

Town Of Dighton



Town Of Dighton  
Zoning Board of Appeals

November 18, 2015

Members Present:

Kenneth Pacheco  
Robert Adams Sr.  
Zachary Caron

Peter Caron  
Greg Logan  
Brett Zografos

ZBA administrative Assistant

Rosalind Grassie

2015 DEC 17 AM 7:57

RECEIVED

**Call to Order:**

Vice Chairman Kenneth Pacheco explained that the secretary was not yet here but the meeting was being audio and video recorded. He also stated that the building inspector was not here yet and that they would be taking cases out of order until he arrives. He then asked for a motion to adjourn the meeting at 9:30 this evening.

**Motion Robert Adams Sr. to adjourn the meeting at 9:30 PM.**

Chairman Peter Caron stated that he had a concern with ending the meeting at 9:30 if they weren't following the agenda. The Board discussed it and it was noted that as soon as the building inspector arrived the only new case to be heard that night would be heard next **second Zachary Caron**

**All in Favor**

**Aye**

**Vice Chairman Kenneth Pacheco** called the meeting to order at 7:02 PM and introduced the Board to the audience and explained how the hearing process would proceed.

**Old Business:**

**Case # 24-15 537 Hart Street "continued"**

**Voting members Kenneth Pacheco Robert Adams & Greg Logan.**

**Kenneth Pacheco** explained that on November 14, 2015 the Board had a meeting "site visit" at 8:00AM at the property and he asked if anyone had any questions or concerns?

**Peter Caron** stated that his original concerns regarding the location of the solar panels to the abutting property were alleviated at the site visit.

**Robert Adams Sr.:** asked that the trees and foliage located near the property line and the abutting Enfield property remain and not be cut. The Board discussed the need for this to be a condition.

**Motion Robert Adams Sr. second Greg Logan to approve the Special Permit with the condition that a 15' foot natural vegetation no cut area on the north and east side of the solar panels remain.**

**All in Favor**

**Aye**

**New Business:**

**Case # 21-15 2589 Pleasant Street**

Kenneth Pacheco read the Legal Notice posted in the Taunton Daily Gazette

**Voting members Greg Logan-Zachary Caron-Brett Zografos**

**Mrs. Beth Leonard** presented the case. She explained that they would like to extend the existing house 26' feet to add a third bedroom for their son. She said they are building away from the water and they are about 300' feet from the road. We would not be encroaching on any neighbors and the view would not be obstructed with this addition.

**Kenneth Pacheco** asked about the 15' foot side yard setback.

**Building Commissioner, James Aguiar:** Stated that is just over 12' feet and the addition would continue along the same foot print as the house. The property hasn't been surveyed yet so we don't know if that line will be further encroached on or even further away. They have a newer septic system that has passed title V. it is also located in an Open Space Recreational Area.

**Peter Caron:** They need 15' feet and they have 13' feet that is why we are here?

**Robert Adams Sr.** How old is the dwelling that is there. 1935

**Greg Logan:** Your septic system is designed for a 3 bedroom system?

**Kenneth Pacheco:** Presently how many bedrooms do you have in the house now? (2) and you would like to add a bedroom and the septic system was designed for 3 bedrooms.

**Mike Leonard** explained that they would like their son to be able to move in with them and there are trying to downsize and retire there.

**Peter Caron:** This not going to be a (2) two family dwelling right? NO They are only looking for relief of a couple of feet. Anything done down there is always an improvement. For such minimal feet I don't have any issues with it.

**Building Inspector:** because the house is so small and the way the floor plan was configured I actually have a second means of egress that becomes

blocked by a bed because they are trying to utilize their house and I don't blame them. Making the house bigger would enable me to have two working egresses and would make a much safer floor plan.

**Peter Caron:** It would take a bad situation and make it better.

**Zachary Caron:** What does it matter that it is in open space recreation?

**Robert Adams Sr.:** Open Space Recreation is one of your most limited or restricted areas. This is a pre-existing dwelling but if it wasn't there would be a lot more requirements.

**Brett Zografos:** They mentioned that they are building away from the water does that change if they were building closer to the water?

**Kenneth Pacheco:** If they were going closer to the water there might be an issue but going away from the water is not such an issue. The house is already there.

**Abutters:**

**None**

**Kenney Pacheco:** Do you have any further questions?

**Beth Leonard:** We love it here!

**Kenneth Pacheco:** Requested that a letter of extension be signed to give the lawyer time to draft the decision. The extension letter was signed by Beth Leonard and extended until January 21, 2015.

**Motion Zachary Caron second Greg Logan to close the Public Hearing.**

**All in Favor**

**Aye**

**Motion Zachary Caron second Brett Zografos to take this under advisement.**

**All in Favor**

**Aye**

**Case # 16-15 1458 Somerset Avenue "Police Station"**

**Kenneth Pacheco** stated that Robert Adams Sr. had previously recused himself from this case because he is an abutter. Robert Adams Sr. joined the audience.

**Voting members Kenneth Pacheco-Peter Caron- Zachary Caron**

**Vice-Chairman Kenneth Pacheco** explained that at the September 16, 2015 meeting the Board requested a variation to the plan that had been presented. They requested the "Wardell" curb cut be shown and look into safety and how safety would be affected if the easement was denied and the Wardell entrance was utilized. We had also initially requested that Mass Highway make a decision on this and we learned at the October 21<sup>st</sup>

Planning Board meeting that is not a reasonable request. Mass Highway will not give you a decision as well as not give us a decision until you can propose to them a final plan.

**Letter from vhb was submitted to the Board and the voting members have a copy of that letter. It describes / shows the Board how it would look and if it is safe to approve or deny the easement. Although there is no guarantee with Mass Highway is going to do?**

**A letter of extension until January 21, 2016 was signed by Dennis Maguy.**

**Justin Mosca** presented the case. He explained pointing to a new plan design that the Board had seen this plan a few times and would be familiar with the general site layout. But he would scope it quickly. The north side is a public parking lot, as you go in it is the Police Station and the parking lot on the plan left side is for police vehicles and employees. He explained that previously they had been granted easements for the front yard setback and also to use the easement for the triangular piece on the south side of the property. The variance under consideration right now is still for the non-frontage access to the Dighton Power access road. The layout you see in front of you right now is the layout we have been requested to show. It has ...it reuses..

**Kenneth Pacheco:** Excuse me; I would like to back track a little bit, regarding the easement, when did you get that easement?

**Justin Mosca:** Which one?

**Kenneth Pacheco:** The Dighton Power access easement.

**Dennis Maguy:** It is in the deed.

**Kenneth Pacheco:** When was that? When was it approved by you and the Power Company?

**Dennis Maguy:** It goes back to 2012.

**Kenneth Pacheco:** Once the easement was decided and approved you developed this plan assuming that the easement would be approved.

**Jeff Macelroy:** In anticipation of the variance being approved.

**Justin Mosca:** This current proposal keeps the existing site curb cut, the site curb cut off Somerset Avenue. It also maintains the shared driveway with Dighton Power. Which is the layout that we have been requested to provide. That is the extent of the ZBA changes. I would like to open it up for questions.

**Kenneth Pacheco:** I don't know that we asked for that change in the site plan. We asked for the change in the parking spaces and how that would impact if we don't approve the easement but we allow the curb cut that has already been approved. How does that impact parking spaces.

**Justin Mosca:** was not sure what Kenny meant.

**Taylor MacDonald:** From our last plan.

**Kenneth Pacheco:** The Board hasn't approved the easement yet. The question is if we don't approve and that is a big if, and you use the Wardell curb cut hoe does that impact the parking spaces?

**Justin Mosca:** In theory you could add parking spaces here.

**Kenneth Pacheco:** So you don't lose parking spaces? In your letter you talk about safety and you can't be definitive as to whether Mass Highway. If we don't use the easement. The road is still going to be there. If we don't allow the easement the road is still going to be there for Dighton Power. How does if we use the curb cut that is existing now how is that a hardship for the variance?

**Justin Mosca:** The issue is going to be the distance between these (2) driveways. Simply put they are closer that you would want. So essentially it is a potential conflict it is not a derailing conflict but it is something that Mass DOT is going to want to look at. They ultimately have the determination of where that driveway goes. The existing driveway is irrelevant. Simply because it was a different use. I believe it was a residential property with one or two cars. Where this is a public lot with police cars and everything else. It happens to lineup in the same location but they won't necessarily view it that way. They don't see any reason that it couldn't be here or further down.

**Kenneth Pacheco:** I don't see it on this plan but you also have an exit for the police to leave?

**Justin Mosca:** On this particular plan these are the only (2) accesses to Somerset Avenue.

**Peter Caron:** Is the easement for the whole driveway.

**Justin Mosca:** It goes to about here.

**Peter Caron:** I'm sorry the width.

**Justin Mosca:** Yes it is right along the curb line.

**Peter Caron:** Is there any concern if a police car is leaving in an emergency and it comes into contact with the public leaving the parking lot?

**Zachary Caron:** That is my concern as well.

**Peter Caron:** As opposed to having their own separate entrance and exit.

**Justin Mosca:** With this layout there is not a ton of traffic going on in this project. The police will know that they are familiar with the site. I'm

personally not a traffic engineer. I don't want to say that it is completely safe or unsafe. I think that you could run into the possibility of a conflict but you have two ways out of the site.

**Kenneth Pacheco:** You have someone here tonight that can attest to that correct.

**Jeff Macelroy:** Principle with Tecton Architects. I have done police stations for the last (28) twenty eight years now. Police is a little different than fire in that most of the responding is not from the police station site. It is not impossible that you respond from the police station but most of the time officers are responding from their patrol cars out on their shift. Periodically they do come into the station whether they are returning with a detainee or evidentiary materials if something came up right then then yes they would roll from the Police Station. We do in police station design like to have (2) two ways in and out of a site just because if something happens right at that driveway we still want to have a way out of the site so that there is a way out to respond to other parts of the community and also get back when you have a detainee in the car. Originally we looked at getting that access way further down so that there was sort of a police entrance and then using the Dighton Power Company driveway. But obviously through the various iterations this is where we are at right now.

**Kenneth Pacheco:** Have you ever built any other police stations that use an easement to get into it or to exit?

**Jeff Macelroy:** I have not done a police station where it is was an easement. As long as it is an easement in perpetuity I'm not sure that I personally see...

**Peter Caron:** I don't see any issue with it. I think that it is an up or down vote on the easement unfortunately I have not been involved from the beginning when this project started. Being on the building committee and I am assuming that everybody has done their homework and this has nothing to do with the easement. Is the vegetation down to a minimum? So that nothing is blocking site lines or views?

**Justin Mosca:** The area out in front of the police station will be... those trees will be removed

**Peter Caron:** Including the area between the parking area and the easement.

**Jeff Macelroy:** There are only a few larger trees on that side of the site. That are outside of the area of our disturbance. Most of the trees are heading back in the other direction.

**Peter Caron:** I don't see many issues. Legally I guess it can be done so I not being an engineer I am assuming that all the things that you have put together that this is the best option. Not that we want to take an easement lightly because who knows what 50 years from now brings if you don't think

that there is a better way in dealing with such a small footprint I don't see many options. Again I am not an engineer but I don't know what you guys think?

**Greg Logan:** Why did you take the second entrance out of Rt. 138? I am curious about that?

**Taylor MacDonald:** We were asked to at the last...The Board wanted to see...

**Greg Logan:** This end over here...pointing to the south end of the plan.

**Taylor MacDonald:** The ZBA wanted it see...

**Kenneth Pacheco:** Actually I don't think we ever asked for that to be taken out?

**Greg Logan:** No we never asked for that.

**Kenneth Pacheco:** Obviously that can be put back in. I don't think we asked for that we asked for the curb cut to show us how it would impacts the whole project and whether or not you would be losing parking spaces whether it is feasible to enter using the curb cut verses the easement.

**Greg Logan:** How many years have you been doing this now?

**Jeff Macelroy:** 28 years

**Greg Logan:** And you have never done another one with the use of an easement you stated that yourself. On a municipality, this is what our concerns have become. Also shown before it had a driveway. We all know we need a police station but we are trying to cover ourselves here. We did have a second driveway that was strictly for police and now that is gone. That would have been the second means of egress and we wouldn't have needed the easement onto private entity. That is where I am concerned.

**Zachary Caron:** That is my concern too.

**Dennis Maguy:** It was exit only

**Greg Logan:** It was stated that it would have been for a police officers which you stated that would have been for the police officers to exit. Our bylaws clearly said 5 parking spaces and I counted 8. They should have the second off the easement is what I am getting at.

**Dennis Maguy:** It was an exit only because it was on the slope. The site line was not going to be good at that point. There was going to be a police exit for the cruisers and then somebody said that it wouldn't be feasible or a good location for it. And now we are asking ... because for a concept.. we were asked to come in with a concept showing the frontage entry. That is a concept of a frontage entry.

**Greg Logan:** But still exiting onto an easement. When we have frontage the to exit onto a main highway.

**Dennis Maguy:** The public is going to be .....

**Greg Logan:** The public is going to be entering onto that little spot right there on the corner next to the power plant.

**Dennis Maguy:** And leaving that way.

**Greg Logan:** the same way.

**Dennis Maguy:** If you want to put it back police exit only on the other side and then we have to go through the Mass Highway approval and if they don't approve that being that close and then you are going to have to shift it anyway. As an entry... so we are going to be in the near future...

**Greg Logan:** You already have a curb cut, I understand you stated that it is for a residential verses what we are using it for a municipality. We do have a curb cut for Mass Highway allowed for a home. Evidently after that the power plant got built, that used to be a driveway to a 3 tenement house back there. Our concern is still. I am for the police station I want the police there, I want to do as much as we can. I don't agree with exiting into an easement of a power plant which is not owned by the town. We cannot police anything there. If there was an accident on that easement. A police car pulls up and hits a truck going in. We are on private property at that moment in time and that is where my concern is. It has been the Boards concern all along.

Peter Caron: I would like to ask Marguerite's opinion?

**Kenneth Pacheco:** Are you representing the Board or are you representing the Police Station?

**Attorney Marguerite Mitchell:** I am not representing the Police Station.

**Kenneth Pacheco:** At all? You haven't had any input on that?

Atty. Mitchell: I was involved for the Town in working on this but I am sitting here right now on the request of the ZBA.

**Peter Caron:** What is your opinion Marguerite? I don't know where liability falls in I would assume if there is an accident on their whether it be a police car or a pedestrians car that could happen anywhere. That would be there automobiles insurance. Ultimately I think and this is my question the liability if somebody chooses to sue is going to fall with the power plant. Because ultimately even through there is an easement it is their land. I don't think the town has any more liability just because it is on an easement

**Atty Mitchell:** As I worked on the creation of this easement and as I reviewed it again recently the easement allows for the access and use by the public. I think that it has every ability I don't see any problem legal problems with concerns with the public's ability to use that easement and I don't see .... The power plant would be in violation of the easement if they somehow were to block the public from utilizing it. If there were some other type of accident occurred like you said that would be addressed through the automobile insurances of the cars and should they reach out the power plant

I am sure that the power plants property is going to provide a copy of the easement to say this was technically this area was public land. It is not private land because it was subject to us having to allow the public to pass and repass and us it and do whatever needed to be done in order to allow the public to utilize that area.

**Peter Caron:** If that is the case than it is no different to an accident on Rt. 138.

**Atty Mitchell:** Correct.

**Kenneth Pacheco:** Is that a public way then?

**Atty Mitchell:** No it is not. The Planning Board made a determination that it is not a public way.

**Greg Logan:** Is the police committee still investigating or looking into that or anything. Nothing?

**Justin Mosca:** No

**Kenneth Pacheco:** So that would be similar too you are at the Swansea Mall and you have a stop sign in the Swansea Mall and you blew right through it. The police department are not going to stop you. They are not going to hand you a ticket. They are not going to do that right? It is not a public way. The Town of Swansea is not plowing the snow at the Swansea Mall. That is not a public way. The public has access there but it is not a public way. They can put up all the stop signs they want. They can have security and everything else but they really can't.....

**Atty Mitchell:** Dighton Power .....

**Kenneth Pacheco:** They can put up a stop sign if they want but how are they going to enforce that then? The police department will not give... if it is not a public way the police department is not going to give a ticket to somebody going through a stop sign. If you are exiting through the easement...

**Atty. Mitchell:** Right

**Taylor MacDonald:** If I may for those of you ....

**Kenneth Pacheco:** Please identify yourself.

**Taylor Macdonald:** Of Pomroy Associates. The drive for the power plant would be for Police only. The public would be entering and exiting off the Wardell curb cut. There will be signage for Police only

**Kenneth Pacheco:** Peter, Is that you're understanding

**Peter Caron:** I did not think that was the case. I thought it was a public right of way. I thought the public was going to use the easement. Now you are telling us it is just for the Police cars.

**Taylor MacDonald:** When we discussed it with the police department yes, it would be just for police access.

**Peter Caron:** I wasn't aware of that. I thought ....

**Taylor MacDonald:** To keep them separate. Before we had it on the other side of the plan. The idea was to always keep them separate. So they were not entering and exiting out of the same drive.

**Peter Caron:** So right now the public is going to enter from rt. 138 through the curb cut. And they are going to park their car back up and exit the same way. That is not what I understood from the beginning. I thought that they were going to have access to almost ... the half circle.

**Taylor Macdonald:** In discussing it with the police department they were worried about potential conflict.

**Peter Caron:** To me that would be more of an issue. Because now you are going to have people that are not going to know until they get to that point in the parking lot that... Oh I can't go that way as opposed to your natural... you are going to see that and you are going to think that you would be able to turn... why would you limit it to just the police cars?

**Taylor MacDonald:** Again just to keep them separate. So that you didn't have... if somebody is responding in an off chance, out of the back drive there and you have public getting in there way as they are going out you might have an accident. So by having signage up to keep people from getting behind the station or to the power plant access...

**Peter Caron:** So you are creating a dead end parking lot which I would rather not have. I would rather it just be an easy flow. You just said earlier most responses are from on the road not from the police station. That is what we have now everybody uses the same entrance in and out. It is a much larger parking lot you can see where you are going and can turn around. I would rather see it be the semi-circle where you come in one way and go out the other. I think you are going to create more confusion by limiting the easement to just police cars. I would have to go back and look at my notes but I thought a few months ago when we sat down it was we wanted the easement because ... that way the public wouldn't by pass the entrance and have to turn around a little further down the road to realize they missed the police station. I thought it was one continuous flow. The other thing is I'd rather go back to your original where you also had the curb cut. Was it south..and make that your police entrance, in and out. I could see saying to the public you can't turn left to go behind the police station. That would be expected but to say you can't go left or right is going to create a problem. You have that other curb cut back south you would have the police coming in and out not interfering with anyone.

**Taylor MacDonald:** I believe the concern of the ZBA last time was the site lines and where the grade drops quickly.

**Peter Caron:** You would just have the police using that one not saying the police officers are better drivers but the use would be cut 1/10<sup>th</sup>

Taylor MacDonald: It would not be for public use.

**Peter Caron:** Right

**Peter Caron:** I would almost think that would elevate the concern about site lines when it comes to that other ... south entrance and exit. I have no issues with the easement. To me I think it is the safer issue. You have a larger entrance you said that you could keep the site lines clear I would rather hear from the Building Inspector. Marguerite has said that she doesn't see any legal reasons not to do it and of course you have (2) two other voting members here on the board. But looking at it as a whole I would rather see the south entrance put back in and I would rather see that be an entrance in and out and not be limited to police cars.

**Zachary Caron:** Could it be all (3) three. The south entrance, the easement and ....

**Peter Caron:** Correct

**Jeff Macelroy:** May I just ask umm.... Three cuts...from a Mass Dot standpoint.

**Peter Caron:** you already have .....

**Justin Mosca:** You are saying keeping this one now

**Jeff Macelroy:** That is (2) two curb cuts on the highway because..

**Peter Caron:** If Mass Dot says no then I would agree with keeping the south one not there. Although I think you are boxing in police cars. I can't believe they wouldn't look at it and say for safety reasons we would allow that curb cut. You have created a dead end parking lot for the police cars.

**Jeff Macelroy:** Again my concern in the original plan we had this driveway and the easement and here the concern was accessing the site for the public from an easement.

**Greg Logan:** That is still my concern.

**Jeff Macelroy:** And my understanding that the requested change is too maintain the Wardell curb cut and use the easement as an egress path. I still like the south access way for the police better myself but I do get concerned that they are going to see this roadway this curb cut this curb cut and that is going to trigger a Mass DOT problem.

**Kenneth Pacheco:** I look at this differently when I asked for a relatively new site plan. When I talked about using the Wardell curb cut it would be if the board did not approve the easement. In other words you would use the Wardell entrance and exit for the public and have the south entrance for the police department separating those in the event that the board did not approve the easement. I'm going to be quite honest I'm not ....if you are just

going to use the two entrances that you are showing now I not crazy about the police department using the easement if they get into an accident somebody going to the power plant or exiting clearly the town is going to be liable it's the police department that is going to be ... so I am not crazy about what you are showing us here. I kind of like using the Wardell curb cut in also using the other one that was part of the original plan but not using the easement but I have not fully made a decision on that yet so...

**Peter Caron:** Ken I have a question for you? Why the concern about the accident when an accident can happen anywhere

**Kenneth Pacheco:** The town is clearly...

**Peter Caron:** The town is going to be liable if they are coming out onto Rt. 138 too.

**Kenneth Pacheco:** They are coming onto rt. 138 but there is no public on town property going in going out. The police will be exiting, there will be people working for the Dighton Power Plant as well as I am going to tell you there is going to be people driving in.... if we leave those two there people are going to drive in to the power plant easement. Hopefully there will be signage and everything else but people are still going to be going in that way with them being so close like that. When I asked for the change in the site plan I wanted to know how it impacted parking spots because if you don't use the Wardell I wasn't sure how many parking spots would be affected all together but by using it are we actually losing parking spaces?

**Jeff Macelroy:** I don't think the use of the Wardell curb cut reduces the parking spaces.

**Justin Mosca:** You would probably have to move the driveway down a bit but you could create (2) two areas where there is (5) five spaces on one side and (5) five spaces on another. We actually only have (8) eight along this road right now. If you line it up correctly you could have (5) five here and (3) three up here.

**Taylor MacDonald:** We are still within our count of what is required for spaces right?

**Justin Mosca:** Jim correct me if I am wrong but there is no requirement for municipal it is based on the applicant's determination of how many spaces is needed.

**Building Commissioner:** Mr. Chairman if I may. First I was present when this site plan was under scrutiny I personally don't recall this board asking for the elimination of the second egress. If that is in the minutes then I may have missed it, If I left the room. But I don't specifically recall that. The focus was all on the Wardell and the easement. The other comment that I have is that you are going to limit public access from the easement or in

other words eliminate it. Then I feel if you are going to put a do not enter sign at the end of that public parking area you now may trigger the dead end requirement that we are trying to avoid. So I think we have to have careful consideration and I think everybody has valid points here across the board for both sides of the table but I think we need to take the time tonight to determine to try to talk this out and see how we can figure a way to build this police station.

**Peter Caron:** ....

**Dennis Maguy:** the way this was taken out in the last meeting we had it was thought that it wasn't going to be necessary and the concept of coming in the frontage that was the original thing that we were told was an important thing. We should be coming in through our frontage. Somebody said why can't we come in where the Wardell is and somebody said why can't we... I was at this Planning Board meeting and I needed directions. Just like tonight because it was getting so confusing. Everybody was picking on me and trying to blame me for things. I said give me directions. They said come in with a concept drawing showing that you are coming in the frontage but I will be perfectly honest. We took it out on a whim. It was to me an exit only for police. I don't remember it being an entry. So there was going to be a variance...

**Peter Caron:** Are you talking south entry?

**Dennis Maguy:** Yes, the south entrance. It was going to be an exit only for the police because it was going to be an unsafe sort of area so the police through when they go out they go out blaring if they are going out that exit usually. It is a police car so but that was going to be an entry and an exit from the plant easement and we didn't have the frontage entry. So you wanted to see a concept of how it affected the drawings and you wanted to see how it affected the drawings and you a professional, Mr. Williams came up with the and said if you use vhb bring them in and come up with a professional opinion on whether the highway is going to pass that with the closeness of those two, pass that and professionally he's telling you that it is likely not so there is going to be an idea anyway if you are going to keep it as a front, as a second it is going to have to move maybe 100' feet away down the road back to where that south was and I still say that was a plant easement was going to be used for entry exit for public Ok If I recollect right for public entry but when we pushed to this level it was more or less going to be for police having to coming in and out to get to their parking area and I didn't believe that we should have taken out on a whim taken out I call it the emergency exit south. That should stay in you know what I mean. Right now...

**Peter Caron:** that is what I said that should be in their too.

**Dennis Maguy:** In no meeting previous to this, Planning or you that was going to be removed. That is something that is being shown tonight. I would say that if it comes back to that conclusion and it goes back in and we wait for the decision. We are trying to get this off and we are trying to get an easement approval a variance for the easement to be used in some way shape or form. I thought that that was one of the things but yeah we want an overall and we can't go into the next phase of design and planning without it.

**Peter Caron:** I go back to my original statement. Which is I think the easement is an up or down vote. Whether you choice to make it a police vehicle only, public entrance I don't think that it is for this Board to decide. You are here to ask and I think what is on the table is can we have this easement or not? Then it becomes your decision and the building inspector's decision how it is used. Bob, Ken will get to you.

**Kenneth Pacheco:** Bob you have to wait. The Board is still talking about it.

**Robert Adams Sr.:** We are wasting so much time and effort here.

**Joseph Pacheco:** You should be quite until you are you acknowledged.

**Peter Caron:** I think it should be an up or down vote. I am not saying the Board is over stepping its bounds but I don't think that it is for the Board to decide. They are not asking us to decide that.

**Kenneth Pacheco:** We made a request in September because they already have a curb cut we wanted to see how it would look. We never talked about the south entrance. They talked about lowering the grade to make it easier for the police department I never asked for that to be taken out and I understand that has been done and that is fine. The question was if we vote down the easement is there another option? And that is what asked and I know other members asked for that same thing. I'm not talking about using both the easement and using that and then putting something for the police station. Whether or not we were going to approve the easement I want to make sure that they have another option. That is what they are presenting to us tonight.

**Justin Mosca:** If you get rid of this access here and you only have a south and a north access that is going to be a dead end. That will reduce parking.

**Kenneth Pacheco:** that is what I have been asking.

**Justin Mosca:** I apologize. I think I and finally understanding what that question was for. The south side is authorized vehicles only. If you only have one access this is dead end parking.

**Kenneth Pacheco:** When you say dead end parking what do you mean by that and how does that impact parking?

**Justin Mosca:** It means you have to turn around and come back out the same way.

**Kenneth Pacheco:** Any other questions from the Board?

Abutters

**Robert Adams Sr.** Simply the board is charged here tonight to approve this easement. Ultimately if there is access to the facility from Rt. 138 there is no need for a variance. They can have their easement in perpetuity forever. The issue here is whether there is a hardship. Under this present thing that they have and we did not ask to have the one removed at the meeting having that access eliminates the need for a hardship to create the variance. They can have the variance and use it all the time in perpetuity but your public access from Rt. 138 which was the sole issue right from the start. You made reference earlier that Mass Highway wouldn't matter where you put the curb cut. You are asking for the easement and there is no hardship. You can have the easement, you can have the exit. The issue is you just have to run it under that proposal. I would like to see the other exit there too because it was never asked to take it out. There is no need for a variance here.

**Kenneth Pacheco:** I think the question before the board is if we deny the easement which means they can go in through the Wardell will Mass Highway approve then to have the second one and that is my concern.

**Justin Mosca:** Mass Highway may not even approve this right here we don't know how they will rule. It gets more complicated with three entrances it is still complicated with just two.

**Kenneth Pacheco:** If we deny the easement that is gone period. If we don't approve the variance it might not be a police station but it is still a curb cut.

**Kenneth Pacheco:** What is the space between those curb cuts?

**Justin Mosca:** About 75' feet

**Kenneth Pacheco:** Are there any other questions from the public or the abutters

**Joseph Pacheco:** I wish to address something

**Kenneth Pacheco:** Please identify yourself

**Joseph Pacheco:** Center Street Dighton. The question before the Board is not to redesign where we go in and where we come out. The question is can we use the easement as an entrance to the police station. Forget the other curb cuts. The question before you should be can we have that variance for that easement.

**Kenneth Pacheco:** I don't think that is the only question that is before the Board.

**Joseph Pacheco:** Well that is none of your business about safety.

**Kenneth Pacheco:** That is none of our business about safety? Excuse me, I disagree with you.

**Joseph Pacheco:** We are asking for a variance to use the easement. That is all.

**Kenneth Pacheco:** I know what is being asked.

**Robert Adams Sr.** the answer to that in order to grant a variance there has to be a hardship. You have a curb cut in the facility in your frontage. There is no hardship.

**Joseph Pacheco:** You don't know if that is a valid curb cut?

**Robert Adams Sr.** You haven't submitted the information we asked for 3 months ago. I don't know what is the hurry here?

**Joseph Pacheco:** The hurry is the costs are going up we were supposed to break ground in October now we are going to do it until spring.

**Kenneth Pacheco:** We got a petition in June this past year for the July meeting to get a variance for the setbacks. At the July meeting it was brought to our attention that a variance would be need for the easement. We had a meeting September 16<sup>th</sup> we asked for this information. I scheduled another meeting September 30<sup>th</sup>. The Selectmen canceled that. We then schedule another meeting for November 4<sup>th</sup>. The Selectmen would not pay to notify the abutters or spend the money to put it in the newspaper. They wanted to see what was going to happen on October 21<sup>st</sup> before the Planning Board. The Planning Board denied it. They would not make that a street. So now it is before us. This easement has been around for 2 ½ years. Shame on us in a sense that we didn't go to the meetings for the police station. I get that but it is before us now. I didn't know anything about the easement now all of a sudden we have to go rushing into everything else. There have been other mistakes with this project we don't have to go into detail on those other mistakes.

**Dennis Maguy:** My opinion and I am chair I am a volunteer. I am a resident of this town. You are right. This goes back I don't want no adversarial thing here. Let's get back to the saying that ... can we agree that there is no reason that the thing can't come back in the entry or exit. We have to have a decision made eventually on the from Mass Highway on all the different curb cuts here but if it is just the easement is that going to be able to let us move on to some timeline that we can get to the Planning Board. I know we have been here and I know what the delays were but I don't to even say what the delays were. I'm frustrated. I am ready to quit on being the chair of the Board. I can't believe it. I don't want it to adversarial. I just would like to come to the conclusion that the basics that you have to deal with respect to the easement and if that requires a variance can we get to that point that

maybe we can move from there on to something but we are going to come up with a resolution on the front entry curb cuts as we proceed. That is a slow process but first we need to have the plan devised and then sent over for approval to anybody. We are trying to get Tecton to be able complete the plan to go to the Planning Board with.

**Kenneth Pacheco:** In my opinion if the easement is denied you still have the option of using the Wardell curb cut and having that second one.

Whether or not Mass Highway Department approves that or not I am not sure. So if the easement is denied and it can't be used. My question for this concept site plan was to see whether or not it was feasible to use the Wardell curb cut and my other concern was safety. If we grant the easement and we don't use the Wardell curb cut and you use the south exit for the police department is that a safer plan than using the Wardell having people coming in and out of Dighton Power Plant and having people only 75' feet away coming in and out of the police station is that safe is it a possibility. There has been accident's in that area so we have to be concerned about that.

**Peter Caron:** Is the Wardell entrance only?

**Justin Mosca:** It is both entrance and exit.

**Peter Caron:** Which to me makes no sense. At that point it would be either an exit only or an entrance only so that you don't have traffic coming in and out of the Power Plant and in and out of the Wardell property. Again make the circle.

**Justin Mosca:** you would rather see a one way all the way around?

**Peter Caron:** If you put that south entrance back for the police cars and if you don't get that extra curb cut you still have the easement and the one curb cut that the state allows you to have. I think you are creating a dangerous situation if that easement is not there and that parking lot becomes a dead end parking lot. Where you will have to have cars turning in and out of just the Wardell property.

**Building Commissioner:** I have something I think is crucial and needs to be discussed. This is a suggestion and I think all of the powers to be need to think about this. You need a working set of drawings to put this out to bid. Right now until we get the curb cut situation cleared up we don't know that ok. If we come up with a site plan that shows all three entrances the one on the south the one on the Wardell and the one on the easement. We put this project out for bid we can in the meantime go to Mass Highway apply for the curb cuts. If they are denied or if they bring up questions that egress this way outgress this way. We can clear all this up while you guys are going out to bid. At the end if there are changes to be made we do a change order on the project. Maybe the elimination of a curb cut which is going to reduce the

price. So why can't we move forward that way and then we can at least bid the project get things moving get the building permit process going and in the meantime get all the applications through. You know that it is going to take a few months to do that. It is going to take a few months to get this out to bid.

**Peter Caron:** This hasn't even gone to bid yet?

**Building Commissioner;** No. But if you show a worst case scenario site plan now you have bids that come in for worst case scenario.

**Peter Caron:** You can do it that way. It make the most sense regardless. It is the natural order of things. My gut feeling is grant the easement and if it doesn't have to be used it is done. I agree with Ken as far as it is a safety issue. I don't think the Board is in the planning stage or the engineering stage to question what is an entrance what is the distance to curb cuts what is allowed by the state.

**Building Commissioner:** I made a call to Mass Highway and I asked them if there is already an existing curb cut and it was used for residential and now is going to be proposed for commercial. That would be a change of use. They still have jurisdiction over it but they can't deny you access to the site. Whether or not they grant you another access or not we do not know that until you actually go through the application process with Mass DOT.

**Peter Caron:** Your easement is you almost putting the cart before the horse.  
**Building Commissioner:** In a sense it is and now that I am thinking about it objectively and focusing all my attention on it> I am saying that I know it is frustrating every month that goes by the Feds are raising the rate next month so the boundary is going to go up the interest rate is going to go up. Why can't we just submit a site plan showing all three curb cuts let's get the thig out to bid and move the project forward. Apply to Mass Highway let Mass Highway discuss what the options are. They are going to have to come out to do a traffic study ECT.... this may take a few months to clear up anyway and then if the variance is needed we will come back to the board for the variance before the occupancy permit is issued. The occupancy permit is going to be a year away or more. Do you think that would work form an architect's standpoint? Technically yes but you could expose the town to possible additional design fees.

**Building Commissioner:** What is the 6 month delay going to cost?

**Jeff Macelroy:** At the rate the escalation is going right now a significant amount of money.

**Building Commissioner:** OK so we have design fees and we have the possibility of a change order. Quite frankly it could reduce the price of site work if you eliminate a curb cut.

**Peter Caron:** I don't mean to step on anybody's toes. I don't want to speak for Ken.

**Kenneth Pacheco:** Mr. Adams did have his hand up. I want to let him speak and then we will take a vote on this.

**Robert Adams Sr.:** All I wanted to say is what Jim said if they move forward with that mass Highway did say you can't have the curb cut then you have your hardship.

**Peter Caron:** I think we can end this and I think that it is time too.

**Motion Kenneth Pacheco to approve the easement with the condition that the south entrance for police access and the Wardell curb cut be incorporated into the plan and it is all conditioned on Mass Highway's approval.**

**Peter Caron:** The discussion is let Mass Highway decide they are going to come out to do a traffic study and say yes or no. This is ridiculous that it continues. I think if ultimately they say you that you can't do it then your decision is there you are not going to tie things up anymore.

**Motion has been made Zack seconded it any further discussion?**

**Atty Mitchell:** Can I just make sure that I understand the condition. So the Condition will be it is a motion to approve the access by way of something other than the frontage of the property utilizing the easement and the condition is the south entrance and the Wardell curb cut is also to be provided as a means of access and or egress provided there is no denial by Mass Highway either of both of those curb cuts.

**Justin Mosca:** So what happens if Mass Dot denies one of those curb cuts? Is that variance no longer in affect?

**Atty Mitchell:** I would word it around subject to the approval of Mass Highway

**Kenneth Pacheco:** I don't necessarily want them coming back to us.

**Atty. Mitchell:** Subject to the approval of Mass Highway they will use the Wardell curb cut as a means of public access and or egress. Subject to the approval of Mass Highway they will use the south entrance as a means of police access and or egress. You can choose whether you make it access or egress at that point in time but you are defiantly making the south entrance police only correct? It will never be public.

**Case #23-04 The Pines**

**Voting Members Robert Adams Sr., Kenneth Pacheco & Brett Zografos**

The Developer is requesting the release of the remaining lots in "The Pines" The Board asked how many lots they were presently holding. 16 Lots are currently being held in the covenant. The developer is requesting the release of 13 lots or however many the Board will allow.

A cost to complete for the development was conducted by Engineer Peter Williams of GZA GeoEnvironmental and submitted to the Board. The total cost to complete was estimated at \$270,000. The value on the lots currently be held is \$90,000 each.

**Kenneth Pacheco** asked about the water stubs and if the water connection between Stoney Ridge and the Pines was completed.

**Eoghan Kelly** submitted a plan showing the lots currently released to the developer.

**Atty. Mitchell:** under the Planning Boards covenant that we have been currently relying on for lot releases. It is the cost of a lot plus 1. The reminded the Board that GZA is still recommending the Water Department verify water services and connection to the abutting development have been completed. She suggested the Board make it a condition of the release. She asked which lots currently have house on them. Lots 1-6 have houses and 7 is vacant 8 & 9 have building permits.

**Kenneth Pacheco:** Asked the developer if they had a preference which lots they would like the Town to hold.

**Motion Kenneth Pacheco second Robert Adams Sr to approve the release of lots 10, 11, 12,13,14,15, 20, 21, 28, 29, 30 & 31 and hold lots 16-19 subject to proof that the water connection between Stoney Ridge and the Pines is complete.**

**All in Favor**

**Aye**

**The F1 form was signed and notarized and given to the secretary to hold until confirmation from the Water Department that the water lines between Stoney Ridge and the Pines is complete.**

**The Building Commissioner** asked to speak to the Board about the new Accessory Apartment Bylaw. The Board discussed how an accessory apartment might affect 40B requirements. They inquired if the accessory apartment units would add to the Town's affordable count.

**Atty Mitchell:** We should check with Mass Housing to see if these could be added to our affordable count.

**Case # 19-15 0 Elm Street Alice Dumenigo Realty Trust**

**Voting members Peter Caron, Zachary Caron & Robert Adams Sr.**  
Public input was closed at the last meeting this is just the hardship with the cemetery.

**Motion Peter Caron second Robert Adams Sr. to approve**

**All in Favor**

**Aye**

**Reason for approval**

**Robert Adams Sr.      Hardship due to the cemetery taking away the frontage**

**Zachary Caron      Same**

**Peter Caron      Same**

**Letter of extension was signed**

**Case #13-15 0 Elm Street Fatima 123 Realty Trust**

**Voting members Peter Caron, Kenneth Pacheco & Greg Logan**

Kenneth Pacheco explained that the applicant submitted a letter to the Board requesting to withdraw without prejudice their variance application and he read the letter. See attached.

**Motion Peter Caron second Kenneth Pacheco to accept the withdrawal**

**All in Favor**

**Aye**

**Peter Caron read a letter submitted to the Board by Alan Beausoleil regarding roadway signage on his property located on the corner of Pine Street and Brook Street. See attached Peter stated that he would be meeting the resident tomorrow to view the signage in question. The Board also requested the highway department be included regarding safety.**



**Rosalind Grassie**

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**From:** Shannon Dufresne <ShannonH@LynchLynch.Com>  
**Sent:** Wednesday, November 18, 2015 9:51 AM  
**To:** Zoning Board of Appeals  
**Cc:** Joe Ferreira  
**Subject:** Request for variance, Fatima 123 Realty Trust (from Attorney Joseph C. Ferreira)

RE: Request for variance, Fatima 123 Realty Trust

Dear Zoning Board of Appeals,

Kindly allow this correspondence to serve as our request for withdrawal without prejudice.

Thank you for your consideration in this matter.

Very truly yours,

Joseph C. Ferreira

November 16, 2015

Zoning Board Chairman Peter Caron,

For nearly 35 years our family has lived at the end of Pine St., near Brook St. During this time there have been two signs warning of the upcoming curve, one located north on Pine St., the second east on Brook St. During this time there have been a minimum amount of incidents at this location. On a rare occasion a vehicle may slide off the road due to the snow covered roadway. The few exceptions to this are caused by excessive speed, with only minor damage to the vehicles.

Recently the Highway Department has installed four large warnings arrows, (one directly in front of our home) and around the curve. Previously there were none. For 35 years the two early warning signs were adequate. Now, due to cost being absorbed by the developer on Pine St., our property resembles an off-ramp from Rt. 195. The feeling of living on a typical New England country road is no longer. Even the monument erected near the site of Dighton's first meeting house is partially blocked. Often people stop to read this part of Dighton's history.

Traveling throughout the back-roads of our area, and surrounding towns, I have been on many roads with more severe curves, greater speed limits with less signs. In my opinion the signs at Pine and Brook St's are excessive. If need be, two properly placed signs would be adequate and still maintain the integrity of that country road.

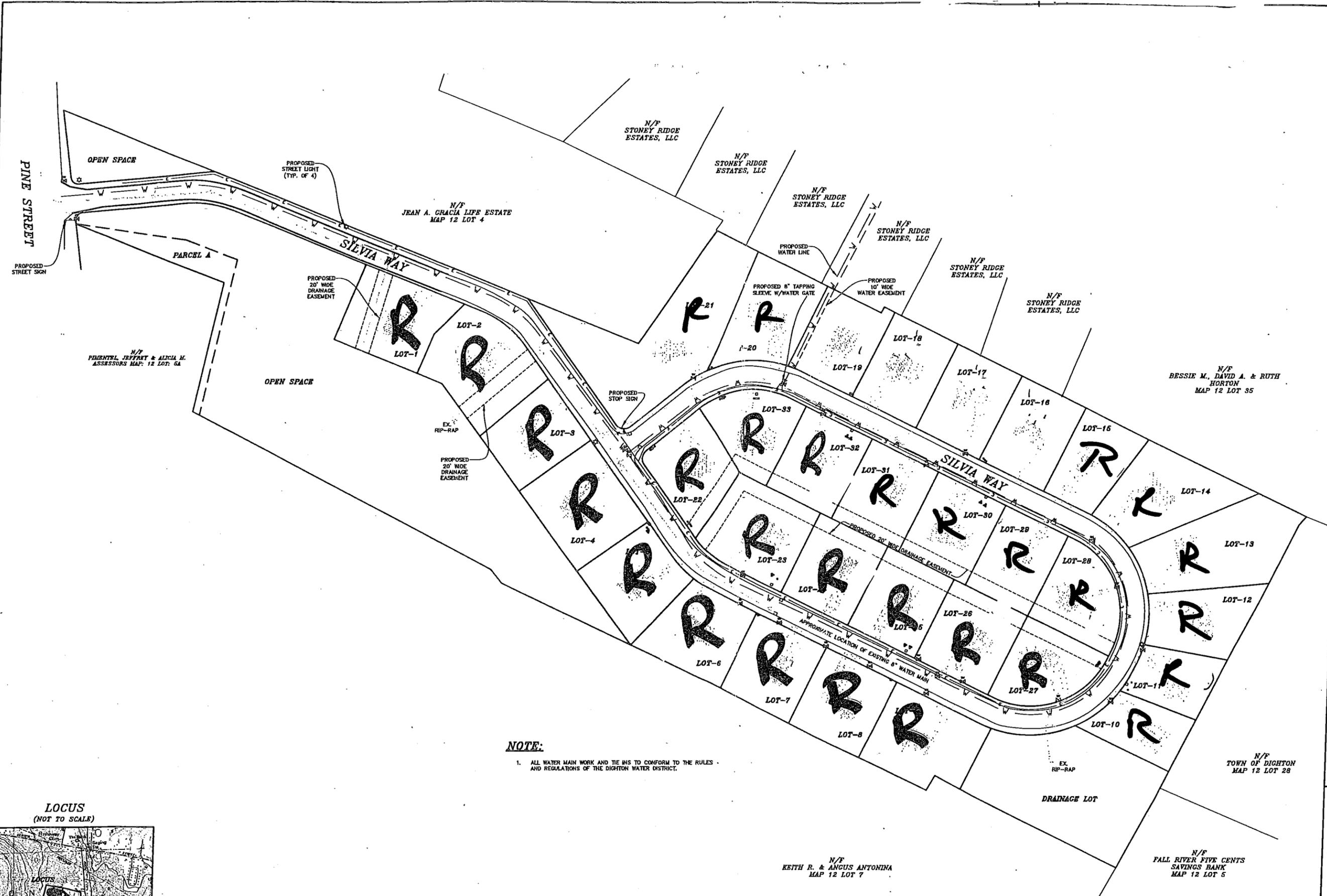
We would like to thank you in a advance for your assistance and cooperation in rectifying this situation. I would appreciate a response regarding the Boards decision, at (508) 669-6285, or by mail.

Sincerely,

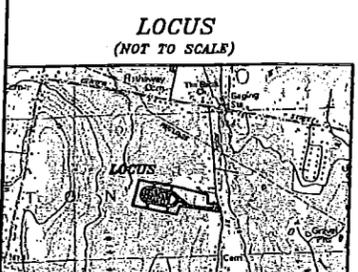


Mr. Alan Beausoleil

Received  
11-16-15  
R. [Signature]



**NOTE:**  
 1. ALL WATER MAIN WORK AND TIE INS TO CONFORM TO THE RULES AND REGULATIONS OF THE DIGHTON WATER DISTRICT.



FOR REGISTRY USE ONLY



I CERTIFY THAT THIS PLAN HAS BEEN PREPARED IN CONFORMANCE WITH THE RULES AND REGULATIONS OF THE REGISTERS OF DEEDS.

DATE \_\_\_\_\_ PROFESSIONAL LAND SURVEYOR \_\_\_\_\_

APPROVED AND ENDORSED UNDER M.G.L. C. 40B BY THE DIGHTON ZONING BOARD OF APPEALS.

DATE: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

DIGHTON ZONING BOARD OF APPEALS

I CERTIFY THAT 20 DAYS HAVE ELAPSED SINCE ZONING BOARD APPROVAL, AND THAT NO APPEAL HAS BEEN FILED AT THIS OFFICE.

TOWN CLERK—TOWN OF DIGHTON

**OWNER/APPLICANT**

PMJD REALTY LLC  
 32 NORFOLK AVENUE  
 EASTON, MA 02375  
 DEED BOOK 21565 PAGE 15

**UTILITY PLAN FOR**  
**"THE PINES"**  
**ON**  
**PINE STREET**  
**IN**  
**DIGHTON**  
**MASSACHUSETTS**



165 EAST GROVE STREET  
 MIDDLEBOROUGH, MA 02346  
 TEL: (508)-946-9231  
 FAX: (508)-947-8873  
 www.outback-eng.com

REVISIONS		
NO.	DATE	DESCRIPTION
1	10/3/14	REVIEW ENGINEER COMMENTS

DATE: SEPTEMBER 11, 2014  
 DRAWN BY: J.A.Y. CHECKED BY: J.A.Y.