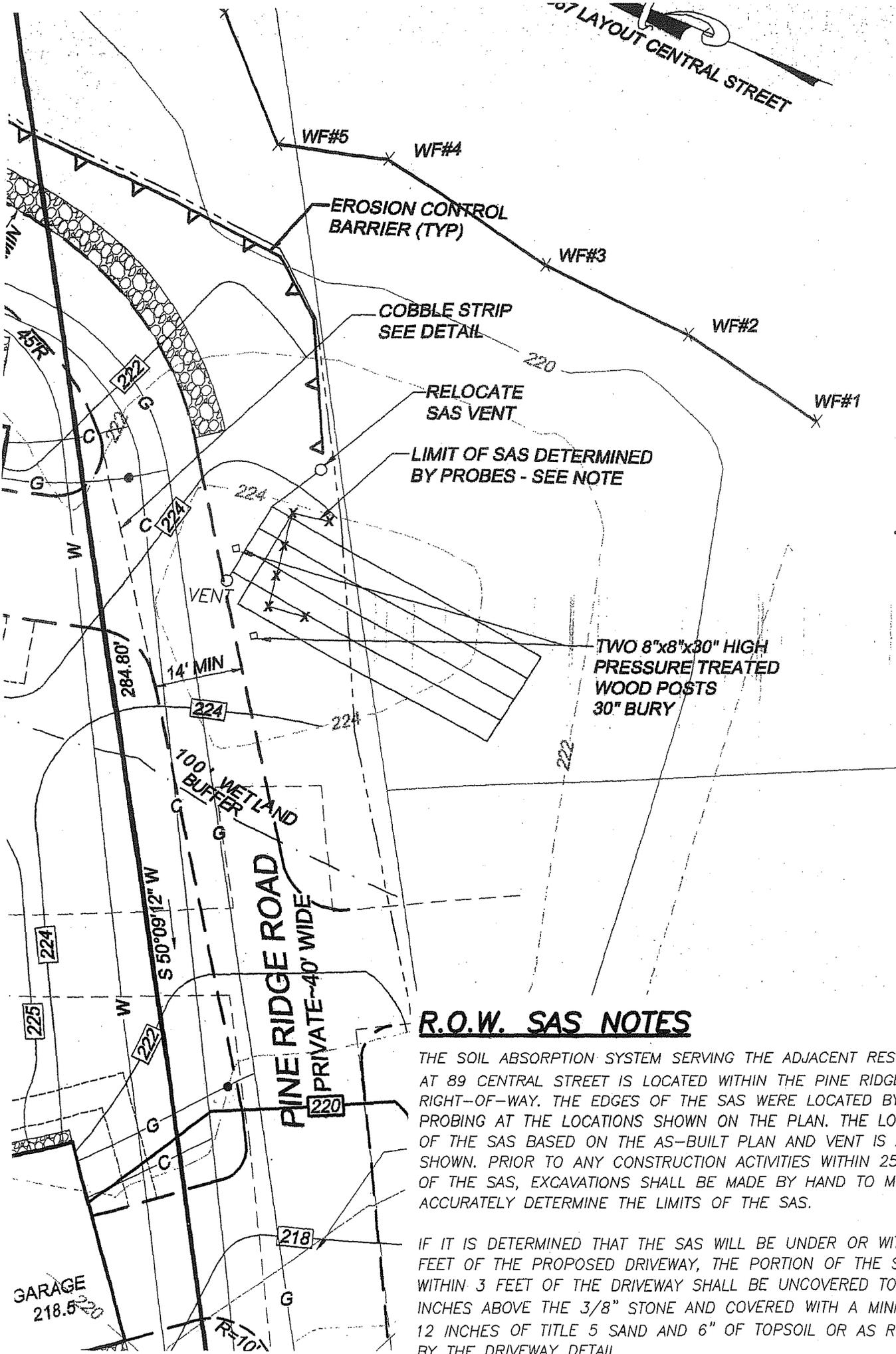
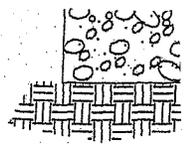
Very truly yours,  
Mark T. Donohoe, PE

for:  
Acton Survey & Engineering, Inc.

cc: Marsh View, LLC  
Acton Zoning Board of Appeals

✓

07 LAYOUT CENTRAL STREET



- NOTES:**
1. ALL MATERIALS TO BE USED SHALL BE APPROVED BY THE ACTON OR MASS. DEPT. OF HIGHWAYS AND REGULATED THEREBY.
  2. PAVEMENT SHALL BE CONSTRUCTED IN 2 COURSES OF 4" EACH COURSE OF 1 1/2" BINDER WITH 1 1/2" SAND SUBGRADE.
  3. GRAVEL SUBGRADE SHALL BE 4" MINIMUM (MINIMUM DRIVE). COMPOSED OF 3/4" SANDS & SILTS & UNCLUSTERS.

**BITUMINOUS**

**R.O.W. SAS NOTES**

THE SOIL ABSORPTION SYSTEM SERVING THE ADJACENT RESIDENCE AT 89 CENTRAL STREET IS LOCATED WITHIN THE PINE RIDGE ROAD RIGHT-OF-WAY. THE EDGES OF THE SAS WERE LOCATED BY PROBING AT THE LOCATIONS SHOWN ON THE PLAN. THE LOCATION OF THE SAS BASED ON THE AS-BUILT PLAN AND VENT IS ALSO SHOWN. PRIOR TO ANY CONSTRUCTION ACTIVITIES WITHIN 25 FEET OF THE SAS, EXCAVATIONS SHALL BE MADE BY HAND TO MORE ACCURATELY DETERMINE THE LIMITS OF THE SAS.

IF IT IS DETERMINED THAT THE SAS WILL BE UNDER OR WITHIN 3 FEET OF THE PROPOSED DRIVEWAY, THE PORTION OF THE SAS WITHIN 3 FEET OF THE DRIVEWAY SHALL BE UNCOVERED TO 2 INCHES ABOVE THE 3/8" STONE AND COVERED WITH A MINIMUM OF 12 INCHES OF TITLE 5 SAND AND 6" OF TOPSOIL OR AS REQUIRED BY THE DRIVEWAY DETAIL.

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E  
H  
O



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Acton, MA 01720  
Phone: 978-263-3666 Fax: 978-635-0218  
[actonsurvey@actonsurvey.com](mailto:actonsurvey@actonsurvey.com)

ASE 6730

December 10, 2009

Acton Zoning Board of Appeals  
472 Main Street  
Acton, MA 01720

Re: Marsh View  
93 Central Street

Dear Board Members:

Please find enclosed eleven full scale and eleven reduced scale copies of the Site Development Plan for the Marsh View site.

The driveway serving the two rear houses has been relocated beyond the limits of the soil absorption system serving the adjacent residence at 89 Central Street and the driveway terminus has been redesigned to consist of a tee shaped turn around with the critical turning radius exceeding published standards.

The turnaround is now to be paved instead of being partially comprised of a grass paver system.

Our client has not informed us of their desires as to the address of the units and we assume that addresses will be as determined by the Fire and Engineering Departments. For the present they can be referred to as 93 Central Street Unit 1, etc.

In response to a meeting with the Engineering Department we added an additional invert elevation to the Catch Basin Discharge Detail.

Copies of our letters to the Board of Health and Fire Chief are also enclosed.

Thank you for your continued consideration of this matter.

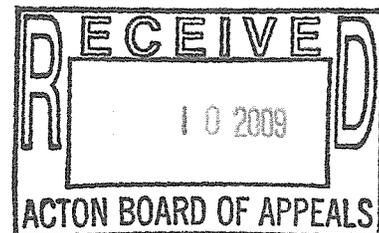
Very truly yours,  
Mark T. Donohoe, PE

for:  
Acton Survey & Engineering, Inc.

cc: Marsh View, LLC

# GOULD LAW OFFICES

311 GREAT ROAD  
P.O. BOX 752  
LITTLETON, MA 01460-2752  
TELEPHONE (978) 486-9566



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HON. MORRIS N. GOULD  
1918-1987

H. MITCHELL GOULD, ESQ.  
1947-1987

CONCENTRATING IN  
REAL ESTATE  
BUSINESS  
ESTATE PLANNING  
WILLS & TRUSTS

FACSIMILE: (978) 486-9934

November 9, 2009

To Charles D. Micol

## CLARIFICATION OF VALIDITY AND ENFORCEABILITY OF RIGHT OF WAY

Dear Mr. Micol:

You have asked for clarification of your right to use Pine Ridge Road, a private way shown on the Plan of Land recorded with Middlesex South District Registry of Deeds in Book 12143, Page 2, as appurtenant to your ownership of Lots 1 and 3 as shown on said Plan. I have certified title to you and issued a policy of title insurance which grants you specifically by Deed 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." I have included in my title insurance policy to you " easement and right of way to use Pine Ridge Road for purposes for which roads are used in the Town of Acton."

Now, at the suggestion of Town Counsel, and for further clarification, I am tracking the pertinent deed history for your and counsel's benefit. Please be advised that the chain of title shows that Lot 2A and the area designated "Private Driveway", together with Lots 1 and 3, all were in common ownership, owned by one Janice Ziman, by deeds dated 1991 and 1998, respectively. On June 30, 2004, Ziman deeded to Matthews, your predecessor in title, Lot 2A as shown on that plan, with a specific conveyance, to your heirs and assigns, of "the unobstructed right to use the parcel entitled "Private Driveway" on said Plan for all purposes

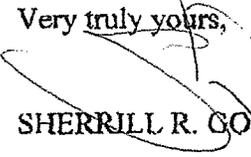
for which streets and ways may be used in the Town of Acton in common with others entitled thereto". See Deed at Book 43297 Page 53 attached, as well as a copy of the plan.

According to conveyancing practice, this is an express grant to use the private way for all purposes for which streets and ways are used in the Town. MGLA Ch. 187 Section 5 grants you the right to install utilities within the private way. Furthermore, it is noteworthy that your predecessor in title, Ziman, did not reserve the fee in the private way when she deeded to Matthews, so under MGLA Ch. 187, Section 58, you are deemed to own the fee in the private way to the centerline of the private way, subject to the rights of you and others to use the private way as a private road for access and egress and all purpose for which streets and ways are used in Acton.

You also inquired whether you have the ability and will convey this to your successor in title and the response is yes, the access rights run with the land as appurtenant to the land and you will convey the rights you acquired when you transfer title to ~~Westchester Homes, Inc.~~ MARSH VIEW LLC 

I trust this satisfies the inquiry.

Very truly yours,

  
SHERRILL R. GOULD

**BLATMAN, BOBROWSKI & MEAD, LLC**  
ATTORNEYS AT LAW

9 Damonmill Square, Suite 4A4  
Concord, MA 01742  
Phone: 978-371-2226  
Fax: 978-371-2296

ADAM J. COSTA  
adam@bbmatlaw.com

NEWBURYPORT OFFICE  
44 Merrimac Street  
Newburyport, MA 01950  
Phone: 978-463-7700  
Fax: 978-463-7747

Via E-mail

December 15, 2009

Zoning Board of Appeals  
Town of Acton  
472 Main Street  
Acton, Massachusetts 01720

Re: Application for a Comprehensive Permit  
Marsh View, 93 Central Street, Acton, Massachusetts 01720

Dear Members of the Board:

Reference is made to the above-cited matter. In that connection, my office represents Gwynn Horsburgh, owner of property located at 89 Central Street in Acton, a direct abutter to the site of the proposed "Marsh View" project (the "Project") and owner of the fee interest in the easement being utilized by the Project for access to Central Street. For several reasons, as hereinafter expressed, Ms. Horsburgh is opposed to the Project.

First, it is my opinion that use of the so-called "Pine Ridge Road," which exists not as a public way or approved subdivision way but only as a privately-created right of way, will be overburdened if the Project proceeds as proposed. While I am aware of an opinion provided to the Board by its counsel, Ryan D. Pace, Esq. and Mina S. Makarios, Esq., of Anderson & Kreiger, LLP, that use of Pine Ridge Road for three (3) additional homes will not overburden the applicant's (the "Applicant") easement therein, I contend that the cases cited therein in support of that conclusion are easily distinguished from the facts presented here. For example, in Lane v. Zylinski, 12 LCR 127 (2004), where the Land Court held that the addition of twenty (20) units to a property served by an easement did not overburden the easement, said easement existed in a private way created on an approved subdivision plan of land, not in a privately-created parcel designated as a "private driveway," as is the case here. Similarly, in Dunham's Corner Residents Ass'n, Inc. v. West, 12 LCR 163 (2004), where the Land Court held that the division of a property served by an easement into five (5) lots did not overburden that easement, the easement existed in a portion of two (2) ways, one (1) a paved, private way approved as a subdivision road and one (1) a private road in existence prior to the adoption of the Subdivision Control Law. Again, that is quite different than the proposed, extended use of the easement in Pine Ridge Road, which was neither approved as a subdivision roadway nor in existence prior to the adoption of the Subdivision Control

Law. Ms. Horsburgh requests that the Board give due consideration to the differences between the cited cases and the circumstances presented here.

Second, notwithstanding the effects of the Project on the Applicant's easement, the Project will adversely impact Ms. Horsburgh's property due to its density, its proximity to her home and the intensity of use being proposed. Ms. Horsburgh will shoulder the burden of the Project's consequences, more so than others, including increased traffic across the easement, increased noise and light, significantly decreased privacy and negative effect(s) on her property value and quality of life. While she is sympathetic to the Board's role in the Chapter 40B process and the unlikelihood that these factors, alone, would support a denial if challenged, Ms. Horsburgh asks that the Board consider denying the Project on principle, and in an effort to prevent similar projects from being proposed elsewhere. Here, the development of four (4) single-family homes on one (1) acre of land, more or less, is inconsistent with neighborhood character. Such is the case in many other parts of Acton. Permitting the Project will open a Pandora's box, with one (1) acre sites throughout the Town becoming "fair game" for Chapter 40B development. Notably, an effort is underway to repeal Chapter 40B in its entirety; the initiative petition proposed for inclusion on the November 2010 ballot provides that the repeal, if passed, would become effective January 1, 2011. As of that date, only projects that "ha[ve] been issued a building permit. . . for at least one (1) dwelling unit" would be unaffected by the repeal and allowed to proceed. It is unthinkable that a board would approve a bad project in the face of such a repeal movement. With that in mind, the Board is urged to deny the requested comprehensive permit.

Finally, should the Board be inclined to approve the Project as proposed, Ms. Horsburgh asks that additional consideration be given to: (a) the type and quality of landscaped buffer being offered by the Applicant; (b) Ms. Horsburgh's preference for a fence along portions of her property boundary and the location of same; (c) responsibility for improving, maintaining and repairing the easement; (d) responsibility for paying taxes on the portion of Ms. Horsburgh's property encumbered by the easement; and (e) the liability associated with use of the easement by the Applicant and its successors-in-interest. Specifically, Ms. Horsburgh requests additional details regarding proposed landscaping on or in the immediate vicinity of her property, and confirmation that a fence will be located as she so desires. Also, while the "Declaration of Common Driveway Covenant" prepared by the Applicant provides that maintenance of the to-be-improved portion of Pine Ridge Road will be shared by owners of the four (4) proposed homes, Ms. Horsburgh requests that the Board condition its approval, if any, so that Ms. Horsburgh herself will not be responsible for any maintenance of or repairs to the easement, the Applicant will be responsible for the payment of all taxes on the now-significantly-encumbered portion of Ms. Horsburgh's property, including the cost of determining the proper apportionment of taxes and submitting the same to the Assessor's office, and Ms. Horsburgh will be indemnified and held harmless from and against any and all claims of any nature and extent for personal injury or property damage resulting from use and/or maintenance of the easement, including damage to Ms. Horsburgh's property during its construction.

In sum, Ms. Horsburgh asks that the Board deny the Applicant's request for a comprehensive permit for the Project. However, should the Board elect not to do so, she asks that additional efforts be made by the Board to fully and adequately address the

concerns raised above.

Thank you for your consideration.

Respectfully submitted,

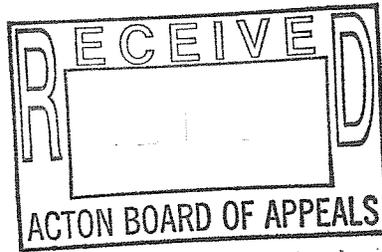
Gwynn Horsburgh,  
by her attorneys,



Mark Bobrowski

Adam J. Costa

Via email



9 Davis Road A-4  
Acton, MA 01720  
Feb. 18, 2010

Town of Acton Zoning Board of Appeals  
472 Main Street  
Acton MA, 01720

Dear Board Members,

I am writing in regard to the 40b development planned for 93 Central Street. I urge you to deny the comprehensive permit for the following reasons:

1. The design of the development is inappropriate for the area and will establish bad precedents:
  - Four full-size detached houses shoehorned onto a one acre lot are out of character with the existing neighborhood.
  - Central Street has incredible diversity of housing styles, ranging from Victorians to ranches, but they share a common characteristic: they all face the street. The name of the project, "Marsh View" is a bit ironic in that the backs of two of the houses face the marsh, while the other two will have no view of the marsh at all. The common view is of the soil absorption system. The requirement that natural screening be planted to hide the buildings from view from the street further obscures the 'view' and suggests that such buildings ought not to be constructed in the first place.
  - Much of the discussion at ZBA hearings on this matter has been about shielding this development from abutters with plastic fences and cheap bushes. If it was a welcome addition to the neighborhood, opposition would not be so vehement. (Dare I use the 'lipstick on a pig' metaphor?)
  - Sitting as they do atop a small rise, the height of the buildings makes them all the more imposing and appearing out of scale with the neighborhood. In particular, they will dwarf the cottage next door. The fact that the developer did not supply elevations suggests a desire to underplay this reality.
  - The marshland opposite this development is a place of subtle natural beauty in the town. The proposed buildings will lastingly impair this vista as one travels Central Street.
  
2. It stands to reason that the additional expanses of asphalt and roofing will shed more rainwater and snowmelt than the single family home that now occupies the site. Can anyone be certain that this increased runoff will not have a bad effect on drainage and the soil absorption system of the abutter at 89 Central Street?. If future damage and/or costs are incurred by the abutters,

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who will be responsible? Certainly not the developer, who stands to make considerable profit if and when the homes are purchased.

3. This development is being built with razor thin margins to wetlands and a small brook that empties directly into the marshland. Many beautiful mature pine trees will be removed. This effect on the delicate balance of nature is irreversible.
4. The aesthetic and environmental costs of this project, as noted above, far outweigh the benefit of one affordable home. An affordable home already exists on the property that perfectly suits the site and the neighborhood.
5. Counsel for the abutter at 89 Central Street has opined that the legal cases from which Town Counsel drew their opinion (that the developer's use of the easement is proper) differ substantially from the facts of this case. The legality is arguable.

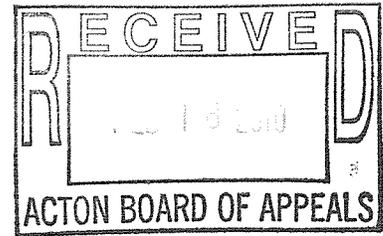
Perhaps it will ultimately prove to be legal. But legality and simple fairness are separate issues. This development's impact is ethically wrong. It is only possible through the (ab)use of an easement granted by the previous owner of 89 Central Street so that the owner of 93 could use the driveway. The present owner of 89 inherited this poorly composed easement. (Arguably an act of legal malpractice in and of itself). The resulting damage to the abutter, as measured by her quality of life, privacy, peace of mind, property value, and the loss of control of her own property far outweighs the benefit of adding a single affordable home to the town.

For all of the above reasons, I appeal to your sense of fairness and awareness of the community's concerns in requesting that you deny this permit. Thank you.

Paul Benedict

Cc: Acton Board of Selectmen  
Acton Town Manager

Zoning Board of Appeals  
Town of Acton  
427 Main Street  
Acton MA, 01720



February 18<sup>th</sup>, 2010

Dear Board Members,

We are the residents of 107 and 89 Central Street. As the abutters most significantly impacted by the 40b developments proposed for 113 and 93 Central Street we appeal to you not to approve these projects.

We have carefully researched 40B regulations known as 760 CMR 56 and throughout this document the authors speak of the importance of addressing local concerns and balancing local needs. Under LOCAL CONCERNS they include the protection of the natural environment, and the development of projects that provide good site and design elements which fit comfortably into their surroundings while conforming to the guidelines set forth in the town's comprehensive plan.

Time and again at the ZBA hearings members of the neighborhood have raised their concerns regarding the problems of density and design in this project and the damage it threatens to the existing woodlands and wetlands.

We would like to focus on two of these concerns:

**Density:**

The houses along Central Street are part of a district which is zoned R-2. This means each house is built on a minimum lot size of 20,000 SF or approximately ½ acre. The lot sizes proposed in both projects are 10,000 SF, twice the allowable density according to the town's own comprehensive plan. This proposal is obviously not compatible with the neighborhood.

We would like to draw your attention to an article in the Beacon last Thursday (2/11/10) regarding another 40b proposal called "Highgrove" on the Stow/Acton border. The article cited Selectmen Knibbe and Rosenzweig's concerns about density and neighborhood compatibility. At Highgrove, the Beacon reports, the residential density will average 1.5 units per acre. At 113 and 93 Central streets, we would like to remind you, the density will be 4 units per acre. Where is the equity in the use of standards? Do we have a double set of standards: one set for our area of town and another for other areas? We want the same criteria applied to the 113 and 89 Central St. projects as was applied to Highgrove.

**Design:**

The developer calls these houses "capes". This is misleading. Most of us think of capes as a small 1 ½ story quaint New England dwellings. These are not. They are 3 story single house structures. Four of these will be built on a single acre of land where one



house currently sits. They will be built on top of already significantly elevated topographical sites, with frontages in almost all cases oriented away from the street; some actually with their backs to the street, again not in keeping with the context of the neighborhood.

Please try to imagine this: these homes will be imposing structures crowded on top of a denuded hill that we as individual abutters, the neighborhood and the larger community will be looking at for many years to come. Every one who drives down Central St will be exposed to this view. We do not want this for our neighborhood. There must be a better way to achieve the need for housing diversity in our town.

In closing, having read the law, in section 56.05 (4), the authors state that when examining proposals, projects should be CONSISTENT WITH LOCAL NEEDS. In other words do the projects satisfy the various needs of the town and the neighborhood? This should be the central issue in all comprehensive permit applications. (Please refer to the referenced section in the law). As the town works towards achieving housing diversity it also needs to balance the ability of each neighborhood to integrate the new housing. We don't believe this is the best project for this neighborhood or the larger community. We don't want more developments like the townhouses at KMART or those at the corner of Rtes 27 and High street, particularly not in a completely residential area. Do you?

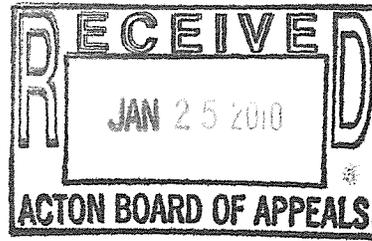
We hope you will seriously consider our concerns and we urge you to deny these permits. We ask that this letter please be read at the next ZBA hearing.

Thank you for your time and thoughtful deliberation.

Brenda Cooper and Thomas Dorrance (107 Central Street)

Gwynn Horsburgh (89 Central Street)

cc: Board of Selectmen, Town Manager: Steven Ledoux



January 25, 2010

Zoning Board of Appeals  
Town of Acton  
Acton, MA

Re: Marsh View LLC Chapter 40B Proposal  
93 Central Street  
Acton, MA

Dear Board Members:

In response to the most recent material (dated 1/6/2010) submitted by the applicant for the above referenced project, I respectfully submit this correspondence for your review and consideration at the next public hearing, in order to mitigate some of the impacts this development will have on the Central Street neighborhood.

The attached annotated images of the applicant's development proposal have been generated from the construction of a detailed 3D computer model based on information that has been submitted by the applicant and in some cases, placed in context by the use of Google Earth or Bing Maps aerial imagery.

As an architect who has devoted a significant portion of my professional career to the design of affordable housing, I whole-heartedly support the Town's objectives and policies towards increasing the number of affordable housing units in Acton. However, development proposals should be responsive to the guidelines outlined in the Town's Comprehensive Permit Policy statement with respect to floor area ratio, orientation, placement and scale of the units on the site. In addition, the reduction of site tree coverage and the increase in site imperious cover are both significant.

While the guidelines state that "the Town wants to avoid imposing overly prescriptive rules on developers and design teams", they also suggest that while determining an appropriate design involves many factors which may not please everyone, "design decisions ought to be sensitive to the site and its context".

The attached images illustrate the following areas of concern that I feel need to be addressed further to make this development a successful project that is more responsive to the objectives of the policy statement and will better fit within the neighborhood context.

- The orientation and alignment of Units 1 and 2 by having their 3 ½ storey "rear" elevations facing the street is inconsistent with the scale and pattern established on Central Street where the "front" elevations of residences face the street and therefore present a lower eave and ridge line. In Appendix C of the policy statement, which includes images from the Visual Preference Survey (October 2003), all of the single and multi-family dwellings are oriented with the "front" of the structure facing the street.

A small, handwritten checkmark in the bottom right corner of the page.

- The proposed floor area ratio (FAR) of 0.30 is significantly greater than the suggested maximum of 0.25 which is considered to be "responsive" to the guidelines. A reduced FAR would help with the scale and massing of the units.
- The proposed reduction in forested area of the site from 55% to 14% is inconsistent with one the policy statement's objectives to "Respect our natural resources".
- Similarly, the proposed increase in the impervious cover of the site from 4% to 29% due to the development of additional residences and driveways is a cause for concern.

I hope that the attached images are helpful in illustrating the concerns noted above and look forward towards working collaboratively to achieve the Town's local objectives in preparing the Comprehensive Permit Policy statement.

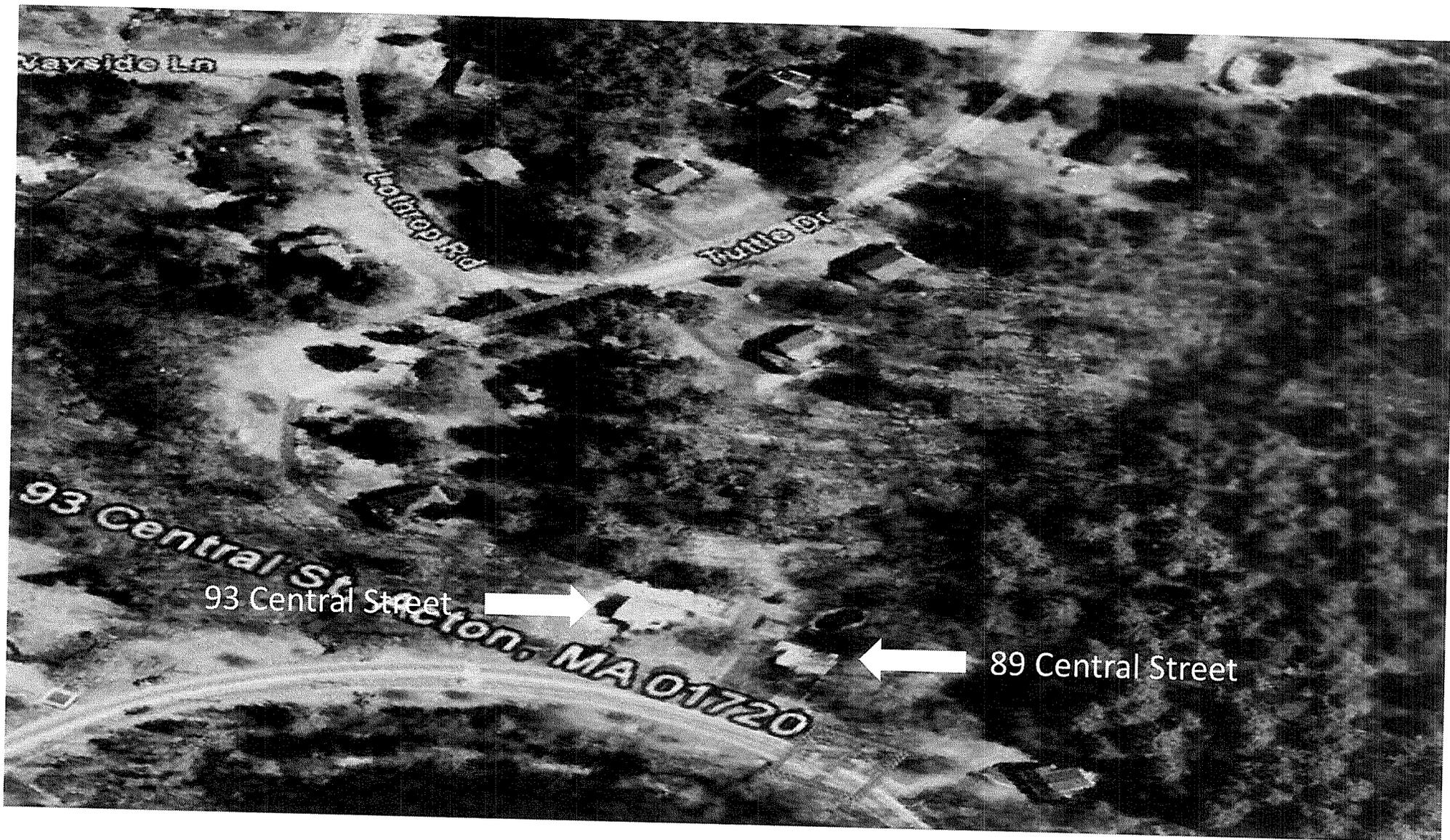
Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kenneth R. Guditz". The signature is fluid and cursive, with a large loop at the end.

Kenneth R. Guditz, AIA  
81 Central Street  
Acton, MA 01720

978-844-0074  
guditz@verizon.net

attachments

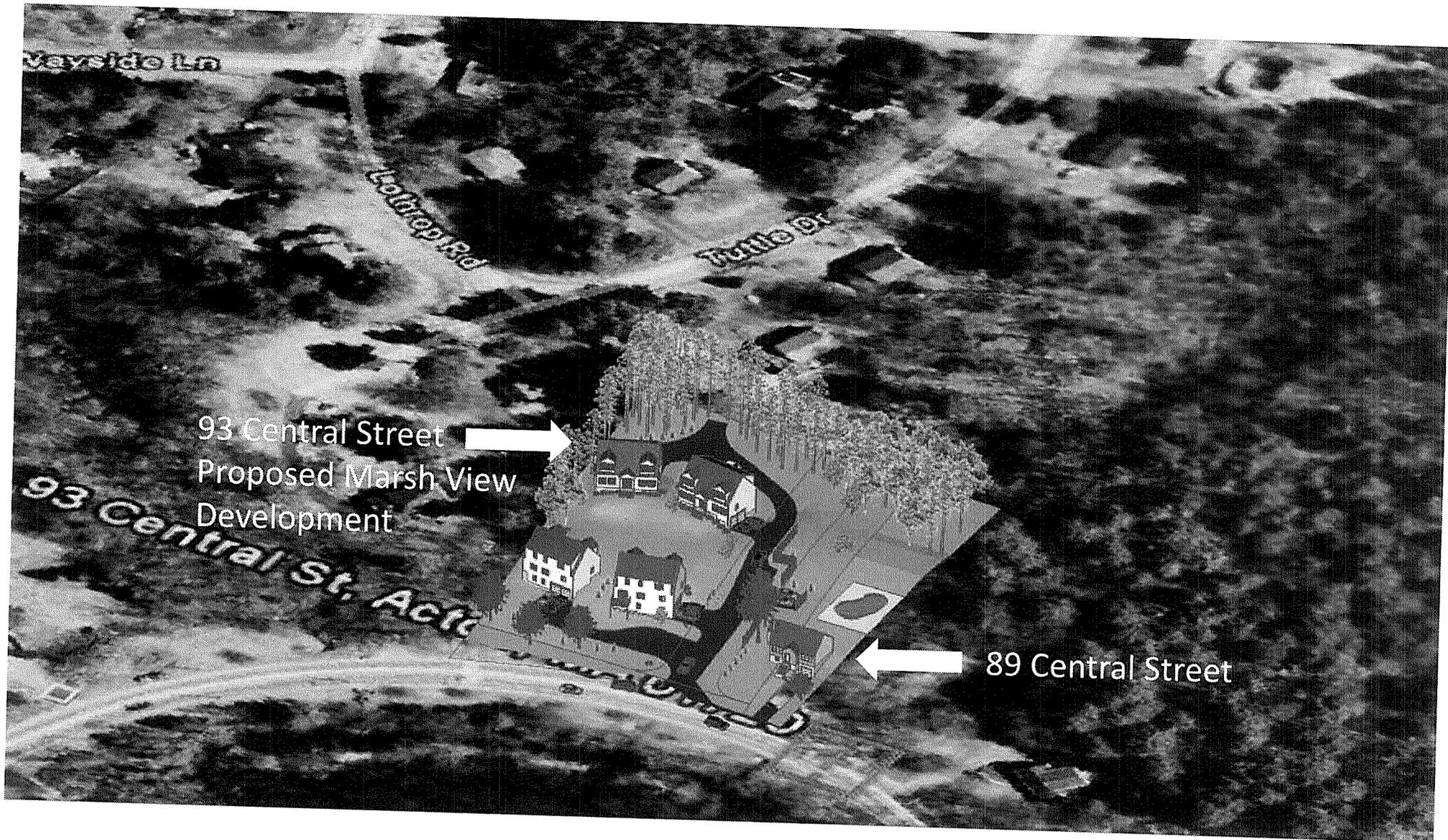


Existing Site Conditions (from Google Earth, April 2008)

93 Central Street "Marsh View" Neighborhood Impact

25 January 2010

Kenneth R. Gudit, AIA  
81 Central Street

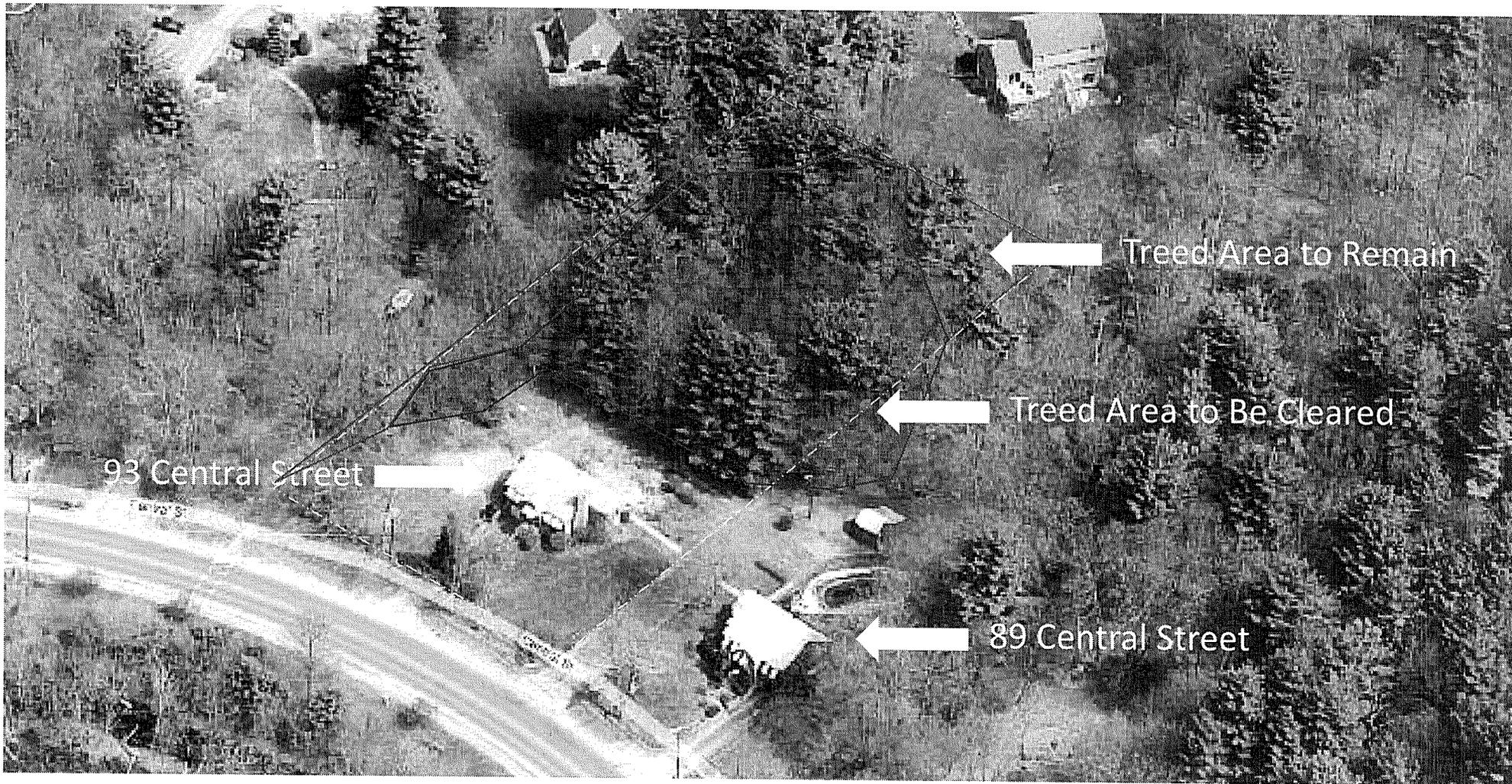


Proposed Marsh View Site Plan Overlaid to Existing Site Conditions

93 Central Street "Marsh View" Neighborhood Impact

25 January 2010

Kenneth R. Guditz, AIA  
81 Central Street

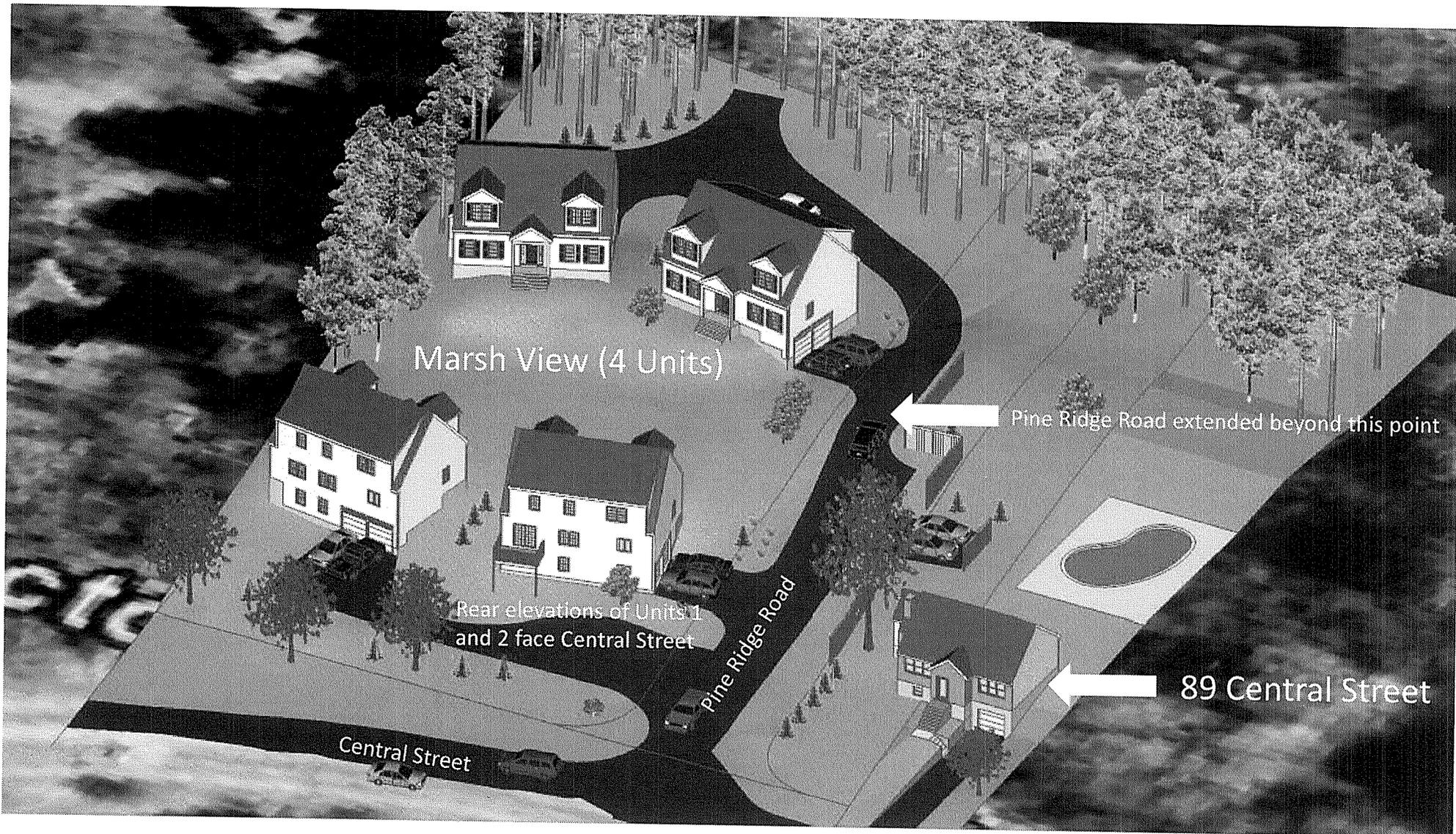


Proposed Site Clearing Diagram

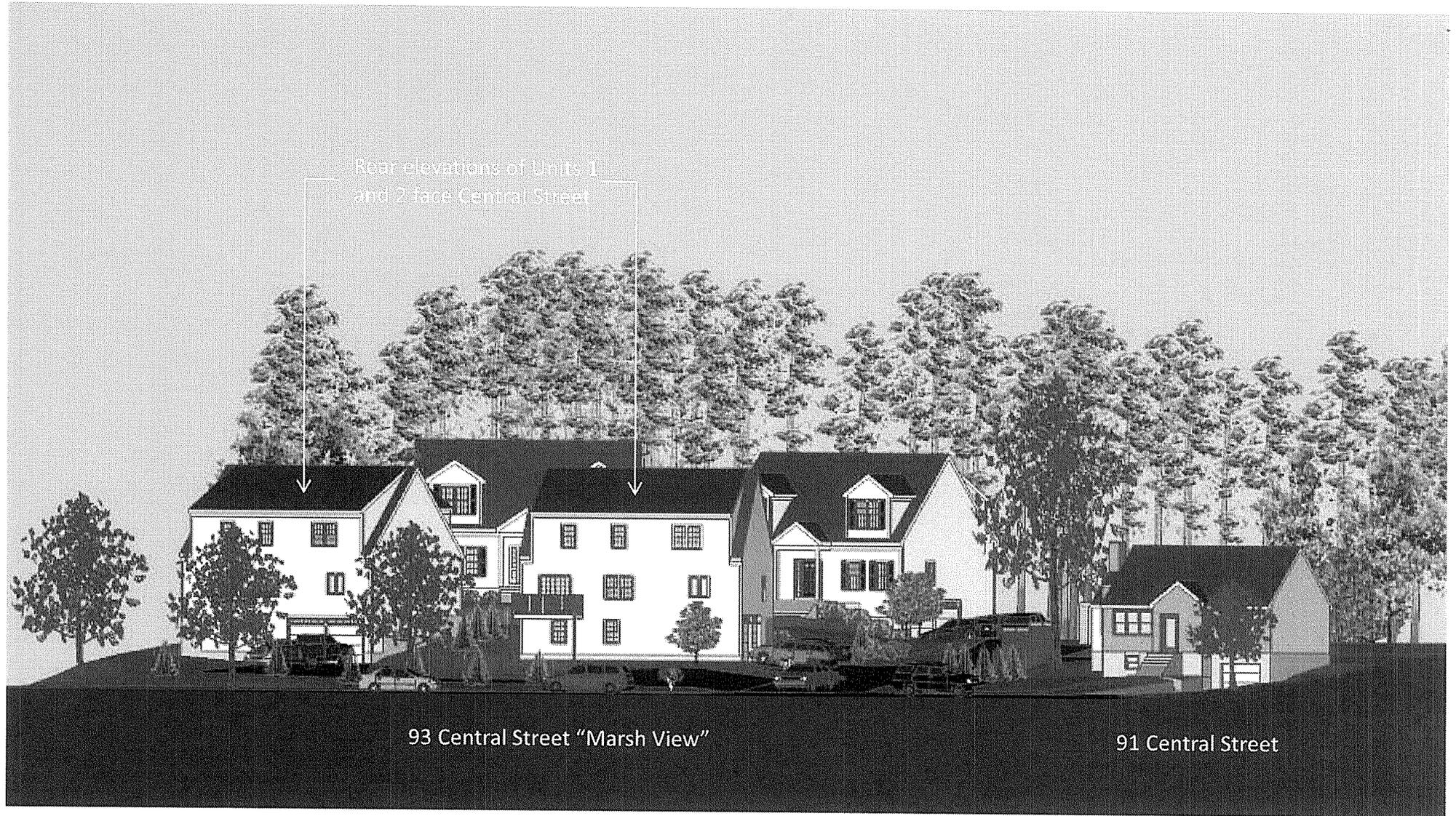
Existing Wooded Area: 55% of Site  
Proposed Wooded Area: 14% of Site

93 Central Street "Marsh View" Neighborhood Impact  
25 January 2010

Kenneth R. Guditz, AIA  
81 Central Street



Proposed Site Development Aerial View



## Proposed Central Street Elevation

93 Central Street "Marsh View" Neighborhood Impact

25 January 2010

Kenneth R. Guditz, AIA  
81 Central Street



Proposed View from Southwest

## 93 Central Street "Marsh View" Neighborhood Impact

25 January 2010

Kenneth R. Guditz, AIA  
81 Central Street



Proposed View from the South Side of Central Street



Proposed View Up Pine Ridge Road (Private Drive)



The rear elevations (not the front) of Units 1 and 2 face Central Street

Proposed View Looking West from Front Door of 89 Central Street

January 28, 2010

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

Re: Marsh View LLC Comprehensive Permit Application Design Review  
93 Central Street  
Acton, MA

[via email \(bos@acton-ma.gov\)](mailto:bos@acton-ma.gov)

Dear Selectmen:

As the above referenced proposal for Marsh View at 93 Central Street moves towards a decision in the coming weeks, I would like to request that a formal design review of this proposal be made by the Acton Design Review Board (DRB). From the proceedings of the most recent Zoning Board of Appeals (ZBA) hearing on January 25<sup>th</sup>, I understand that the DRB was not be included on the list of town boards and departments to submit formal review comments on residential projects such as this. Although the DRB was mistakenly included on the initial distribution of the proposal materials late this past summer to which they did submit review comments, there has not been any expectation put upon the applicant that these comments should be responded to. Any additional material that has since been submitted by the applicant has not been forwarded to the DRB for further review.

This proposal has generated a significant amount of local concern with respect to the massing, density, orientation and placement of the proposed residences on the site, which are drastically inconsistent in their relationship to those currently existing in our Central Street neighborhood.

During the hearing process, a significant amount of time has been spent on a myriad of details relating to important issues such as fire vehicle access, erosion control, landscaping, septic design, screening, legal descriptions, etc., but there has been no substantive discussion (except for that generated by the neighbors attending) about the basic building and site design features of this proposal, which in the end, will be the most visible character-defining aspect of the project that will be left behind for years to come.

Although neighbors have requested on several occasions that the applicant prepare street level views or elevations to illustrate the project's appearance from Central Street, none have been prepared. In order to illustrate the neighborhood's concerns, my attached letter and accompanying images were submitted to the ZBA for their consideration at the hearing on January 25<sup>th</sup>. The Design Review Board is composed of a variety of design professionals (architects, civil engineers and landscape architects) that can be a valuable resource to the ZBA in considering the design aspects of this proposal. This is not unlike the

✓

Marsh View LLC Comprehensive Permit Application Design Review  
93 Central Street  
Page Two

assistance provided by other town boards or departments who have already provided their review comments as they relate to their particular areas of expertise.

I ask that you take a few minutes to review the attached information and respectfully request that the Design Review Board review the applicant's proposal and submit their comments to the ZBA. I believe that a review by the DRB would satisfy the intent of Section 4.5 of the Town's Rules and Regulations for Comprehensive Permits which states in part, *"To ensure full and qualified review of the APPLICATION, the BOARD will forthwith notify other TOWN departments, boards, committees, agencies or independent consultants of the APPLICATION by sending one or more copies thereof to such local boards, committees, agencies or independent consultants for their recommendations,....."*

It is important to keep in mind that under the Comprehensive Permit Statute, issues of Local Concern, such as *"the degree to which the design of the site and the proposed housing is seriously deficient"* are weighed no more or less importantly than other issues like health and safety, the natural environment or open space. All issues of Local Concern are to be considered in balance with Housing Need. The evaluation of proposals should be based on fundamental design and planning principles which are consistent with the objectives outlined in the town's Master Plan and Comprehensive Permit Policy's guidelines, as well as the Chapter 40B regulations.

Should you have any questions regarding the enclosed information, I may be contacted as noted below.

Respectfully submitted,



Kenneth R. Guditz, AIA  
81 Central Street  
Acton, MA 01720

978-844-0074  
guditz@verizon.net

cc: Acton Design Review Board (via drb@acton-ma.gov)  
Acton Zoning Board of Appeals (via zba@acton-ma.gov)  
Town Manager (via manager@acton-ma.gov)

Attachment: Letter and images dated January 25, 2010

## Cheryl Frazier

---

**From:** Maureen and Steve Friend [friendz@verizon.net]  
**Sent:** Saturday, February 13, 2010 8:36 PM  
**To:** Board of Appeals  
**Cc:** 'Deb'; ghorsburgh@comcast.net; Board of Selectmen; Planning Department; 'Maureen and Steve Friend'; Ann Sussman; David Honn; kguditz@sbra.com; 'brendacooper@verizon.net'  
**Subject:** Marsh View development - 93 Central Street - Undue Burden on Single Acton Resident

Dear Sirs,  
 RE: Marsh View - 93 Central Street, Acton

I am disappointed that Jim D'Augustine has backed out of his promise of a fence for me and my neighbors, even though he made assurances to us, the Friend family (40 Tuttle) and the Maher family (42 Tuttle Dr.) regarding the fence, marking trees and snow removal (has that front-loader snow removal made it to the by-laws yet?) Since the ZBA will not be requiring him to fulfill his promises to us, we will necessarily be looking into putting up a fence on our property to protect ourselves and families from the inevitable headlights in our living room, construction debris, snow piles and who knows what else.

Each successive meeting has brought more comments from the developer on the costs they do not want to incur. This has never been a conversation about helping someone afford to live in Acton, but rather the profit they'll make on the other 3 units - \$1.8+ million dollars. Even members of your Board seemed bothered at this last meeting that the developer had missed more deadlines. Your approval of this permit will just reward this behavior and you will have many opportunities to see it again on their future projects.

Yet I recognize that the discontent and inconvenience this development will cause my family pales in comparison to what this will do to Gwynn Horsburgh, the current Acton resident and taxpayer of 89 Central Street. Please consider:

1. You said that you agreed with the statute which addresses easements that 4 houses will not constitute "undue burden" of the easement. Whereas I am fully confident that the pavement of the new road will support the daily traffic of 8+ cars, perhaps the statute could also be applied to the "undue burden" this entire development places on Gwynn.
2. Gwynn will effectively lose the use of 1/5 of her land. Currently, she can use of 100% of the easement which is handy on a street with no on-street parking. Once this is paved, however, she will have no use of this property because at any time a car or truck will have the right of way. During construction she will have 0% use of that part of her property. Will the developers compensate her for this use of her property during this time? She may own the property under the pavement, but the Town of Acton is effectively using her property, presumably, for the "good" that the town gains from one, single affordable housing unit.
3. You also mentioned that it is "too late" for input, intimating that you have all but made your decision in favor of the developers of "Marsh View." While I understand that the developers have put a great deal of work into this project, that reason alone should not justify your ruling in their favor. I don't know of the actual numbers involved, but in addition to the purchase price of the property which they can develop differently or resell, let's say the developers

have invested \$100,000 - staff time for 2 years and plans, etc. Conversely, Gwynn has worked her entire life to invest in her property and a loss of 1/5 of her property probably nears \$100,000, as well. Would I feel badly for the developers for their loss? Of course. But theirs would be a business loss which they can write off on their taxes or recoup in their many other 40b developments in Acton. The loss will not affect the personal property of any of them. What is Gwynn's recourse? She does not have the time and capacity to recoup that level of financial loss. Can she write off 1/5 of her property as a charitable contribution to the State of MA? Gwynn's loss would be far greater. Since you are not obligated by law to accept all applications for 40b, please do not side with the developers simply because they've put time and effort into this. That's their job and, in the end, they get paid handsomely for it.

4. Following the "too late" comments you made at the last meeting, you told one of the citizens that they "should have gotten involved in the process earlier," referring directly to the first BOS meeting where it was first presented. With your propensity to side with the developers, would citizen input really make a difference, even with early involvement? My neighbors and I started attending meetings last August. When does it become "too late"? You also said that it is incumbent upon each citizen to watch the public BOS listings to be aware of developments that will affect them. Is this done purposely to minimize the input of residents? The affect is that you're basically telling us that we can't trust the Town to protect our property. Message heard.

I am not asking you to stop the building of affordable housing in Acton. If I've learned anything in this process, it's that none of us can stop that, even if we wanted to. But I am asking you to stop THIS ONE project because of the undue burden it places on ONE citizen. If the goal of this project is to add ONE affordable unit for \$175,000 and ONE citizen will be losing \$100,000 in property value, then Gwynn is "paying" for that house, not the developers. They merely walk away with the profits and away from the mess that they leave for the rest of us to live with. Even Mr. Bartl said that this one unit will not affect our 40b unit count.

"At what cost is Acton willing to pay to build THIS affordable housing unit?" I asked this question at the last meeting and Mr. Bartl said that it was a good one. This is no mere rhetorical question for Gwynn. Acton will "pay" nothing. Gwynn will be the one paying for it in her loss in property value.

Just because it may be legal doesn't make it right. Please do the right thing by not allowing the permit on this egregious use of the 40b law.

With respect and gratitude for your time,  
 Maureen Ryan-Friend  
 40 Tuttle Drive

# Cheryl Frazier

---

**From:** Gwynn Horsburgh [ghorsburgh@comcast.net]  
**Sent:** Friday, February 12, 2010 1:25 PM  
**To:** Board of Appeals  
**Subject:** Proposed Development: 93 Central Street, Acton

Dear Members of the Board,

As the owner of the property located at 89 Central Street, I would like to reiterate some of my concerns regarding the proposed 40b development at ~~89~~<sup>93</sup> Central Street. My lawyer, Adam Costa, of Blatman, Bobrowski and Mead, LLC submitted a letter to you December 15th, 2009 describing my opposition to the Project. These objections have also been raised very strongly at all the ZBA meetings by concerned neighborhood residents. You cannot ignore that this Project is very unpopular in the community.

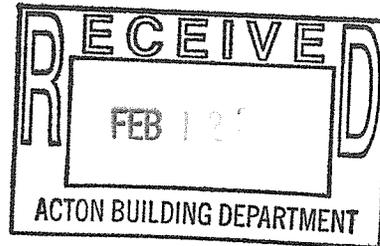
The purpose of this communication is to ask for your consideration of my situation in the event that the Board does see fit to approve the Project. As the owner of "Pine Ridge Road" I have serious concerns regarding my responsibilities and liabilities. As Mr Costa proposed in his letter to you I would ask that the Board condition its approval such that:

1. I will not be responsible for any maintenance of or repairs to this portion of my property.
2. I will be indemnified and held harmless from and against any and all claims of any nature and extent for personal injury or property damage resulting from use and/or maintenance of the entire easement, including damage to my property during construction.
3. The Applicant and future property owners at "Marsh View" will be responsible for payment of all taxes on the parcel known as "Pine Ridge Road", including the cost of determining the proper apportionment of taxes and submitting the same to the Assessor's Office.

As a property owner and tax payer in Acton who will be significantly and negatively impacted by the proposed development, I respectfully request that the Board give consideration to my concerns and condition your approval of the Project, if approved, to include my requests.

Thank you for your efforts,  
Sincerely,

Gwynn Horsburgh



**Scott Mutch**

---

**From:** Matthew Liebman [m.liebman@comcast.net]  
**Sent:** Monday, September 14, 2009 8:15 AM  
**To:** Planning Department; Building Department  
**Cc:** Green Advisory Board; Design Review Board; Land Stewardship Committee; Conservation Commission; Natural Resources Department  
**Subject:** Developments at 93 and 113 Central Street

My name is Matt Liebman and I live on Tuttle Drive. I am writing this email to the Building and Planning departments because the ZBA does not appear to have an email address. I hope that you can pass this along to the members of the ZBA. I am concerned about two pending 40b developments at 93 and 113 Central Street. There is a hearing tonight (which I cannot attend) about these projects. These developments may have adverse effects on conservation land, wetlands habitat, water quality and quality of life in our neighborhood. As I am sure you are aware, like most people, we certainly promote affordable housing in Acton, but the tradeoffs of more growth (i.e. build four houses to get one affordable house) is unsustainable in our community and other communities. A different model is clearly needed. This is a good case in point. These developments will put 8 new houses in a small watershed that the Board of Health has identified as a concern for groundwater quality. There are three to four wetlands and at least two vernal pools (or pools with strong vernal pool characteristics) either abutting or very close to these developments. Scientific research has shown that at least a 100 foot (and probably over 200 feet) horizontal setback is needed to protect these critical habitats. There is also conservation land (Pacy Land) directly abutting one of the projects, and efforts to protect this land are stymied as more development encircles it and fragments it. The Land Stewardship Committee is actively promoting a trail in this land as well. Finally, although I have not seen the design of these houses, there is no evidence that they will be "green". The lots at 93 Central are ideal for a solar roof and in this day of critical global climate change, with efforts by the town to reduce our carbon footprint, it would be a shame if the town allows 8 new houses with little effort to limit carbon emissions.

As you know, the 40b development allows some circumvention of local bylaws. But you have the power to maintain those laws too! It's important to remember that these parcels are not in areas targeted in the town for 40b development. I have worked hard over the years to establish improved setbacks to wetlands in Acton, to protect our natural resources. As I have seen in the last few years in my neighborhood, I am continually disappointed that insufficient effort is made to develop our town in a sustainable fashion.

Thank you.

Matthew Liebman  
m.liebman@comcast.net  
978-635-9652

9/14/2009

## Cheryl Frazier

---

**From:** Deb [d.piper4@verizon.net]  
**Sent:** Wednesday, February 17, 2010 10:03 AM  
**To:** Board of Selectmen; Board of Appeals; Manager Department  
**Subject:** 93 and 113 Central Street

February 17, 2010

**TO:** Board of Selectmen  
 Zoning Board of Appeals  
 Steven Ledoux, Town Manager

**RE:** Proposal Process for Marsh View and Richardson Crossing  
 93 and 113 Central Street  
 Acton, MA.

To Board Members and Town Staff:

This letter is in regard to the process involved in granting Comprehensive Permits for the above mentioned properties. The process has been inadequate and seriously flawed. A January 25, 2010 ZBA meeting ended with many of the attending townspeople expressing dismay and disappointment as well as clear outrage at the process.

In the summer of 2009, someone informed me of the potential for land clearing and density that may be involved at the above mentioned properties. I began naively to inquire of town staff how I might be constructively involved in the planning. I had heard about our "Smart Growth" initiative and I somehow thought "smart growth" implied careful planning and a clearly delineated zoning process that would encourage the best possible building specifications even in dealing with Comprehensive Permits. I was very wrong. I have received many calls and emails from neighbors all over town who are deeply dismayed at the type of building that is going on all over Acton. Friends from neighboring towns including Harvard, Concord, Groton, Stow and Carlisle have asked me: "What's going on in Acton?" citing the destruction of trees and the building of structures that don't fit in with neighborhoods. As one long time native Actonian said: "Acton has sold its soul."

On July 7, 2010, I emailed Roland Bartyl in our Town Planning office to inquire about how one could be constructively involved in the above mentioned proposals. He informed me of the Comprehensive Permit Law and wrote: "40B is not about planning; it is about generating affordable units." I researched this to get a better understanding. I found countless articles from sources such as: The Massachusetts Housing Partnership in November of 2005; The Department of Housing and Community Development; a Land Use case study on Acton done by the MIT Department of Urban Studies and Planning published in February 2007; the Town of Acton Comprehensive Permit Policy published in April of 2006; a "Fact Sheet on Chapter 40B" prepared by Citizens' Housing and Planning Association in April 2009 and many others. Each one clearly discusses the importance and even necessity of good town planning in granting a Comprehensive Permit. Though Mr. Bartyl told me Planning was not a part of 40B, it turns out he had done a "Project Evaluation Summary Exercise" at 93 and 113 Central street "to evaluate this project using criteria in the Comprehensive Permit Policy." His report stated: "This project seems to fit without much needed justification into the existing neighborhood due to its small scale, moderate density, and single family style." The submissions of three dimensional scale drawings by my neighbor Kenneth Guditz clearly dispute this evaluation.

At the January 25,2010 ZBA meeting, the disappointment and outrage expressed by townspeople was directly in response to statements by Mr. Bartyl that this project should have easily slipped through and that the town staff was spending way too much time on the project. It was as though we were wasting time in asking that the legal and ethical requirements of this proposal be met! The people who will drive by or live next to these projects for many years to come strongly disagree. The

2/17/2010

applicant has repeatedly returned to successive ZBA meetings without adequately responding to questions from the previous meetings. The information they do bring is submitted late or incomplete. As time has gone on, they state it is too costly to present clear and comprehensive plans. Why wasn't the application denied for lack of information or due process?

The ZBA has the ethical and legal responsibility to ask for any and all assistance, technical or otherwise, that they may need to make an informed decision. There is a wealth of statutory requirements and legal case information that is available to direct evaluation of 40B developments. We were all shocked to see how surprised the board was when they heard some of these regulations read or submitted by townspeople. It was almost as though the board did not have this information. If the role of the ZBA is to advocate for responsible development that is within the scale or fundamental character of the town, then we need to have clearer guidelines at the outset.

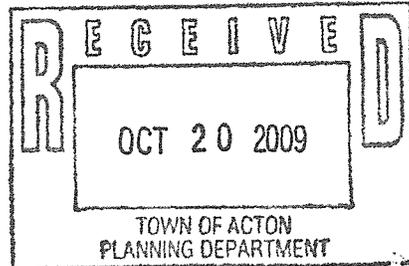
**No proposal for development, either 40B or market rate should be allowed to slip through easily. No applicant should be allowed to submit proposals without adequate information including three dimensional drawings to scale. Our townspeople deserve to have better planning and a more ethical and responsible process.**

Respectfully submitted,

Deborah Piper  
101 Central Street  
Acton, MA. 01720

October 20, 2009

To: Zoning Board of Appeals  
Town of Acton



RE: October 20, 2009 Hearing

I request a continuance without discussion on 93 Central Street #09-03, and on 113 Central Street #09-04.

Marsh View, LLC  
Richardson Crossing, LLC

A handwritten signature in black ink, appearing to be "J. D'Agostine", written over a horizontal line.

By: J. D'Agosotine, Managing Partner



RECEIVED  
APR \_ 7 2010

TOWN CLERK, ACTON

Town of Acton

**Zoning Board of Appeals**

Acton Town Hall  
472 Main Street  
Acton, Massachusetts 01720

Consent and Agreement to Extension

Marsh View LLC applicant for a comprehensive permit under Chapter 40B of the Massachusetts General Laws (Applicant), hereby agrees and consents, pursuant to G.L. c. 40B § 21, to the Acton Zoning Board of Appeals holding a continued public hearing on the proposed Marsh View, 93 Central Street project on October 20, 2009 at 7:30 pm.

Marsh View LLC

By \_\_\_\_\_

Name: \_\_\_\_\_

ACCEPTED:

  
\_\_\_\_\_

Ken Kozik  
Acton Zoning Board of Appeals



RECEIVED  
APR 7 2010

Town of Acton

TOWN CLERK, ACTON

**Zoning Board of Appeals**

Acton Town Hall  
472 Main Street  
Acton, Massachusetts 01720

Consent and Agreement to Extension

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Marsh View LLC

By \_\_\_\_\_

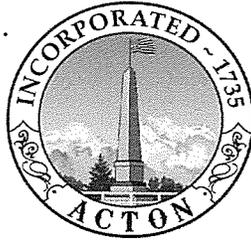
Name:

ACCEPTED:

  
\_\_\_\_\_

Ken Kozik

Acton Zoning Board of Appeals



RECEIVED  
APR - 7 2010

TOWN CLERK, ACTON

Town of Acton

**Zoning Board of Appeals**

Acton Town Hall  
472 Main Street  
Acton, Massachusetts 01720

Consent and Agreement to Extension

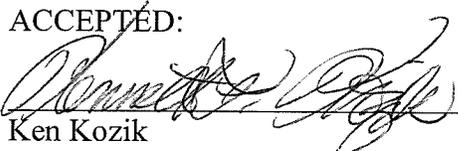
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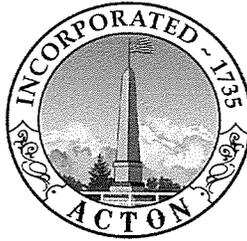
December 15, at 7:30 pm.  
2009

Marsh View LLC

By \_\_\_\_\_  
Name:

ACCEPTED:

  
\_\_\_\_\_  
Ken Kozik  
Acton Zoning Board of Appeals



RECEIVED  
APR 7 2010

TOWN CLERK, ACTON

Town of Acton

**Zoning Board of Appeals**

Acton Town Hall  
472 Main Street  
Acton, Massachusetts 01720

Consent and Agreement to Extension

Marsh View, LLC for a comprehensive permit under Chapter 40B of the Massachusetts General Laws (Applicant), hereby agrees and consents, pursuant to G.L. c. 40B § 21, to the Acton Zoning Board of Appeals holding a continued public hearing on the proposed Marsh View LLC, 93 Central Street project on JAN. 25 / 2010 at 7:30 pm.

Marsh View, LLC

By \_\_\_\_\_  
Name:

ACCEPTED:



Ken Kozik  
Acton Zoning Board of Appeals



RECEIVED  
APR - 7 2010

TOWN CLERK, ACTON

Town of Acton

**Zoning Board of Appeals**

Acton Town Hall  
472 Main Street  
Acton, Massachusetts 01720

Consent and Agreement to Extension

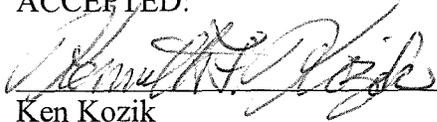
Marsh View, LLC for a comprehensive permit under Chapter 40B of the Massachusetts General Laws (Applicant), hereby agrees and consents, pursuant to G.L. c. 40B § 21, to the Acton Zoning Board of Appeals holding a continued public hearing on the proposed Marsh View LLC, 93 Central Street project on FEB. 24/2010 at 7:30 pm.

Marsh View, LLC

By

Name:

ACCEPTED:

  
\_\_\_\_\_

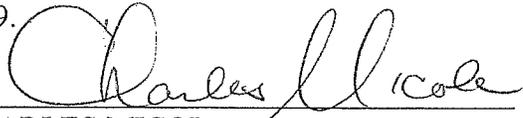
Ken Kozik

Acton Zoning Board of Appeals

**LETTER OF AUTHORIZATION**

I, CHARLES MICOL, the owner of 93 Central Street, Acton, Massachusetts, hereby authorize MARSHVIEW, LLC, to act in all regards as Purchaser and/or my Agent concerning the development and permitting of 93 Central Street, Acton, Massachusetts.

Executed as a sealed instrument this 4<sup>th</sup> day of June 2009.

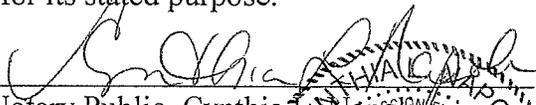
  
\_\_\_\_\_  
CHARLES MICOL

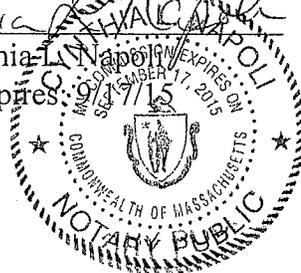
COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

DATE: June 4, 2009

On this 4th day of June 2009, before me, the undersigned notary public, personally appeared CHARLES MICOL, proved to me through satisfactory evidence of identification which was the presentation of a driver's license, to be the persons whose name are on this document, and acknowledged to me that he signed it voluntarily and for its stated purpose.

  
\_\_\_\_\_  
Notary Public, Cynthia L. Napoli  
My Commission Expires: 9/17/15



Request the following language be added:

We would ask that any conditions in the decision relevant to landscaping or fencing to be placed on her property, outside of Pine Ridge Road, contain language that if Ms. Horsburgh refuses adequate access to perform the work that we the applicant be relieved of performing the required work without coming back to the board to modify the decision and plan.

