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November 3, 2023

VIA EMAIL

Kenneth Murphy, Bourne Building Inspector
kmurphy@townofbourne.com

**Re: Ocean Pines Condominium – Sagamore Beach, Bourne, Massachusetts
Ocean Pines Development Phases I & II**

Dear Inspector Murphy:

Our office, on behalf of the Ocean Pines Condominium Trust (“Condominium”), recently requested that the Town of Bourne Planning Board (“Planning Board”) address and remediate numerous violations relating to the above-referenced development project.¹ Please consider this letter as a further signed, written Request for Enforcement pursuant to Bourne Zoning Bylaw (the “Zoning Bylaw”) § 1262. We request that you take action to ensure full compliance with the Zoning Bylaw, Special Permit #38/38A, and the Certificate of Approval of a Definitive Subdivision Plan dated April 30, 1987. Specifically, we refer to the violations presented and referenced in the above-referenced October 26, 2023 Planning Board Review Hearing. Those presentation materials are also attached for your reference. *See generally* Att. 1 (Oct. 26, 2023 Presentation Materials).

¹ Such requests were made during the October 26, 2023 Planning Board Meeting and were further memorialized, and more particularly described, in the written materials Cetrulo LLP submitted to the Planning Board on October 20, 2023, which are now publicly available through the Planning Board’s website at <https://www.townofbourne.com/planning/news/upcoming-planning-board-meeting-project-materials>).

I. Authority

“The Inspector of Buildings/Chief Zoning Enforcement Officer, the Enforcement Officer(s) and any Assistant Inspector of Buildings shall take such action as may be necessary to enforce full compliance with the provisions of the Zoning Bylaw and of permits and variances issued hereunder, including notification of noncompliance and request for legal action through the Town Administrator to the Town Counsel.” *See* Zoning Bylaw § 1262; *see also* Mass. Gen. Laws c. 40A, § 7.

II. Factual Background

On April 30, 1987, the Planning Board issued 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.” *See* Att. 2 (Cert. of Approval); Att. 3 (Apr. 1, 1987 Subdivision Plan). Pursuant to § 374 of the Bourne Subdivision Regulations, “[i]t is the responsibility of the developer to ensure that the approved construction plans . . . are implemented[.]” Yet, development has not proceeded in accordance with the approved development plan. *See* Att.1, Ex. 1 (Engineering Peer Review), at 9; *id.* fig. SP03. As identified by the Condominium’s engineer:

- There are seven buildings proposed within Lot 61 where five were originally proposed;
- The proposed buildings contain larger footprints than originally proposed;
- The current design includes numerous modifications to the overall layout of parking and circulation areas; and
- The Unit 12 Ocean Pines building consists of a single larger building where two separated buildings were previously approved.

See id. at 9. The overall effect of these deviations is to (1) create additional impervious areas from the original design plan; and (2) eliminate a potential overflow path from the detention basin. *Id.* Additionally, the Condominium’s engineer has identified design deficiencies in the drainage plans

and further deviations from those plans that contribute to poor performance of the drainage and stormwater management systems. *See generally id.* Consequently, as presented to the Planning Board on October 26, 2023, numerous units and abutting landowners have experienced flooding and drainage issues. *See id.* 1-2, 6, 10. Pursuant to § 4644 of the Zoning Bylaw:

“Access, drainage, utilities, and grading shall meet functional standards equivalent to those established in the Planning Board’s adopted Subdivision Regulations. Prior to issuance of building permits within an Open Space Community, the Planning Board shall certify to the Inspector of Buildings that a detailed site plan has been submitted to them and meets those standards, and before occupancy permits for any structure are issued, the Planning Board shall certify to the Inspector of Buildings that improvements to meet such standards have either been completed to serve such structure, or security for their completion has been received.”

Further, the Planning Board approved this development pursuant to Special Permit # 38 (as amended, # 38A) as an “open space development,” otherwise referred to in the Zoning Bylaw as an “open space community.” *See* Att. 4 (Special Permit); Zoning Bylaw § 4600. In such a community, “[a]ll land not designated for roads, lots for dwellings, or other development within the Community shall be held for common open space[,]” which “shall be preserved for recreation or conservation[.]” Zoning Bylaw § 4645.

“Such open land shall either be conveyed to the Town and accepted by it for park or open space use, or be conveyed to a non-profit organization the principal purpose of which is the conservation of open space, or be conveyed to a corporation or trust owned or to be owned by the owners of lots or residential units within the plan. If such a corporation or trust is utilized, ownership thereof shall pass with conveyances of the lots or residential units.”

Id. Here, the Town and/or the developer elected to proceed with the latter option, and Brian Hebb, acting on behalf of Ocean Pines, LLC, a Delaware LLC (“OP LLC DE”), recorded a Homeowners Trust (Trust) and Quitclaim Deed on September 13, 2007 relating to open space parcels A-E (the “Open Space Parcels”). *See* Att. 5 (Homeowners Trust); Att. 6 (Quitclaim Deed). Mr. Hebb conveyed the Open Space Parcels to OP LLC DE (a Hebb-controlled entity) as Trustee, and

provided in the Trust instrument that the Lot Owner(s) of Lots 61-66—i.e. the Condominium—would hold an undivided 1/6 beneficial interest in the Trust.² *See* Att. 5, § 3.2.

- Later, however, Brian Hebb organized an entity, also named Ocean Pines, LLC, under the laws of Florida (“OP LLC FL”). Mr. Hebb now claims that the Open Space Parcels are held in Trust by OP LLC FL as Trustee; however, we have seen no transfer of title or merger between OP LLC DE and OP LLC FL. This creates concerns regarding possible clouds on title and the proper administration of the Open Space Parcels as assets in Trust.
- The deed reserved to Ocean Pines, LLC an easement “for the installation, maintenance and repair of a water line[.]” *See* Att. 6, at 1. No other easement or reservation is included. Nevertheless, Brian Hebb and/or Hebb Builders Inc. has staked off areas of Parcel E for construction staging; has staked off other areas of Parcel E to the exclusion of the Condominium; has failed to maintain Parcel E and has otherwise instructed the Condominium not to engage in any maintenance (e.g., lawn mowing); and has informed the Condominium that he will “continue to use Parcel E for reasonable storage and construction staging as provided in the Trust document.” *See* Att. 7 (Oct. 23, 2023 Letter), at 2. Notwithstanding this statement, nothing in the Trust instrument permits the Trustee, or any other party, to use the open space parcels in this manner. *See generally* Att. 5. Indeed, the Trustee of the Trust has a fiduciary obligation to manage, maintain, and control the Open Space Parcel “for the benefit of the beneficiaries.” *See* Att. 5, at § 5.1.

The foregoing issues are longstanding and known to the Town. Planning Board meeting minutes from September 13, 2007 reflect that the Planning Board temporarily rescinded Special Permit

² Although the Trust instrument is, at best, ambiguous, there are two groups of beneficiaries: (1) Lot Owners of Lots 61-66, which is now the Condominium, and (2) Lot Owners of Lots 31-60. *See* Att. 5, § 3.2. It does not appear that Mr. Hebb organized a homeowners’ association for the latter group, consequently, such association has never borne any costs associated with the Open Space Parcels, including but not limited to Parcel E.

#38/38A over concerns with the open space conveyance. *See* Att. 1, Ex. 10 (Sept. 13, 2007 Minutes), at 2.

Finally, during the aforementioned meeting, the Planning Board also voiced concerns over roadway construction issues, and those issues continue to plague this development. There exist unsafe lips and unlevel ground at numerous units. *See* Att. 1, Ex. 5. In addition, the existing bond to repair and extend Wildwood Lane at the completion of development is insufficient based on numerous estimates. *See* Att. 1, Exs. 8-9.

III. Relief Requested

1. Building permits should have never issued for Lots 61-66 that failed to conform to the approved Subdivision Plan and Zoning Bylaw, specifically proper drainage/stormwater design. We therefore respectfully request that any current active building permits relating to development of Lots 61-66 be suspended, any new permit applications be denied, pending confirmation of compliance with both the Subdivision Plan and the Zoning Bylaw, including but not limited to § 3490 *et seq.* *See* Zoning Bylaw § 3490 *et seq.* (requiring a (a) Stormwater Management Plan that complies with the Massachusetts Stormwater Management Standards as further defined in the Massachusetts Stormwater Handbook, (b) Sediment and Erosion Control Plan, and (c) Long-Term Operation and Maintenance Plan).³

2. The Planning Board conditioned development approval upon the inclusion of “common open space”—namely Parcels A-E—to be used “for recreation or conservation”—not construction staging—and to be “conveyed to a corporation or trust owned or to be owned by the owners of lots or residential units within the plan.” Zoning Bylaw § 4645. Building permits should

³ Construction under Special Permit # 38/38A and the Approved Definitive Subdivision Plan has not continued “continuously and expeditiously” since 1987, nor was it completed within eight years, and as a result, the Special Permit, Subdivision Plan, and any related construction are now subject to the requirements of the **current** Bylaw. *See* Zoning Bylaw § 2330; Mass. Gen. Laws ch. 40A, § 6.

have never issued for Lots 61-66 where there existed noncompliance with this Bylaw. We therefore respectfully request that any current active building permits relating to development of Lots 61-66 be suspended, and that any new permit applications be denied, pending confirmation of compliance with both the Subdivision Plan and the Zoning Bylaw, including but not limited to § 4645.

3. Considering the longstanding paving and roadway issues, we respectfully request that any current active building permits relating to development of Lots 61-66 be suspended, and that any new permit applications be denied, pending confirmation that the existing walkway/driveway issues have been safely remediated and confirmation from the Planning Board that the roadway is adequately bonded.

4. Until the Planning Board certifies compliance pursuant to Zoning Bylaw § 4644, no certificates of occupancy should be issued.

Very truly yours



A. Scott Marra

ASM/kem

Enclosures

cc: Ocean Pines Condominium Trustees