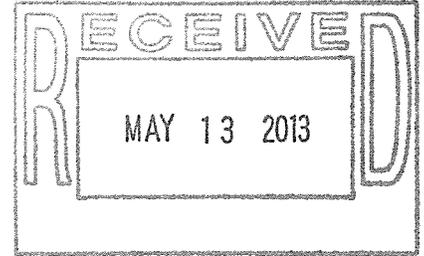


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AUDUBON HILL NORTH CONDOMINIUM ASSOCIATION, INC.

May 9, 2013

Steven L. Ledoux, Town Manager
Acton Town Hall
472 Main Street
Acton, MA 01720



Subject: Repair of Sewage Disposal System

Reference: Lease dated 1 November 1993 (including First Lease Amendment dated 12 September 2000) for the Acton Senior Center

Dear Mr. Ledoux:

For several years the Audubon Hill North Condominium Association (AHNCA) has been dealing with problems associated with our sewage system. Repairs have been made in the past, but we are now in the position where we have to replace our two leaching fields. The Acton Senior Center is the major contributor to the sewage processed by our system. For this reason we are requesting financial support from the Town of Acton.

The Senior Center is owned jointly by Audubon Hill North and Audubon Hill South, and it is leased to the Town of Acton.

Last year the field testing and engineering design were completed, and the design of the new leaching fields was approved by the Acton Board of Health on January 31 of this year. We are now preparing to do the construction, and we anticipate that work will be started around June first.

The design of the new leaching fields is specified to handle a flow rate of 5,796 gallons per day. The Acton Senior Center contributes 1,169 gallons per day to this design specification as required by the Board of Health. This is 20 percent of the total design requirement attributable to the Senior Center.

The total cost of the new leaching fields is expected to exceed \$200,000 including testing, engineering, Board of Health fees, loan interest and a contingency. We are requesting that the Town of Acton provide funding for 20 percent of this total cost, or \$40,000.

If you have any questions or would like more information please contact me at 111 Audubon Drive, Acton, MA 01720-4258, 978-263-2123, stacyangle@gmail.com.

Very truly yours,

A handwritten signature in cursive script that reads "Stacy L. Angle".

Mr. Stacy L. Angle
President, Board of Governors

ANDERSON & KREIGER LLP

NINA PICKERING-COOK
npickeringcook@andersonkreiger.com
T: 617-621-6536
F: 617-621-6636

June 3, 2013

VIA FIRST CLASS MAIL AND EMAIL

Stacy L. Angle
President, Board of Governors
Audubon Hill North Condominium Association, Inc.
111 Audubon Drive
Acton, MA 01720-4258
stacyangle@gmail.com

Re: Response to Demand re Acton Senior Center

Dear Mr. Angle:

I represent the Town of Acton, and I write to respond to your letter to Town Manager, Steven Ledoux, dated May 9, 2013. In that letter, you state that the Audubon Hill North Condominium Association is undertaking the design and construction of new leaching fields to deal with problems with its sewage system. You request that the Town of Acton, as lessee of the Acton Senior Center, contribute \$40,000, which represents 20% of the estimated total cost of the design and construction of the new leaching fields.

As you have pointed out in your letter, the Town of Acton leases the Acton Senior Center pursuant to a Lease date November 1, 1993, as amended by the First Lease Amendment dated September 12, 2000 (collectively, the "Lease"). Nothing in the Lease obligates the Town to pay for or contribute any amount towards capital or systems improvements, such as the described leaching field construction. Indeed, such costs are the responsibility of the unit owners of the Audubon Hill North Condominium, and not its tenants. Therefore, the Town refuses to pay the requested amount.

If you have any questions or concerns with respect to the Town's position on this issue, please do not hesitate to contact me at 617.621.6536.

Mr. Stacy L. Angle
June 3, 2013
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Sincerely,

Nina Pickering-Cook

cc: Steven Ledoux, Town Manager (via email)
Stephen D. Anderson, Town Counsel (via email)

AUDUBON HILL NORTH CONDOMINIUM ASSOCIATION, INC.

June 9, 2013

Nina Pickering-Cook
c/o Anderson & Kreiger, LLP
One Canal Park, Suite 200
Cambridge, MA 02141

Subject: Repair of Sewage Disposal System

Reference: Lease dated 1 November 1993 (including First Lease Amendment dated 12 September 2000) for the Acton Senior Center

Dear Ms. Pickering-Cook:

Thank you for your letter of June 3, 2013, regarding "Response to Demand re Acton Senior Center". Your letter was reviewed by the Board of Governors of the Audubon Hill North Condominium Association, and we strongly disagree with your decision to decline payment of the requested amount. Our reasons are stated in the following paragraphs.

(1) The lease agreement in ARTICLE VIII, Section 8.3 states in part, "The...septic sewer...and other utilities furnished to the Premises...shall be separately metered. The Tenant shall pay directly to the supplier of such utility services the cost of such utilities consumed in the Premises". This clearly indicates the obligation of the Town of Acton to financially support expenses associated with the sewage system.

(2) In the year 2007 we did extensive repair work on our sewage system and requested financial support from the Town of Acton. The town responded with a payment of \$20,000. Why is this precedent not being followed for the current request? What has changed since 2007?

(3) The work we are doing on our leaching fields is a repair and not an improvement as stated in your letter. Our leaching fields are currently in a failed condition and will not pass a Title 5 inspection. We have no choice but to do the repair work in order to have a viable sewage system. We would not be spending \$200,000 simply to improve our system. The design drawing from our engineer, which was approved by the Acton Board of Health, is entitled "Proposed Subsurface Sewage Disposal System Repair". The repair is being done in accordance with Title 5 requirements, and the result is two replacement leaching fields.

(4) The lease agreement in ARTICLE VII, Section 7.1, first paragraph, states in part "... the Tenant...shall keep in good order, condition and repair...all...pipes...serving the Building". The sewage pipe serving the building certainly includes the leaching fields.

(5) ARTICLE VIII, Section 8.4 of the lease agreement deals with the limit to the allowable sewage flow rate produced by the senior center, and it is set at 1156 gpd (gallons per day). In designing the replacement leaching fields our engineer established the design flow for the senior center at 400 gpd in accordance with the procedure required by Title 5. This Title 5 procedure uses the actual water consumption over a three-year period to establish the design flow. The

initial design of the replacement leaching fields was completed using the 400 gpd value for the senior center, and that design was rejected by the Acton Board of Health. Therefore, the design was subsequently changed to increase the field size (and cost) by about 15 percent to meet the higher flow requirement. This change was determined to be unnecessary by our engineer and increased the cost for no apparent reason. A substantial part of the total cost is due to using the unrealistically high design flow rate required for the senior center.

Note that in (1) above the town is required to meter the flow into the sewer system. This has not been done. Also, our engineer used the value of 1,169 gpd for the senior center rather than the 1,156 gpd number referenced above. This is an insignificant difference.

(6) We don't understand the rationale for requiring a small group of tax-paying senior citizens to pay for processing the sewage from a municipal building, particularly when that building is specifically dedicated to supporting senior citizens. Perhaps you can explain this to us.

We respectfully request that you reverse your decision and authorize payment of \$40,000 to Audubon Hill North Condominium Association.

If you have any questions or would like more information please contact me at 111 Audubon Drive, Acton, MA 01720-4258, 978-263-2123, stacyangle@gmail.com.

Very truly yours,

Mr. Stacy L. Angle
President, Board of Governors

cc: Steven L. Ledoux, Acton Town Manager