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December 1, 2023

**VIA EMAIL**

Kenneth Murphy, Bourne Building Inspector  
*kmurphy@townofbourne.com*

**Re: Ocean Pines Condominium I and Ocean Pines Condominium II (Ocean  
Dunes, LLC) – Sagamore Beach, Bourne, Massachusetts (Lots 61-66)**

Dear Inspector Murphy:

Our office, on behalf of the Ocean Pines Condominium Trust (“Condominium”), requested on November 3, 2023 via letter that you take action to ensure full compliance of the above-referenced development project with the Zoning Bylaw, Special Permit #38/38A, and the Certificate of Approval of a Definitive Subdivision Plan dated April 30, 1987. Our November 3, 2023 letter reflected the same concerns brought to your attention by a representative of our client in a meeting that occurred on August 17, 2023. The foregoing meeting was “in person” at your offices, and was by/between you and Kelley Collins, as President and Board of Trustees Chairman for the Ocean Pines I Condominium (comprising Lots 62 through 66).

To summarize, development has proceeded with significant and unapproved modifications from 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.” and has otherwise failed in several respects to comply with common open space condition of Special Permit #38/38A (the “Special Permit”) and the Zoning Bylaw, most critically as to lot

coverage, drainage, and stormwater management. As indicated in our November 7, 2023 letter to the Town of Bourne Planning Board (the "Planning Board") on which you were copied, much of the above-referenced non-compliant construction is presently occurring on Lot 61, which is now owned by a separate entity, Ocean Dunes, LLC ("Ocean Dunes") and subject to a separate condominium regime ("Ocean Pines II").

Our November 3, 2023 letter therefore requested that any current active building permits relating to development of Lots 61-66 be suspended, and any new permit applications be denied, pending confirmation of compliance with Special Permit 38/38A, the Subdivision Plan, and the Zoning Bylaw, including but not limited to stormwater management/drainage, building design/placement, open space, and lot coverage requirements.

To date, neither our office nor our client have received a response from you or the Building Inspection Department to the August 17<sup>th</sup> and November 3<sup>rd</sup> requests for enforcement. We understand that any decision finding that "no enforcement action is required" shall be provided in writing to us within fourteen days of the request. *See* Bourne Zoning Bylaw § 1262. No such decision having been received, we assume that you will be proceeding with a warning to the developer pursuant to § 1281 (of the Bourne Zoning By-Law) and ask to receive a copy of any such correspondence. We note that building permit applications appear to have been filed for Lot 61, 1 Wildwood Lane, Units C and D as of October 16, 2023, which show in the Online Permitting website as "Active" but without any permits issued. Nevertheless, we also note that significant construction activities have been occurring at Lot 61, 1 Wildwood Lane, Units C and D despite this apparent lack of permitting. We therefore also ask that you order construction to cease and desist.

Relatedly, we previously notified the Planning Board that the above-referenced development had not proceeded in accordance with its Special Permit, nor had the Special Permit

been properly amended, and that development should not be permitted to proceed relative to a site plan that failed to comply with the current Zoning Bylaw.<sup>1</sup> We therefore requested that the Planning Board rescind Special Permit #38/38A or restrain further construction under that Special Permit until issues raised in the above-referenced November 3, 2023 correspondence were resolved.<sup>2</sup> In response, the Planning Board decided on November 9, 2023 to refer our Planning Board request to you, as the Chief Zoning Enforcement Officer, and to “counsel and staff” to review records relating to this development and to determine whether current building requests have “changed” from what was previously approved. Although not fully explained in the Planning Board meeting, it is our understanding that the Planning Board awaits your review to determine whether “substantial modifications” (in relation to the Special Permit and applicable Site Plan Approval) have occurred, and whether the proposed construction at Lot 61 complies with the Zoning Bylaw. *See Barlow v. Plan. Bd. of Wayland*, 64 Mass. App. Ct. 314, (2005) (“substantial modifications require submission of a revised site plan to the permit granting authority and a public hearing”). Members of the Planning Board expressed that this review was “imperative” and requested that it occur “as soon as possible.”

We therefore write to inquire as to the status of your review, to be notified of any action taken in response to our November 3<sup>rd</sup> request, and to be informed of your plans, if any, to present

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<sup>1</sup> Such requests were made during the October 26, 2023 and November 9, 2023 Planning Board Meetings and were further memorialized, and more particularly described, in the written materials Cetrulo LLP submitted to the Planning Board, which are publicly available through the Planning Board’s website at <https://www.townofbourne.com/planning/pages/wildwood-lane-development>).

<sup>2</sup> We view the Planning Board’s authority and the Building Inspector’s authority as distinct yet overlapping in this circumstance. The Planning Board acts as Special Permit Granting Authority for mixed use developments and open space communities and should therefore require compliance with or amendment of the existing Special Permit and/or the “Certificate of Approval of a Definitive Subdivision Plan.” *See* Bourne Zoning Bylaw §§ 1232, 4600. The Inspector of Buildings/Chief Zoning Enforcement Officer is tasked with enforcing compliance with said permits and certificates as well as the bylaw. *See id.* § 1260.

to the Planning Board at the upcoming December 14, 2023 so that we may prepare and attend as necessary. Given that the Planning Board requires submissions no later than December 8<sup>th</sup>, we would appreciate your response to this letter by close of business December 4<sup>th</sup>.

Very truly yours

A handwritten signature in black ink, appearing to read 'A. Scott Marra', written in a cursive style.

A. Scott Marra

ASM/kem

cc: Ocean Pines Condominium Trustees  
David C. Uitti, Esq.  
Town of Bourne Planning Board (c/o Jennifer Copeland, Town Planner)  
Town of Bourne Select Board (c/o Mary Jane Mastrangelo, Chair)  
Town of Bourne Zoning Board of Appeals (c/o James Beyer, Chair)