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December 12, 2023

VIA EMAIL

Jennifer Copeland, Bourne Town Planner, et al.
jcopeland@townofbourne.com
Miyares & Harrington, LLP, Town Counsel
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**Re: Ocean Pines Condominium – Sagamore Beach, Bourne, Massachusetts
Ocean Pines Development Phases I & II**

Dear Sir/Madam:

Pursuant to the upcoming Planning Board Review Hearing scheduled for December 14, 2023 before the Town of Bourne Planning Board (the “Planning Board”), our office, on behalf of the Ocean Pines Condominium Trust (hereinafter referred to as the “Condominium”), writes in regard to the agenda item titled “Enforcement: Ocean Pines Development/Wildwood Lane.” That agenda item includes three topics/complaints: (A) Lot 61 Site Plan, (B) Roadway Finishing and Asphalt Top Coat, and (C) Drainage and Detention Pond Design.

It was our understanding that, during the November 9, 2023 Planning Board Hearing, the Planning Board had referred these three topics/complaints to the Zoning Enforcement Officer. Yet, as will be further explained below, on December 8, 2023, our office received a late copy of a three-week old zoning enforcement letter (dated November 16, 2023), which addressed only surface drainage issues. Simultaneous to our receipt of this letter, the Planning Board posted its December 14, 2023 agenda to the Town website, including all three topics/complaints. It is therefore our understanding that all three topics/complaints are back before the Planning Board for final action, and this letter addresses the Planning Board’s authority to take action as to each topic.

I. Lot 61 Site Plan

As further explained in our letter dated November 3, 2023, the Planning Board approved the “Ocean Pines at North Sagamore” development in 1987 as an open space community. Approval was by way of Special Permit # 38 (as amended, # 38A) and a “Certificate of Approval of a Definitive Subdivision Plan,” approving the “Subdivision Plan and Plan and Profile of a

Subdivision called Ocean Pines at North Sagamore, dated 16 December 1986 Revised 1 April 1987 designed by Wilson Hill Associates Inc.”¹

Yet, development has not proceeded in accordance with the development plan approved by the 1987 Planning Board. As previously explained, the developer’s current site plan depicts seven buildings, as compared to the five originally-approved buildings, and those seven buildings include a larger footprint, increased building height, and numerous modifications to surrounding impervious surface areas. The Massachusetts Appeals Court has stated that such “substantial modifications require submission of a revised site plan to the permit granting authority and a public hearing.” *Barlow v. Plan. Bd. of Wayland*, 64 Mass. App. Ct. 314, (2005). In these circumstances, “the owner [is] required to apply for a new special permit for the facility in its presently constructed form . . . significant increase in [a] building’s size or footprint and the change (however slight) in the building’s actual location upon the locus [are] changes of substance” requiring approval. *Id.*

The Planning Board must therefore act as the permit granting authority and require a new special permit application. *See id.*; *see also* Bourne Zoning Bylaw §§ 2220 n.2; 4610.

II. Roadway Finishing and Asphalt Top Coat

The existing bond to repair and extend Wildwood Lane at the completion of development is insufficient based on numerous estimates. The Planning Board has the authority to require adequate security for the completion of the roadway prior to the issuance of a building permit in an open space community. *See* Bourne Zoning Bylaw § 4644. As previously communicated, the Condominium requests that a redacted form of the roadway paving bond be released to the Condominium for review, and the bonded amount be increased to at least \$200,000.

III. Drainage and Detention Pond Design

On November 16, 2023, Ken Murphy, acting as Bourne Building Commissioner and Zoning Enforcement Officer, sent an enforcement letter to Hebb Builders Inc. regarding surface drainage violations at Lots 61 and 62. Despite the apparent existence of this enforcement letter

¹ Notwithstanding comments to the contrary in the November 9, 2023 Planning Board Hearing, the Certificate of Approval of a Definitive Subdivision Plan authorized a mixed-use development comprising “30 single family lots, 48 condo units on 6 lots, [and] 30 office park lots,” as reflected in the Planning Board’s own files. *See* Exhibit A, attached hereto (emphasis added). Believing that Ocean Pines at North Sagamore was wholly residential, Town Counsel erroneously advised the Planning Board at that November 9th hearing that Zoning Bylaw § 1230 *et seq.* was inapplicable. In any event, however, there is no dispute that this development was approved pursuant to Special Permit # 38 as an open space community, and the Zoning Bylaw also separately provides that “open space designs should be prepared in accordance with the Planning Board site plan review process in Section 1230.” *See* Bourne Zoning Bylaw § 2832.

for over three weeks, our office received a courtesy copy of that letter only on December 8, 2023.² The email accompanying Inspector Murphy's letter was also our first notice that this matter would now be referred back to the Planning Board for approval of a stormwater plan.

As you are aware from the numerous photographs, videos, and testimony previously shared with the Planning Board, drainage and runoff issues are of critical importance to the landowners abutting Lot 61, including the Condominium. To be sure, we are aware that at least one abutting landowner has been in recent contact with the Planning Department regarding a rain event that occurred on December 10-11, 2023. The videos provided by that individual show that drainage issues continue to plague the development despite apparent temporary mitigation efforts.

Although not stated explicitly, our understanding of Inspector Murphy's email is that the Planning Board will act pursuant to the Bourne Zoning Bylaw as the town's Stormwater Authority. *See Bourne Zoning Bylaw § 3491(E)*. We therefore assume that the Planning Board will review a Stormwater Management Plan (prepared for and submitted by the developer and "new" owner of Lot 61, Ocean Dunes, LLC) for compliance with relevant stormwater management standards. We have monitored the Planning Board website and, to date, no such plan has been publicly posted. We note that the submission deadline for any such materials was December 8, 2023.

Interested parties have a right to notice and a fair opportunity to be heard. We preserve the right to review and respond to any report submitted to the Planning Board and request that any such report be promptly made public with adequate time for review in advance of any future hearing.

Very truly yours



A. Scott Marra

ASM/kem

cc: Ocean Pines Condominium Trustees
David C. Uitti, Esq.
Kenneth Murphy, Bourne Building Inspector
Town of Bourne Select Board (c/o Mary Jane Mastrangelo, Chair)
Town of Bourne Zoning Board of Appeals (c/o James Beyer, Chair)

² It also does not escape our notice that we received Inspector Murphy's letter at 1:55 p.m., the same time the December 14, 2023 Planning Board agenda was posted to the Town website, both a mere three hours before the deadline to submit materials to the Planning Board. As counsel for interested abutting landowners, we strongly reiterate our November 7, 2023 request that all parties act in good faith and with candor.

Exhibit A

OCEAN PINES
North Sagamore

DEFINITIVE PLAN APPROVAL

DI issued 4/30/87.....

30 single family lots, 48 condo units on 6 lots, 30 Office Park Lots

Extension of Condition "A" on DI to April of 1991 (Condition "A", All such installation and construction shall be completed with 24 months of this date.)

81P PLAN, 9/20/90

30 Office Park Lots and streets changed to one lot (tax purposes).

NOTE: There is NO copy of the "Recorded" Covenant on File with Planning.

SPECIAL PERMIT #38 INFORMATION

Special Permit #38, Section 1330, 4/30/87 Issued.

Special Permit (Amended) - Extended to 5/19/89 on 9/26/88.

Confirmation of SUBSTANTIAL CONSTRUCTION, 5/23/89.

RELEASE OF LOTS

Ten Lots Released (#40 - 49) 4/2/90 for the purposes of conveyance only with work to commence from Old Plymouth Road through to completion. No further lots will be conveyed, no foundation permits will be issued and no building permits will be issued until such time as a satisfactory report is made by the Planning Board that the requirements of this release have been satisfied.

CORRESPONDENCE

Letter to David Walsh from William Norman, Acting Chairman: 1/9/92
Planning Board allowed David Walsh to construct a twenty-four (24') foot roadway with berms to be added to the roadway provided that a paved four (4') foot sidewalk on whichever side he deems best is constructed. Originally a 30' roadway was required. It was noted that future lot releases will not be granted by the Board unless either the originally planned 30' roadway is constructed or a 24' roadway and berms and a 4' paved sidewalk are constructed.

BANK BOOKS IN QUESTION

One of the Bank Books in Question is with the Cape Cod Five Cents Savings Bank, Acct. #39600045, in the names of Frank J. Nuovo and Theresa Nuovo. I have asked the Treasurers Office to advise which subdivision this refers to, but have not yet received an answer.

10/28/92
JND