

From: Acton Land Stewardship Committee
To: Acton Planning Board
Subject: Comments on the May 2011 "Request for Amendment" (Quail Ridge)
Date: July 12, 2011

Thank you for the opportunity to comment on the "Request for Amendment to Special Permit Decision 08-02 / The Residences at Quail Ridge".

The Land Stewardship Committee has five related concerns. They all revolve around risks to the goal of providing a new safe and usable pedestrian connection to the Nagog Hill Conservation Land.¹ Most of them specifically focus on the public pedestrian trail LSCOM is currently constructing² within the Town's trail easement across the Quail Ridge property.³

1) Relocated Gates

A new location for the large gate currently across the entrance from Hazelnut is not shown correctly on the plan.

In the plan sheet "Quail Ridge Drive Extension" (Sheet Number EX-H of 8), the gate is shown moved only a few yards down the road to the Concord Water District, still blocking almost the entire width of the trail easement in that area.

However, the Supplemental Decision 08-02 included the following Plan Modification: "4.1.3 In coordination with the Concord Department of Public Works relocate the existing gate far enough to the northwest to be outside of the pedestrian easement areas for the trail between Hazelnut and the Nagog Hill conservation land."

The simplest solution to the gate issue is to **move the gate up to the Concord Water District land boundary.**

The larger problem of which this is a part is that the exact path of the trail is not part of the plan, and at this point in the process it should be. That is the next issue:

2) Incomplete Trail Design

The almost entire lack of cooperation and communication from the owner to LSCOM, despite the mandates in the Trail Easement agreement,⁴ means the trail is not yet completely designed. If the trail had been designed and placed in a plan on schedule, issues such as the gate placement would have been detected earlier.

The Trail Easement agreement was signed in 2008. The easement says that "Prior to any construction, the Grantor shall, at its sole cost and expense, prepare plans and specifications of the design and materials to be used in the construction of the Trail and submit the same to the Grantee for the Grantee's prior written consent within ninety (90) days after the date of this Trail Easement."

Because of the lack of proactive communication from the owner⁵ to LSCOM, no such plans and specifications have been prepared.

We believe that a key part of the solution to this problem is to **require that the entire trail design be shown on the plan, along with any structures, signs, and surface preparation needed.**⁶

Implementing that solution will require cooperation between the proponent of the amendments and LSCOM to agree on these aspects of the trail.

3) Units 91-96 are Too Close To the Trail Easement.

New Units 91 through 96, 3 duplexes, will be longer and skinnier than what the plans associated with the 2008 Special Permit called for. That means they would be closer to the easement area than before, creating more risks.

The risks of these buildings being so close to the trail include:

- During construction there will either be interference with the Town's use of the trail easement, or danger to the safety of trail users/maintainers, or both.
- After construction there will be a substantial "chilling" effect on the general public's use of the public pedestrian trail, as users find it awkward and uncomfortable to walk past looming structures and their residents.
- After construction there will be conflicts and complaints between residents and RQR management on the one hand, against trail users/easement workers over, noise, property damage, alleged privacy violations and other issues; and The Town, its agents and the general public on the other hand, about, for example, being treated as interlopers when they are in the easement, or finding property, snow or lawn debris from RQR in the trail easement area, or because of problems caused by the excessive water run-off onto the easement that seems inevitable from the site design between Units 92-96.

The simplest way to deal with these issues is to **remove or reconfigure units 92-96 to restore a greater buffer between the trail easement area and the houses and their accompanying landscaping and grading.**

The most straightforward way to do this might be to **identify and require a reasonable buffer distance between houses, landscaping and grading, and any public trails within Quail Ridge; or increase the buffer needed between the adjacent land in those areas where trails run; or both.** Acton's Subdivision bylaws define most setbacks as 'minimums' and note explicitly "that the Planning Board may require larger setbacks." (Section 9B of the Zoning Bylaw, October 2010, Page 127ff).⁷

In any case, if the houses, possibly in some reconfigured state, remain where they are, we suggest a requirement for **6 foot or taller privacy fence, or a combination of shorter fence and 6 foot or taller evergreen shrub screen, as an additional buffer somewhere outside of but near to the 20' easement, in a continuous run in the area encompassed by those 6 units, during construction and after.** These fences will help prevent lawn maintenance and lawn furniture from finding their way in to the easement, create confidence for walkers on the trail (and residents) that walkers are on the authorized trail, and create some additional safety during construction. RQR and the Town could agree to having gates in the fences to provide the attractive feature of resident access to the public pedestrian trail.

And in any case, **the drainage and landscaping features shown in the trail easement area in the landscaping plan need to be removed; and an analysis needs to be presented by the proponent**

that shows that there will not be runoff problems from the housing area in to the trail easement area.

4) The "Trail Head Parking" is incomplete.

At the eastern edge of Quail Ridge Drive, down a short access drive, distinct from the trail easement area, the new plans show a small 4-car lot labeled "proposed gravel trail head parking". Given that no trail is shown, and that it is far from the trail easement, we think it creates a risk of confusing potential trail users. We also think there is an opportunity here for potentially improving the access to Nagog Hill. We recommend that the **trailhead parking area be made an actual trailhead** to simplify trail access in the future.

Now, or during house construction, or after the residents have had some time with a trail running in their backyard, or some far future date when the boardwalk might need expensive repairs, this lot might actually serve as a new trailhead in to Nagog Hill. Quail Ridge or the future homeowners association might choose to work with the town and its Land Stewardship Committee to define a new easement and a new trail, that goes via that parking lot to the Nagog Hill Conservation area, either over the existing wetlands bridge crossing near there, or a to-be-built trail to the corner of Nagog Hill Conservation Land, Quail Ridge, and the Concord Water District Land. LSCOM would be happy to work on that idea with the proponent now or in the future.⁸

To preserve the possibility of this option, we also recommend that **the plans should show the landscaping intent in the areas south of this parking area that are currently used for golf.**

Abandoning the area and allowing woody plants to return, or adjusting maintenance to create a meadow, are examples of options that would allow for trails to be built and maintained.

5) The responsibility of the applicant for easement obligations is unclear.

In order to ensure we can proceed with confidence and get the public pedestrian trail completed on a timely basis, LSCOM needs to feel it has a responsive player on the "Quail Ridge" side with whom to confer. Because of the complexity of the ownership and bankruptcy filings, we are not entirely confident that without explicit language to this effect, the easement obligations will remain with whoever has the building permits and the financial power to implement them.

The Applicant should become directly responsible for the obligations under the Special Permit Application and Trail Easement agreement.^{9 10}

Submitted respectfully,

-Jim Snyder-Grant, and the Acton Land Stewardship Committee, with a special acknowledgement to Land Steward Joan Cirillo for uncovering and developing many of the facts and arguments here.

¹ The Town's vision regarding connections such as trail easements was expressed in the Master Plan Update. See *1998 Master Plan Update* at pp. 48, 186 and 250.

In addition to increasing Nagog Hill's connection to new parts of the Town, a working trail access across Quail Ridge will improve public health and safety: At 170 acres, Nagog Hill is the only Acton conservation land larger than 100 acres that does not have at least four access points; Nagog Hill currently has only two access points, both on its southwestern side. The pedestrian trail currently under construction will provide a northeastern entrance/exit, which would be helpful in the event of accident or emergency, and also facilitate maintenance efforts, in the entire northern portion of Nagog Hill.

²LSCOM received permission for a boardwalk to cross the wetlands that cover part of the trail easement area at the 2/17/2010 ConsCom meeting. Here's the RDA:

<http://doc.acton-ma.gov/dsweb/Get/Document-27536> and here's the minutes approving the RDA: <http://www.acton-ma.gov/Archive.aspx?ADID=817>. The application included the LSCOM's standard boardwalk construction guidelines (<http://actontrails.org/BoardwalkDesign.pdf>), but did not include the exact location, materials list, or design of the boardwalk.

After that approval, LSCOM volunteers went ahead and marked and built a trail within the wooded portion of the 20' easement area, and staked out a location and height for the boardwalk. After review with the Natural Resources Director, it was agreed that the best route for the boardwalk was a single 170' boardwalk, using pressure-treated lumber for sills in the uplands areas, and either corrugated plastic or dock fittings in the wet areas, pending further site inspection.

LSCOM has been largely acting without any involvement of the owners, who have not been proactive in keeping to their side of the trail easement agreement. We did get a signature from an owner's representative to file with ConsCom. The town waived the filing fee.

³ The definitive version of the trail easement is the one filed at the Middlesex South Registry of Deeds at Book 51930, Page 356. A copy of the definitive version is available at <https://doc.acton-ma.gov/dsweb/Get/Document-33434>), and the text is available as the last endnote of this memo.

The Board's requirement for a trail easement across Quail Ridge connecting the Route 2A/119 area to Nagog Hill dates back to the Board's original 2002 decisions regarding Quail Ridge Country Club. See *May 20, 2002 Special Permit for a Golf Course, as amended June 24, 2002, specifically Plan Modification 3.1.10 a) and 3.1.12; Conditions 3.2.11 and 3.2.18 and Board Action 3.4*. It was reiterated in the Board's February 2008 Special Permit Decision. Section 3.3 of the Special Permit Decision provides: The following conditions shall be binding on the Applicant and its successors and assigns. Failure to adhere to these conditions shall render this special permit null and void...

3.3.1 Pedestrian trail from Hazelnut Street to the Nagog Hill Conservation Area:

- ...The easement, which is subject to Town Meeting acceptance, shall be for public pedestrian trail use....

If the easement is accepted by Town Meeting, the Applicant shall complete the trail.... The Town continues to offer to prepare the applications and represent the Town's interest at hearings before the Conservation Commission necessary to obtain approval. The Applicant shall be responsible for the preparation of all necessary plans, calculations, specifications and documentation.... After approval by the Conservation Commission, the Applicant shall then complete the construction of the trail, or assist the Acton Land Stewardship Committee with the completion of the trail construction as needed including delivery of materials and/or financial support for the purchase of materials that are required to traverse the wetland and build all other trail construction elements in accordance with the Conservation Commission approved plans and specifications.

⁴ We understand that some of the terms of the easement related to financial expenses that may be problematic in bankruptcy, but even the simple communication and coordination requirements that required no writing of checks have been spottily complied with if at all. Here's a partial list:

- "Within ten (10) days after the date of this Trail Easement, the Grantor shall notify the Acton Land Stewardship Committee ("LSCOM") in writing and shall coordinate the construction of the Trail with LSCOM"

- "Prior to any construction, the Grantor shall, at its sole cost and expense, prepare plans and specifications of the design and materials to be used in the construction of the Trail and submit the same to the Grantee for the Grantee's prior written consent within ninety (90) days after the date of this Trail Easement."
- "no snow, leaves or other debris from other portions of the Property shall be deposited in the Trail Easement Area.": grass clippings from the golf course have been deposited at the trail entrance more than once, and are still sitting there as of the writing of this document.

The new involvement of Pulte Homes to resolve any remaining permitting issues has given us new hope about our ability to complete the access. At a meeting on Tuesday June 21 with Conservation Commission members, Pulte representative Mark Mastroianni explained that Pulte intends to abide by all the terms of the easement, and that when LSC had a price for constructing the boardwalk we should contact him to have the plans and price reviewed in preparation for writing a check, or having Pulte build the boardwalk according to the plans.

⁵ Lack of responsiveness was exacerbated somewhat by confusion related to who owned and was running "Quail Ridge." The original applicant and property owner under the Original Decision and Special Permit Decision and the grantor under the recorded Trail Easement was Quail Ridge Country Club LLC (QRLLC). QRLLC transferred the golf course real estate to QR Properties LLC on in February 2009 and transferred management of the golf course to QR Members, LLC, a sub-group of the country club members, around June 2009. We were told that QR is an entirely different organization, unrelated to those involved in QRLLC; however, documents QR has filed with the Bankruptcy Court indicate significant overlap between the owners of QR and the junior mortgagees of QRLLC (and now QR), including the Palmer Family Trust (25%) and Peabody Family Investments, LLC (11.30%).

⁶ The big remaining trail design issue is the placement of the trail on the 40' easement that follows the road in from hazelnut to the Concord Water District Land. On the part that comes straight in from Hazelnut Drive, the obvious location is the proposed sidewalk. But after the bend, where should the trail go? There are safety issues running the trail on the 12' road, given that the Concord Water District has trucks coming in, and is considering a plant upgrade which would create even more traffic during construction. There are issues running it on the east side of the road, because you are getting closer to the slope down to the wetlands. A possible solution would be a painted crosswalk and then either a paved or other path parallel to the existing road, between the road and the proposed storm basin, to the west of the road.

We would also recommend that general locations for permanent trail signs within the 40' area be agreed on and marked on the plan. There are two bends in the trail that need to be clearly marked to avoid confusing trail users, and the entrance in to the woods might benefit from a small kiosk with a "You Are Here" map, perhaps with a sign explaining that this is a public easement over private property.

⁷ Section 9B of the Zoning Bylaw, October 2010, Page 127ff includes

"9B.5.3 **Minimum** setbacks for BUILDINGS and STRUCTURES: 45 feet from any existing STREET; 15 feet from a STREET within the site; **30 feet from any TRACT OF LAND boundary**; and 10 feet from the Common Land boundary, **except that the Planning Board may require larger setbacks.**"

In our opinion, interactions with residential trails are a reasonable place for the planning board to impose larger setbacks. Right now we have, in effect, 10 foot setbacks created by the 30 foot land boundary minus the 20 foot easement. (Although there are features, such as stairs off of decks, that extend in to the 30' setback, and thus come even closer than 10' to the trail easement).

One alternative would be to have the board simply exercise their power under Section 9B.5.3 of Acton's Zoning Bylaw to require:

At least a 40' setback from any tract of land boundary adjacent to which the trail easement is located (thus providing a buffer of at least 10' from the trail easement for any residential units that end up in the area of proposed Units 91 through 96); and

At least a 40' setback from Nagog Hill (thus providing an appropriate buffer in the case of any tee, fairway, green or other golf course renovations or RQR structures that end up in the areas of existing holes 2, 3 and 12).

⁸The "trailhead parking area" discussed in this memo might even provide better access for maintenance, or in the event of an accident or emergency in Nagog Hill. There has been concern raised in earlier discussions that there is a road access issue to that trailhead. But the Supplemental Decision already says "3.3.3 Quail Ridge Drive and Skyline Drive between Hazelnut Street to Great Road shall be open and accessible for use by the general public for all purposes for which street and ways are used in the Town of Acton". That means that to create a new public entrance, only the short drive to the trailhead would need to be added to the collection of paved areas that are open and accessible to the public, and a new trail easement agreement could encompass the proposed parking area and a new trail to Nagog Hill.

⁹ Having Pulte Homes explicitly assume the costs and other obligations of the trail easement would be consistent with the preamble to Section 3.3 of the Special Permit Decision (addressed to an "Applicant" and its successors) and Section 3.3.1 (describing the "financial support" obligation), and with the oral undertaking made by Pulte at the June 21st meeting. We don't know what assets QRLLC had to back up its obligations under the Trail Easement, but according to documents QR has filed with the Bankruptcy Court, the only asset QRLLC's transferee, QR, has is the over-encumbered real estate. (Aside: Then who has the rights under the Special Permit Decision?). If Pulte receives the benefits of the Special Permit Decision, as proposed to be amended by the Request, it should also have to assume, in writing, all of the burdens outlined in the recorded Trail Easement. And if the Town's rights under the existing Trail Easement document do, in fact, end up compromised by QR's Bankruptcy proceedings, the specific terms of QR's reorganization plan, or its P&S with Pulte, it may be necessary for QR, Pulte or their successors or assigns to sign and record a replacement Trail Easement or other documents that restore the Town's rights, including to cost reimbursement.

10

Text of trail easement

(The text below was generated by optical character recognition from a scan of the original, and then corrected by hand. The definitive version is the one filed at the Middlesex South Registry of Deeds at Book 51930, Page 356. A copy of the definitive version is available at <https://doc.acton-ma.gov/dsweb/Get/Document-33434>)

TRAIL EASEMENT

Quail Ridge Country Club, LLC (the "Grantor"), a Massachusetts limited liability company, owner of certain parcel of land and the improvements thereon located at 354B Great Road, Acton, Middlesex County, Massachusetts, known as The Quail Ridge Country Club. and more particularly described on Exhibit A attached hereto (the "Property"), for good and valuable consideration. the receipt and sufficiency of which is hereby acknowledged, grants to the Town of Acton, a municipal corporation with an address of 472 Main Street, Acton, Middlesex County, Massachusetts (the "Grantee"), the perpetual right and easement to use in common with the Grantor and others from time to time entitled to use those portions of the Property lying within the areas labeled "40' Wide Right of Way" and "20' Wide Trail Easement" (hereinafter collectively the "Trail Easement Area"), as more particularly depicted on a plan entitled "Plan of Land in Acton, Massachusetts (Middlesex County), Prepared for Quail Ridge Country Club, LLC, Scale 1" = 100', dated July 16, 2008" prepared by Stamski & McNary, Inc., 50 Harris Street, Acton, Massachusetts (the "Plan"), which is recorded herewith, for the recreational, open space and access purposes described below.

With respect to the rights and easements hereby established, the Grantor and the Grantee hereby agree as follows:

(a) The primary purpose of this Trail Easement is to establish a Trail Easement Area within which a trail (the "Trail") shall be constructed, or access maintained (i.e. "40' Wide Right of way" portion of the Trail Easement Area is already improved), that shall provide for permanent and perpetual public pedestrian four-season recreational uses of the Trail Easement Area and access from Hazelnut Street to the Nagog Hill Conversation Area. The Grantor shall permit without limitation public access to the Trail Easement Area and shall not close, obstruct or otherwise hinder access thereto or act in a manner inconsistent with the terms and provisions of this Trail Easement.

(b) Within ten (10) days after the date of this Trail Easement, the Grantor shall notify the Acton Land Stewardship Committee ("LSCOM") in writing and shall coordinate the construction of the Trail with LSCOM in accordance with the terms and provisions hereof. Prior to any construction, the Grantor shall, at its sole cost and expense, prepare plans and specifications of the design and materials to be used in the construction of the Trail and submit the same to the Grantee for the Grantee's prior written consent within ninety (90) days after the date of this Trail Easement. Once such plans and specifications are approved by the Grantee, the Grantee shall prepare all applications and submit the same to the Town of Acton Conservation Commission for the approval thereof. The Grantee shall represent its own interests at any and all hearings before the Town of Acton Conservation Commission, and, upon the reasonable request of the Grantee, the Grantor shall attend any and all such hearings applicable to this Trail Easement and shall support fully the Grantee's application for the approval of the Town of Acton Conservation Commission hereof. To the extent that the Acton Conservation Commission requires modified, revised or updated plans and specifications, the Grantor shall prepare the same at its sole cost and expense within sixty (60) days after written notice from Grantee thereof. In no event shall any provision of this Trail Easement be interpreted to require the Acton Conservation Commission to grant any permits or approvals to the Grantor or the Grantee for the Trail Easement Area or shall any provision of this Trail Easement require the Acton Conservation Commission to compromise its permitting authority in any way. For purposes of this Trail Easement, the term "Trail" includes all bridges, boardwalks, fences and other structures and surfaces to be constructed hereunder, and shall encompass any and all clearing activity and other preparation and finishing work (i) required by the Town of Acton Conservation Commission and (ii) reasonably requested by LSCOM to facilitate pedestrian passage and provide perpetual four-season access to the Nagog Hill Conservation Area. In the event that the Grantor fails to perform any of its obligations under this paragraph (b) within thirty (30) days after written notice from the Grantee, the Grantee shall have the right, but not the obligation, to prepare or otherwise obtain the necessary plans and specifications itself and the Grantor shall promptly reimburse the Grantee for all reasonable costs incurred in procuring the same.

(c) Unless the LSCOM exercises its rights to construct the Trail (as set forth below), the Grantor, at its sole cost and expense, shall diligently construct the Trail in the Trail Easement Area in a good and workmanlike manner and in accordance with all applicable laws, bylaws and rules and regulations and any construction and maintenance guidelines promulgated by LSCOM. Notwithstanding the foregoing, LSCOM, in its sole and absolute discretion, shall have the right to construct the Trail, with the assistance of the Grantor if and to the extent requested by LSCOM, all at the sole cost and expense of the Grantor, including, without limitation, the cost and expense of construction materials. In connection therewith, LSCOM shall have the right to paint blazes and post arrow markers on trees located within the Trail Easement Area. The Grantor shall cooperate with the Grantee, and with LSCOM in the event LSCOM exercises its rights as described in this paragraph (c), and shall promptly reimburse LSCOM for all reasonable costs incurred by LSCOM in connection with exercising its rights hereunder. Notwithstanding anything in this paragraph (c) to the contrary, the Trail, whether it is constructed by LSCOM or the Grantor, shall be constructed in a single phase obtaining the approval of the Acton Conservation Commission therefor as aforesaid.

(d) Each of the Grantor and the Grantee shall have the right, but not the obligation, to inspect, maintain and repair the Trail Easement Area, and in connection therewith each of the Grantor and the Grantee, as the case may be, shall have the right and easement, notwithstanding anything set forth herein to the contrary, to use motorized vehicles and equipment on the Property in the area adjacent to the Trail Easement Area as reasonably necessary for maintenance and repair purposes.

(e) Grantee hereby acknowledges that this Trail Easement is being accepted subject to the rights of the Town of Concord under the "40' Wide Right of Way" portion of the Trail Easement Area, as more particularly described in a certain deed from Gloria W. Palmer, Trustee of the Palmer Family Realty Trust to the Town of Concord dated and recorded with the Middlesex South District Registry of Deeds in Book 40019, Page 158.

(f) Except as provided in paragraphs (d) and (e) above, the Trail Easement Area shall be used exclusively by the Grantor and the Grantee for recreational purposes. No commercial, industrial, residential or other use inconsistent with the immediately foregoing sentence shall be permitted in, on, over and under the Trail Easement Area.

(g) The grant of the rights and easements hereby conveyed to the Grantee include a right for the Grantee to permit public access to the Trail Easement Area, and it is not intended to prohibit the use of the Trail Easement Area by the Grantor and its members, guests and invitees so long as any such use complies with the terms and provisions of this Trail Easement and does not interfere with or prohibit the full use and enjoyment by the Grantee and the public, as appropriate, of the rights and easements hereby granted.

(h) The Grantor shall have no right to modify, alter or relocate the Trail Easement Area or the Trail without the Grantee's prior written consent, which may be withheld in the Grantee's sole and absolute discretion, and no snow, leaves or other debris from other portions of the Property shall be deposited in the Trail Easement Area.

(i) The rights and obligations hereunder shall be binding upon and shall inure to the benefit of: (i) the Grantor and the Grantor's successors and assigns as owners of the Property and (ii) the successors and assigns of the Grantee.

(j) Simultaneously in connection with the recordation of this Trail Easement the Grantor shall record Consents and Subordinations of all holders of mortgages or encumbrances of record or otherwise on the Trail Easement Area that have priority over this Trail Easement, all in form and substance previously approved by the Grantee.

[additional text containing signatures and defining the parcel have been omitted from this copy]