

**TOWN OF WEST NEWBURY
PLANNING BOARD
TOWN OFFICE BUILDING
381 MAIN STREET
WEST NEWBURY MA 01985
978-363-1100 X 125 Fax: 978-363-1119**

**CERTIFICATE OF VOTE
APPROVAL OF A DEFINITIVE SUBDIVISION PLAN
SULLIVANS COURT EXTENSION
ESTATE HOMES AT RIVERS EDGE
(Assessor's Map R-11, Lot 18)**

April 21, 2015

At a meeting of the West Newbury Planning Board (hereinafter the "Board") held on April 7, 2015, Board members voted to approve with Conditions the Application filed for Definitive Subdivision Plan Approval, in accordance with the provisions of M.G.L. Chapter 41, Section 81L, et. seq. for six residential lots, by a vote of 5 to 0. Planning Board members Ann E. Bardeen, Richard W. Bridges, Raymond A. Cook, Brian R. Murphey and John Todd Sarkis voted in favor of approval. The approval incorporates by reference all the plans and drawings noted below as submitted by the Applicant, Walker Development Corporation, (hereinafter the "Applicant") and the Owners, Kathryn Coffin, Louise F. Beard, Vincent P. Sullivan, and Priscilla J. Santos (hereinafter the "Owners") and to the Applicants' and Owners' heirs, successors and assigns as their interest may appear, subject to the Conditions of this Decision to be met. The Board responded to Plans and Applications, which are incorporated by reference into this Decision. The submittal is further described as follows:

APPLICATION FILED:

Form C, Application for Approval of a Definitive Subdivision Plan, dated October 10, 2014

OWNERS:

Kathryn Coffin, 541 Main Street, Louise F. Beard, 11 Poores Lane, and Vincent P. Sullivan, P.O. Box 31, all in West Newbury, and Priscilla J. Santos, 8065 Long Branch Terrace, Glenn Burnie, MD

APPLICANT:

Walker Development Corporation, 447 Boston Street, Topsfield MA 01983

REFERENCES:

Town of West Newbury, Certificate of Vote, Sullivans Court Extension,
The Estate Homes at Rivers Edge

Civil Engineering Plan: Definitive Subdivision Plan, for Sullivans Court, Tax Map R-11, Lot 18, West Newbury MA ("the Plan")

Prepared for: Walker Development Corporation, 447 Boston Street, Topsfield MA 01983

Prepared by: Thomas E. Neve, 10 Valley View Way, Methuen MA 01944

Stamped By: Thomas E. Neve, Registered Professional Engineer and Registered Professional Land Surveyor

Dated: October 9, 2014, revised January 7, 2015, March 3, 2015, March 31, 2015, April 7, 2015, and subsequent date noted as FINAL.

Drainage Report, Estate Homes at River's Edge

Prepared by: Civil Design Consultants, P.O. Box 2237, Methuen, MA 01844-1097

Stamped By: James E. Hanley, Registered Professional Engineer

Dated: October 9, 2014, revised January 7, 2015; and Existing Watershed Plan, Sheet EWP-1 dated October 9, 2014 ; and Existing Watershed Plan showing Proposed Conditions, Sheet PWP-1, dated October 9, 2014, revised January 7, 2015.

Planting Plan for: Thomas E. Neve, prepared by Thom McMullen, Landscape Architect, dated April 1, 2015.

PRELIMINARY SUBDIVISION PLAN FILING and SITE WALK:

A Preliminary Subdivision Plan Application (Form B) was filed on March 13, 2014. Discussions were held in conjunction with meetings to discuss Special Permit Applications on April 22, May 6, May 20, June 17, and August 19, 2014. The Application for Preliminary Subdivision Plan approval was withdrawn without prejudice on May 20, 2014.

A Site Walk was conducted on November 22, 2015.

FILING and PUBLIC HEARING INFORMATION:

The Application package was filed with the Town Clerk and the Planning Board on October 10, 2014. In accordance with the requirements of M.G.L. Chapter 41, Section 81T, and Rules and Regulations Governing the Subdivision of Land, Section 3.3.4.1.4. (Planning Board Regulations.) Legal Notice was published in the Daily News of Newburyport on October 20 and 27, 2014, mailed to abutters and abutting communities on October 17, 2014, and posted with the Town Clerk on October 16, 2014. Copies of the Application package were distributed to the Board of Health, Building Inspector, Conservation Commission, Department of Public Works,

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Fire, Open Space Committee, Police, and Water Departments in compliance with Section II.B.2. of Planning Board Regulations.

The Application was filed concurrently with Applications for a Special Permit for three Reduced Frontage Lots (Section 6.A.1.) and a Common Driveway to serve three lots (Section 7.D.) The Public Hearings were held concurrently.

Responses to the Applications submitted were received from Gary Bill, DPW Director, Michael Gootee, Water Department, Paul Seigny, Health Agent, and are on file in the Planning Board Office.

The Public Hearing was opened on November 3, 2014, and continued to November 18, December 2, December 16, 2014, and January 20 February 4 (postponed due to lack of a quorum), February 17, March 3, March 24, and April 7, 2015. The Public Hearing was closed on April 7, 2015.

CERTIFICATION PURSUANT TO M.G.L. CHAPTER 39, §23D.

The statute is referred to as “the Mullen Rule Law”. Certification has been made by the following members:

Richard W. Bridges, for Public Hearing held on March 3, 2015

John Todd Sarkis, for Public Hearing held on March 24, 2015

DESCRIPTION OF PARCEL:

The parcel, located in the Residential C Zoning District, consists of 13.3 acres with 337.12 feet of frontage on Sullivans Court. Access to Sullivans Court is from Whetstone Street, off Main Street. The terrain of the parcel slopes toward the Merrimack River.

In recent years, the property has been used agriculturally as a field for growing crops such as corn. Much of the parcel has been cleared for the fields, with sparse vegetation growing primarily around the edges of the parcel and in the wetland areas. The parcel has frontage on the Merrimack River.

COMPLIANCE WITH SECTION 3.3.4.1.1. of SUBDIVISION REGULATIONS

An Application for a Common Driveway Special Permit for Lots 2, 3, and 4 has been filed with the Application for Definitive Subdivision Approval. Section 3.3.4.1.1. requires that: If the Definitive Subdivision Plan and application includes a Common Driveway, the Board must review for approval the following:

1. An agreement between the owner or developer and the Town of West Newbury prohibiting the sale of lots and erection of buildings until such time as the Common Driveway(s) have been constructed in accordance with the approved plan.
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2. A declaration of covenants, easements and restrictions for the use and maintenance of said Common Driveway(s).

The Planning Board has required the above-listed documents as part of the Special Permit for the Common Driveway, and has deemed that this requirement has been fulfilled.satisfied this section of Subdivision Regulations.

Waivers Requested and Granted:

1. To allow the lotting plan to be at 50 scale rather than 40 scale so the entire project can be shown on one sheet. **Section 3.3.3.1.4.**
2. To allow the 1988 NAVD datum system to be used rather than the 1929 system. **Section 3.3.3.1.5.**
3. To allow the dimensional criteria of lots to be shown at an accuracy of two decimal places rather than 3. **Section 3.3.3.2.**
4. To allow street bounds to be located at points of curvature of the road as directed by the Planning Board.. **Section 3.3.3.3.8.**
5. To allow no Modified Cape Cod Berm, **Section 4.2.5.1**
6. To allow a roadway width of 16 feet to be used for overlaying the existing Sullivan's Court and the new roadway extension. **Section 4.2.6.3**
7. To allow the travelled width of the existing Sullivan's Court and the new section of Sullivan's Court to have a travelled width of 16 feet. **Section 4.2.6.3.**
8. To allow the extension of a dead end street. **Section 4.2.8.1.**
9. To allow a modified circular turnaround at the end of new Sullivan's Court. The pavement width on the cul-de-sac shall be 16 feet as shown on the approved plans. **Section 4.2.8.2.**
10. To allow no sidewalks. **Section 4.3.1.1 and 4.3.1.2.**(NONE ARE REQUIRED FOR MINOR LOCAL ACCESS ROADS, SEE TABLE).
11. To allow the use of High Density Polyethylene Pipe (HDPE) in place of Reinforced Concrete pipe for drainage purposes. **Section 4.4.9.1.**
13. To allow for no street lights to be installed along Sullivan's Court. **Section 4.7.2**

14. To allow street trees to be installed in locations as directed by the Planning Board along existing Sullivan's Court, New Sullivan's Court and along the Common Driveway.
Section 5.7.
15. To allow a roadway and common driveway to be built with a cross section as shown on the plans. **Section 5.2.1.4 and Section 5.2.1.5.**

CONDITIONS OF APPROVAL

I. Frontage for and Access to Lot 1, and Unconstructed Portion of Sullivans Court Extension

- A. The Plans have been submitted with an Extension of Sullivans Court drawn to the property line abutting a 50' wide parcel of Town-owned land identified as Assessors Map R-11, Parcel 68A. The Planning Board has approved a cul-de-sac which provides frontage to Lots 2, 3, and 4, and is not requiring that Sullivans Court be built to the property line, since that would create another dead-end street condition.
- B. Frontage for Lot 1 is provided on the un-built section of Sullivans Court. Access and utilities to Lot 1 shall be provided by an Access and Utilities Easement across Lot 2, as shown on Sheets C-3 and C-8 of the Plan. The Planning Board has approved the frontage and access for Lot 1 under the provisions of Zoning Bylaw Section 6.A.9.

CONDITIONS:

1. A Driveway Access and Utility Easement for access to Lot 1 over Lot 2 shall be submitted to the Planning Board for review and approval.
 2. The Driveway Access and Utility Easement shall be recorded with the Definitive Subdivision Plan.
 3. The unbuilt portion of Sullivans Court Extension shall not be used for any private purposes, including but not limited to buildings, landscaping, etc. It shall be left in its natural state, and shall not be maintained by Owners.
 4. The Owner shall grant an Easement to the Town of West Newbury for all purposes for which streets are to be used, to be recorded with the final Plan, for both the constructed and unconstructed portions of Sullivans Court Extension, which shall include use of the land for a trail easement.
 5. The Owner shall install a trail easement and a 4' wide boardwalk on the unbuilt portion of Sullivans Court Extension as indicated on Sheet C-8 and identified further in the Trails Section below.
- II. Inclusionary Housing Requirements** The Owner is required to fulfill the requirements of the Inclusionary Housing Requirements, Zoning Bylaw Section 5.F., for Lots 1, 2, 3, and 4. Lots 5 and 6 have not been included in this calculation as they could be ANR Lots.

The fee has been calculated as follows:

Estimated Sales Price for a home built on Lots 1, 2, and 4 (each) \$700,000.

Estimated Sales Price multiplied by 3 homes: \$2,100,00.

Estimated Sales Price for a home built on Lot 3: \$850,000.

TOTAL: \$2,950,000, multiplied by 4% equals:

A Housing Contribution Payment of \$118,000.

The fee shall be remitted to the Town of West Newbury in the following manner:

- A. In accordance with the provisions of West Newbury Zoning Bylaw Section 5.F.6, the Applicant shall provide a Housing Contribution Payment equal to 4% of the Average Market Sales Price times four (4) (the number of new units.) Applicant shall execute and deliver the Housing Contribution Payment Agreement with the Planning Board in accordance with West Newbury Zoning Bylaws Section 5.F.6.b prior to and as a condition of the endorsement of the Subdivision Plans in accordance with the provisions of Massachusetts General Laws, Chapter 41 Section 81U.
- B. The Planning Board shall deposit the funds with the Treasurer in an account established for this purpose, with the restriction that the funds may be spent only for Affordable Housing purposes and only with the authorization of the Planning Board.

III. Performance Guarantee

CONDITION:

Prior to endorsement of the Definitive Subdivision Plan by the Planning Board, the Owner shall secure the construction of ways and the installation of municipal services in a manner provided for in M.G.L. Chapter 41, Section 81U.

IV. Site Work

CONDITIONS

- A. Compliance with Approved Plans: The project shall be built in accordance with the Plans as approved, except where stated otherwise within this Certificate of Vote. Any deviations from the approved Plan must be brought to the attention of the Planning Board. Minor changes or deviations may be authorized by the Planning Board or its designee, without formal refile, as minor field changes, if the Planning Board determines that such changes are warranted to meet field conditions or to improve site conditions.
- B. Pre-Construction Conference, to be held prior to the start of any construction.

1. The Owner shall submit a Construction Schedule to the Planning Board for review as a pre-requisite for scheduling a Pre-Construction Conference. The Schedule shall be submitted at least fourteen days prior to the requested date for final review. Review by the Planning Board Agent shall be at the Owner's expense.
2. The Planning Board shall distribute the proposed Construction Schedule to the departments listed in Subsection 5. below for review and comment.
3. The Owner shall request that the Planning Board schedule a Pre-Construction Conference at least 14 days prior to the requested date.
4. The Planning Administrator shall contact the people listed below to arrange a mutually convenient date and time.
5. The following shall be notified and requested to attend the conference: Conservation Administrator, DPW Director, Fire Chief, Health Agent, Planning Board Technical Review and Technical Agent, Police Chief, and Water Department Supervisor, to discuss the Construction Schedule, which has been previously submitted and approved by the Planning Board, and the Conditions of Approval.
6. At that Conference, the Owner shall submit to all present a list of contact information for the Owner, Contractor, Engineer, Surveyor, including 24 hour emergency contact numbers.

C. Hours of Construction:

1. Project construction shall be limited to the hours of 7:00 a.m. to 5:00 p.m., Monday through Friday, and on Saturday from 8:00 a.m. to 5:00 p.m. Construction during other hours, and on Sundays and on all holidays, is expressly prohibited. Holidays are: New Year's Day, President's Day, Memorial Day, Independence Day (July 4), Labor Day, Thanksgiving, and Christmas.
2. The term "construction" shall include deliveries of materials, arrival of vehicles on site, running of motors, moving of earth and all equipment, dwelling unit construction, and related noise such as hammering, nail gun use, sawing, compressor usage, etc.

D. Control of Dust and Debris:

1. The Owner shall provide appropriate measures to limit construction debris, dust, and materials on the site. In the event that debris is carried onto any public way, the Owner and his assigns shall be responsible for all cleanup of the roadway. All cleanups shall occur within twenty-four hours after first written notification to the Owner by the Board or its designee. Failure to perform such cleanup may result in the project being shut down until said public way is clear, Town cleanup at the Owner's expense, or other measures deemed appropriate in the reasonable judgment of the Town.

2. In the event that dust, dirt and other materials are carried onto abutting private property, the Owner shall be responsible for cleanup if determined necessary by the Planning Board.

E. Project Construction Inspections:

1. The Board's Subdivision Inspector shall inspect all roadway, infrastructure and drainage improvements required by the Plan, and any other elements as requested by the Board, at the expense of the Owner. Inspections shall follow the Form L, Inspection Form, found in the Town of West Newbury Subdivision Regulations.
2. Attendance by the Inspector at meetings, conferences, review of subsequent plans, releases, documents etc. shall also be at the expense of the Owner.
3. The Inspector shall be contacted at least forty-eight hours prior to requested inspections. The number of hours prior does not include Saturdays, Sundays, or holidays when the Town Office Building is closed. For the purposes of this requirement, holidays are: New Year's Day, Martin Luther King Jr. Day, President's Day, Patriots Day, Memorial Day, Independence Day (July 4), Labor Day, Columbus Day, Veterans Day, Thanksgiving, and Christmas.
4. The Owner shall establish an Escrow Account for inspections with the Town, and maintain a balance of \$10,000 in the account at all times until utilities, first coat, and drainage have been completed to the satisfaction of the Board. Thereafter, the Board may reduce this minimum balance, but is not obligated to do so.

V. Location of Dwelling Units and Restrictions

Due to the proximity to the Merrimack River, abutting dwelling units, and topography, the location of dwelling units and grading have been indicated on the Plan.

CONDITIONS

- A. Dwelling units and grading shall be located as shown on the Plan. Any deviation from the approved locations must be approved by the Planning Board.
- B. The Owner has stated that dwelling units with walk-out basements will not be built on Lots 1 and 2, in order to reduce visual impact to abutters.
- C. The driveway to Lot 6 shall be built exactly as indicated on the plan and may not be relocated or moved in order to keep headlights directed away from 14 Sullivans Court.
- D. An Easement shall be granted to the Homeowners Association for the drainage swale located near the rear property line on Lot 2, in order to preserve the integrity of the drainage system at that location.

E. These Restrictions shall be listed in the Declaration of Restrictive Covenants as in Town of West Newbury, Certificate of Vote, Sullivans Court Extension, The Estate Homes at Rivers Edge

perpetuity.

VI. Street Trees: Street trees are not indicated on the Plan. See Waiver #14.

CONDITIONS

- A. The Planning Board shall review street trees to be planted at Sullivans Court after work on Sullivans Court has been completed to determine if and where they are needed.
- B. The Board reserves the right to require trees to be planted following that review.
- C. The Board has agreed that trees shall not be required in front of 14 Sullivans Court, due to the proximity of the existing dwelling to the road.

VII. Stump Removal

CONDITION

All stumps shall be removed from the site and disposed of properly. The Planning Board may require proof of proper disposal.

VIII. Landscaping

The Owner has submitted a Landscape Plan which has been reviewed and approved by the Board. Planting is limited along the Common Driveway to provide a wider turning radius for emergency vehicles.

CONDITIONS

- A. Maintenance, replacement of plants, and mowing of the cul-de-sac island shall be the responsibility of the Homeowners Association.
- B. Plantings on either side of the Common Driveway shall be limited to those indicated on the Landscape Plan. The Owners of Lots 2 and 4 shall not plant addition vegetation which would impede passage of emergency vehicles.
- C. These conditions shall be noted in the Declaration of Restrictive Covenants as in perpetuity.

IX. Soil Removal

CONDITION:

Removal of soil from the site shall comply with the requirements of the Town of West Newbury Bylaws, Section V, Soil Removal Bylaw.

X. Improvements to Sullivans Court and Whetstone Street

The Owner has proposed improvements to Sullivans Court and Whetstone Street. Both streets are public ways, and are under the jurisdiction of the Board of Selectmen.

The following plans show the work proposed:

Sheet DPW-1 of the Plan, which is not to be recorded in the Subdivision Plan set but is hereby referenced in this decision, outlines work to be performed. The work includes the replacement of a crossculvert and catchbasin crossing Sullivans Court which has deteriorated over time. The plan shows all of the details of the work.

Subdivision Sheet C-4 shows the plan view and profile view of the work proposed.

Subdivision Sheet D-1 and D-2 show crosssections and construction details relating to the proposed work.

CONDITIONS:

- A. The Applicant shall seek approval from the Board of Selectmen for all improvements proposed in the public way (or right of way), as shown on DPW-1 and the Subdivision Plan set.
- B. The general list of improvements and proposed sequence of construction shall be as follows:
 1. The Owner shall begin by building Sullivans Court Extension, within his own property boundaries, including all appurtenances, to the binder coat of pavement. The Plan and Profile including all grading necessary are shown on Sheet C-4
 2. At the same time, the end of Sullivans Court will be lowered to improve sight distance, as indicated on Sheet C-4.
 3. The Owner shall install the new water main, other utilities and drainage on Sullivans Court . A new 8" diameter water main shall be installed and two cross culverts for drainage shall be installed as shown on the Plan.
 4. Once all of the utilities have been installed, underground and in Sullivans Court, then the roadway and shoulders shall be repaired to prevent further deterioration as the subdivision building occurs.
 5. A 1.5" binder coat shall be applied at the same time that the Extension of Sullivans Court is paved with binder coat. The top coat will be applied when the top coat is applied to the Common Driveway and the new roadway extension, or within two years from the commencement of construction.
- C. General Requirements For Improvements
 1. Work shall be in conformance with the details and specifications of the Plans. Minor modifications may be made in the field with the approval of the Board of Selectmen or its designee.
 2. Any agreements, contracts, performance guarantees or other documents such as As-Built Drawings related to work to be performed on Sullivans Court shall be executed between the Board of Selectmen and the Applicant, and are not within the purview of the Planning Board.

3. The Owner shall ensure that grade changes made to Sullivans Court do not negatively impact the grading at the front of the lot at 18 Sullivans Court.
4. The Board of Selectmen may choose to have construction on Sullivans Court inspected by the Planning Board Agent at the Applicant's expense.
5. All work shall be completed to the satisfaction of the Board of Selectmen and its designee.
6. The Owner shall prepare Applications and Plans for any required Permits on behalf of the Town of West Newbury as the Applicant. The respective Town Entities shall be required to file for and secure the permits and the developer shall perform the work.
7. Any required permit Fees shall be paid by the Owner.
8. Prior to the release by the Planning Board of the first unit from the Form I, Approval with Covenant Contract, work on Sullivans Court shall be completed as noted in Section X.B., as appropriate, and completed to the satisfaction of the Board of Selectmen.

D. Easement to the Town for Access and Maintenance of the Culvert on Lot 6

1. The Owner shall grant an Easement to the Town for Access and Maintenance of the culvert that is installed within the right of way which exits onto Lot 6. The Easement shall be subject to review and approval of the Planning Board.
2. The Easement dimensions shall be 10' deep by 20' across. The Easement shall be shown and recorded with the final Plan.

E. Intersection of Sullivans Court and Whetstone Street

1. The Owner shall perform certain work at the intersection of Sullivans Court and Whetstone Street which will result in smoother traffic movements at that intersection. The improvements shall extend 50 feet northerly and southerly from the intersection along Whetstone Street.
2. The improvements shall include the removal and establishment of gravel shoulders and both binder and final pavement widening to create the best and widest intersection possible without any intrusion onto private properties. This work shall be performed under the direction of the Planning Board and DPW Director.
3. The work shall be performed after water lines and drainage have been installed on Sullivans Court.
4. Prior to issuance of any Building Permit, the binder coat shall be applied to Whetstone Street.
5. Prior to any construction at the intersection, the Owner shall conduct a pre-construction meeting with the DPW Director and the Planning Board or its

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representative to determine the extent of work to be performed. Markings shall be installed which will clearly show the limits of the work and all work shall be reviewed and approved in the field prior to construction.

6. Abutters on Sullivans Court and 50 feet in either direction from the intersection with Whetstone Street shall be notified of the meeting by the Planning Board at least one week prior to the scheduled date by either regular mail or e-mail.
- F. In the event that the Board of Selectmen does not approve any of the elements proposed as work on Town-owned land, the remaining Conditions and approval of this Certificate of Vote shall remain valid.
- G. See Section XIII. below for work proposed on Town-owned land for Trails.

XI. Water Department Requirements

CONDITIONS:

- A. Installation of water service in the public way and within the project shall be performed in accordance with details in the Plan.
- B. During construction, the Water Department shall monitor and inspect installation of all water system elements prior to backfilling of trenches. The Owner shall contact the Water Department Superintendent at least 48 hours prior to requested inspection. The number of hours prior does not include Saturdays, Sundays, or holidays when the Town Office Building is closed. For the purposes of this requirement, holidays are: New Year's Day, Martin Luther King Jr. Day, President's Day, Patriots Day, Memorial Day, Independence Day (July 4), Labor Day, Columbus Day, Veterans Day, Thanksgiving, and Christmas.

XII. Stormwater Management Operation and Maintenance

CONDITIONS:

- A. A Homeowners Association shall be established which shall include the following for maintenance and inspection of the Drainage Facilities:
 1. Maintain the Drainage Systems and stormwater management features on Lots 1, 2, 3, 4, and 6 by hiring a professional engineer with expertise in drainage system design to perform regular inspections and to make recommendations for maintenance and repairs of the stormwater basins, drainage pipes, drainage swales, culverts, and outlet control structure, but not less than once every year, and performing the following maintenance as necessary:
 - a) remove any litter, debris or sediment that may have accumulated in the swales, infiltration areas and detention areas;

- b) inspect all embankments for erosion, repair any washed out areas, loam and seed to restabilize vegetative surface;
 - c) the swales and infiltration areas should be raked to remove any sediment or leaves that may have accumulated;
 - d) make all repairs, and improvements as recommended by said engineer all within forty-five days of said recommendations.
 - e) take all actions necessary to effectuate this purpose of this requirement.
2. The Homeowners' Association shall require the professional engineer with expertise in drainage system design to provide an Annual Report to the Association within ten days of the inspection as to the results of these inspections and recommendations for repairs and improvement. Said Association shall forward a copy to the Town of West Newbury Planning Board, Conservation Commission and Department of Public Works within ten days after its receipt by the Homeowners' Association.
- B. The Operation and & Maintenance Plan and the requirements for annual maintenance shall be referenced in the Declaration of Restrictive Covenants, and the Homeowners Association, and the obligations of the Plan shall be in perpetuity.
- C. The Owner and Owners and then their Successors and/or Assigns, including, but not by way of limitation shall be responsible for the proper operation and maintenance of all components of the stormwater management and drainage system and shall maintain said system as described in the Stormwater Operation & Maintenance Plan.
- D. Alterations or Modifications
- 1. No alterations or modifications to the drainage system shall be made without the prior approval of the Planning Board and the Board of Selectmen. This obligation shall extend to all elements of the drainage system, whether placed on or under the Use Areas, on or under any common area, or on or under any way.
 - 2. The obligation to maintain and repair all elements of the drainage system shall never become the obligation of the Town of West Newbury.
- E. Condition XII. shall be included in the Declaration of Restrictive Covenants as in perpetuity.

XIII. Trails and Trail Easements

The Owner has proposed trails and trail easements as indicated on Sheets C-3 and Sheet C-8. The Trail Easements are to be held by the Town of West Newbury Conservation Commission.

The Owner has also proposed to build a boardwalk over wetlands to the abutting Town-owned land identified as Assessors Map R-11 Parcel 68A, and to install a four foot wide trail on the Town-owned land from the property line to River Meadow Drive.

CONDITIONS:

- A. The Trail Easement shall be granted from the Owner to the Town of West Newbury by and through the Conservation Commission for trails within the Owner's property.
- B. The Easement is subject to review and approval by the Planning Board and the Conservation Commission and shall be recorded with the Plan.
- C. The Owner shall prepare Applications and Plans for any required Permits on behalf of the Town of West Newbury as the Applicant. The respective Town Entities shall be required to file for and secure the permits and the developer shall perform the work.
- D. The Owner shall seek approval of the Board of Selectmen for installation of the trail on the Town-owned land.
- E. The trails shall be constructed and open to the public prior to the final release of the Performance Guarantee held by the Planning Board.
- F. The boardwalk shall be four feet wide, constructed of wood, with a wooden railing and balusters. It shall be ADA compliant. Final details of the boardwalk are subject to the approval of the Conservation Commission.

XIV. As-Built Plan and Street Acceptance

It is the intent of the Planning Board to have Sullivans Court Extension accepted by Town Meeting through the Street Acceptance process.

CONDITIONS:

- A. A final As-Built Phasing Plan in .pdf and .dwg format shall be submitted to the Planning Board when the project is completed. The As-Built Plan shall conform to the requirements of Subdivision Regulations, Section 5.16.
- B. The Owner shall propose Street Acceptance to the Board of Selectmen at the completion of the project, shall fulfill all requirements, and submit all necessary documentation and plans to support Street Acceptance and acceptance of Easements, as appropriate, as required by the Planning Board and the Board of Selectmen.
- C. The Owner shall record the deed to the Town and the Street Acceptance Plan at the Southern Essex District Registry of Deeds within 90 days of acceptance by Town Meeting, and provide the Planning Board with recording information.
- D. Funds shall be held in escrow to ensure that these Conditions are met.

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- E. A printed and a digital copy in .pdf and .dwg format of all As-Built Plans submitted to the Water Department, Board of Health, and other Town entities shall also be submitted to the Planning Board.

XV. General

A. Restriction of Further Subdivision of Lots

Approval has been granted by the Planning Board for a Definitive Subdivision of Six Lots.

1. Further subdivision of any of the lots is prohibited.
2. This Condition shall be noted in the Declaration of Restrictive Covenants as in perpetuity.

B. Hold Harmless and Indemnification

CONDITIONS:

1. In the event the Town must perform any service, maintenance and/or repair in an emergency situation, the Town shall not be held responsible for any damage to any person or property.
2. In such a circumstance, Owners shall indemnify and hold harmless the Town of West Newbury, its agents, servants and employees from liability for claims for personal injury or property damage and shall fully reimburse the Town for any work performed.

C. Town's Right to Perform Work

CONDITIONS:

1. If at any time the Owner or Owners fail, upon written request from the Board of Selectmen of the Town of West Newbury, to maintain or repair any part of any way, or drainage system (including all related pumps and equipment) to the reasonable satisfaction of the Board of Selectmen of the Town of West Newbury, then the Town shall have the right, but not the obligation, to enter upon any and all of said Use Areas, the common areas, and any way to do perform such maintenance or affect such repairs as it deems appropriate and to charge the current Owner or Owners the full cost, including actual costs or imputed value of any labor involved, incurred by the Town in so doing.
2. The Town shall have a cause of action in damages for such sum against said Owner or Owners and in such action shall be entitled to recover the reasonable value of its attorney's time and any expenses or costs incurred therein. In addition, any such costs or expenses as aforesaid may be taxed as a Betterment

Assessment pursuant to the provisions of M.G.L. c. 81, § 1.

3. The provisions of Conditions XV. A, B, and C. shall be included in the Declaration of Restrictive Covenants as in perpetuity.

XVI. Administration

CONDITIONS:

- A. All Covenants, Declarations, Easements, Agreements and other required documents are to be recorded with the endorsed Plans. A note shall be placed on the cover sheet as follows: See the Form I, Approval with Covenant Contract, Recorded Herewith
- B. Any outstanding invoices must be paid in full prior to endorsement of the Plan.
- C. Following recording, the Owner shall submit a full set of the recorded Plan, and a digital copy of the entire plan submittal, as recorded, to the Planning Board. Additional recorded copies shall be submitted for distribution to the Building Inspector, Board of Health, Conservation Commission, DPW Director, and Water Department.
- D. All applicable laws, bylaws, rules, regulations, and codes of state law, federal law, and the Town of West Newbury shall be complied with, and the Owner shall obtain all necessary permits, licenses, and variances, as applicable.
- E. In accordance with Section 3.3.4.2.8. of the Town of West Newbury Subdivision Regulations, this approval which has been granted by the Planning Board shall lapse within two years from the date of Planning Board filing the Certificate of Vote with the Town Clerk, or on April 30, 2015, if a substantial use thereof has not sooner commenced except for good cause or, in the case of a permit for construction, if construction has not begun by such date except for good cause.
- F. No further amendment, alteration, waiver or other change of this Certificate of Vote shall occur other than by filing, approval, and recording of a modification to the approved Plan in accordance with M.G.L. Chapter 41, Section 81W, if deemed necessary by the Planning Board. See Section III.A. of this Certificate of Vote for provisions of minor modifications.
- G. The action of the Planning Board does not waive or alter any other permit or approval requirements, including, but not limited to, those of the Board of Health, the Inspection Department, and the Conservation Commission.
- H. The Conditions of this Approval shall run with the land and shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. Purchasers of all lots shall be forever bound by all applicable conditions and restrictions contained in this Certificate of Vote.
- I. In the event of a conflict between the Plans and this Certificate, the terms of this Certificate shall govern.
- J. Recording of Documents

1. This Decision and related plans and documents must be recorded at the Southern Essex District Registry of Deeds.
2. It is the responsibility of the Owner to record a certified copy of any Certificate of Vote of the Planning Board granting Approval of a Definitive Subdivision Plan and related Plans stating that the appeal period has lapsed and that there have been no appeals or that if any appeal has been filed that it has been dismissed or denied. Proof of recording of the Certificate of Vote and all other documents must be provided to the Planning Board before the Decision becomes effective.

APPEALS: Appeals, if any, shall be made pursuant to Massachusetts General Laws, Chapter 41, Section 81-BB, and shall be filed within twenty (20) days after the filing of this Notice of Certificate of Vote in the Office of the Town Clerk of the Town of West Newbury.

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At a meeting of the Planning Board held April 7, 2015, Board Members voted to Approve the Application for a Definitive Subdivision Plan under M.G.L. Chapter 41, Section 81L, et. seq. for Sullivans Court Extension, also known as the Estate Homes at Rivers Edge, subject to the Conditions of this Certificate of Vote, and subject to the following:

Final Certificate of Vote and Conditions, as approved by the Board,

Final Plans, as approved by the Board,

All Covenants, Declarations, Easements, Agreements, and other required documents, as approved by the Board, which are to be recorded with the final approved Plans,

Any other documents deemed to be necessary.

The Vote was as follows:

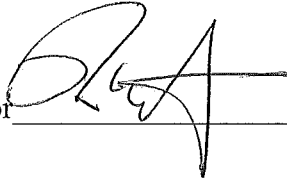
Ann E. Bardeen

In favor



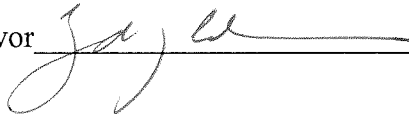
Richard W. Bridges

In favor



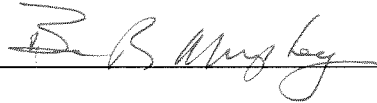
Raymond A. Cook

In favor



Brian R. Murphey

In favor



John Todd Sarkis

In favor

