

John C. Gillespie

From: Paula Kosko <pkosko@hainesporttownship.com>
Sent: Monday, June 27, 2022 9:30 AM
To: David Frank; Robert E Kingsbury; Scott Taylor
Cc: Martin G. Miller; Jack J Gravlin Jr., P.E.; Chris Aivazoglou; Avra Gross; John C. Gillespie; Joan T. Horner
Subject: RE: Diamantis Senior Housing

***** External Email – This email has come from outside of Parker McCay. Think before you click on links, open attachments, or reply! *****

Good Morning Dave:

Our governing body meets on July 12. They will have to issue consent at this meeting.

Can you please provide me with 7 hard copies of the plan for stormwater discharge through the municipally-owned lots and a formal request for consent no later than July 6? Please also send this electronically.

Best,

Paula Kosko, MPA/RMC
Administrator/Municipal Clerk
Hainesport Township
1401 Marne Highway
PO Box 477
Hainesport NJ 08036
(609) 267-7114 - Phone
(609) 261-4762 - Fax

From: David Frank <dave@njlandlawyer.com>
Sent: Thursday, June 23, 2022 11:21 AM
To: Robert E Kingsbury <rekingsbury@kingsburylaw.net>; Scott Taylor <Staylor@tdgplanning.com>
Cc: Paula Kosko <pkosko@hainesporttownship.com>; Martin G. Miller <mgmiller@alaimogroup.com>; Jack J Gravlin Jr., P.E. <jjgpe@verizon.net>; Chris Aivazoglou <cvoz1973@gmail.com>; Avra Gross <agpadevelop@gmail.com>
Subject: RE: Diamantis Senior Housing

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Bob,

Thanks.

My understanding is that Jack Gravlin has requested an updated 200' list that includes the Twp. properties.

Paula,

How shall we coordinate having a Twp. official sign the application?

Dave

From: Robert E Kingsbury <rekingsbury@kingsburylaw.net>
Sent: Thursday, June 23, 2022 8:29 AM
To: Scott Taylor <Staylor@tdgplanning.com>
Cc: Paula Kosko <pkosko@hainesporttownship.com>; Martin G. Miller <mgmiller@alaimogroup.com>; David Frank <dave@njlandlawyer.com>
Subject: RE: Diamantis Senior Housing

Scott: 1. The Township is not generally subject to the standard procedures of a JLUB applicant, however in this case a Township representative should sign the application indicating the consent of the owner. 2. The 200' notice list should include properties within 200 feet of the Township lots.

From: Scott Taylor <Staylor@tdgplanning.com>
Sent: Monday, June 20, 2022 2:21 PM
To: Jack J Gravlin Jr., P.E. <jjgpe@verizon.net>; Chris Aivazoglou <cvoz1973@gmail.com>; Rami Hassidim <ramiyh@gmail.com>; David Frank <dave@njlandlawyer.com>
Cc: Martin Miller, PE <mgmiller@alaimogroup.com>; Robert E Kingsbury <rekingsbury@kingsburylaw.net>; Anna Marshall <amarshall@tdgplanning.com>
Subject: Diamantis Senior Housing
Importance: High

Good afternoon Jack and Application team;

We are starting to review the new submission routing the stormwater discharge through the Township Lots.

The plans and letter were not clear but we are assuming that this will be Amended Preliminary and Final Major Subdivision Approval.

Please advise us accordingly.

Also, now that you are doing work on the Township parcels- Block 100; Lots 9 and 10....

1. Will those lots be listed in the application?
2. Im asking Bob Kingsbury to double check on this, and whether they Town has to sign any application forms, consent of owner, etc./
3. Bob and Dave will have to determine any noticing implications as well for Township parcels- Block 100; Lots 9 and 10.

Scott

Scott D. Taylor, AICP, PP, LLA, LEED AP
Vice President

856.810.3443 Ext. 201



Taylor Design Group, Inc.

**131 Hartford Road
Mt. Laurel, NJ 08054**

Community Planning Landscape Architecture Park Planning & Design Economic Development

John C. Gillespie

From: Scott Taylor <Staylor@tdgplanning.com>
Sent: Thursday, June 30, 2022 4:06 PM
To: John C. Gillespie; 'Paula Kosko'
Cc: Joan T. Horner
Subject: RE: Diamantis easement
Attachments: Easement.PNG

***** External Email – This email has come from outside of Parker McCay. Think before you click on links, open attachments, or reply! *****

Its shown on sheet 2 only of the pdf.

See attached image.

Scott D. Taylor, AICP, PP, LLA, LEED AP
Vice President

856.810.3443 Ext. 201

Taylor Design Group, Inc.

131 Hartford Road
Mt. Laurel, NJ 08054

Community Planning Landscape Architecture Park Planning & Design Economic Development

From: John C. Gillespie <jgillespie@parkermccay.com>
Sent: Thursday, June 30, 2022 3:52 PM
To: 'Paula Kosko' <pkosko@hainesporttownship.com>; Scott Taylor <Staylor@tdgplanning.com>
Cc: Joan T. Horner <jhorner@parkermccay.com>
Subject: FW: Diamantis easement

I'm doing the Resolution consenting to this application for Committee to consider 7/12. But can someone tell where I find the easement on these plans? Any chance of highlighting it and emailing that page back to me? Thanks.

John C. Gillespie, Esquire
Of Counsel
Municipal, Government and Redevelopment

PARKER McCAY P.A.
O: 856-985-4083
jgillespie@parkermccay.com

From: Paula Kosko <pkosko@hainesporttownship.com>
Sent: Thursday, June 30, 2022 3:17 PM
To: John C. Gillespie <jgillespie@parkermccay.com>
Cc: Joan T. Horner <jhorner@parkermccay.com>
Subject: RE: Diamantis easement

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Here you go

Paula Kosko, MPA/RMC
Administrator/Municipal Clerk
Hainesport Township
1401 Marne Highway
PO Box 477
Hainesport NJ 08036
(609) 267-7114 - Phone
(609) 261-4762 - Fax

From: John C. Gillespie <jgillespie@parkermccay.com>
Sent: Thursday, June 30, 2022 10:18 AM
To: Paula Kosko <pkosko@hainesporttownship.com>
Cc: Joan T. Horner <jhorner@parkermccay.com>
Subject: Diamantis easement

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Forgot to ask: can you have someone send me the application and whatever else will give me the info on the name and address of the developer, etc. for the resolution? Thanks.

John C. Gillespie, Esquire
Of Counsel
Municipal, Government and Redevelopment

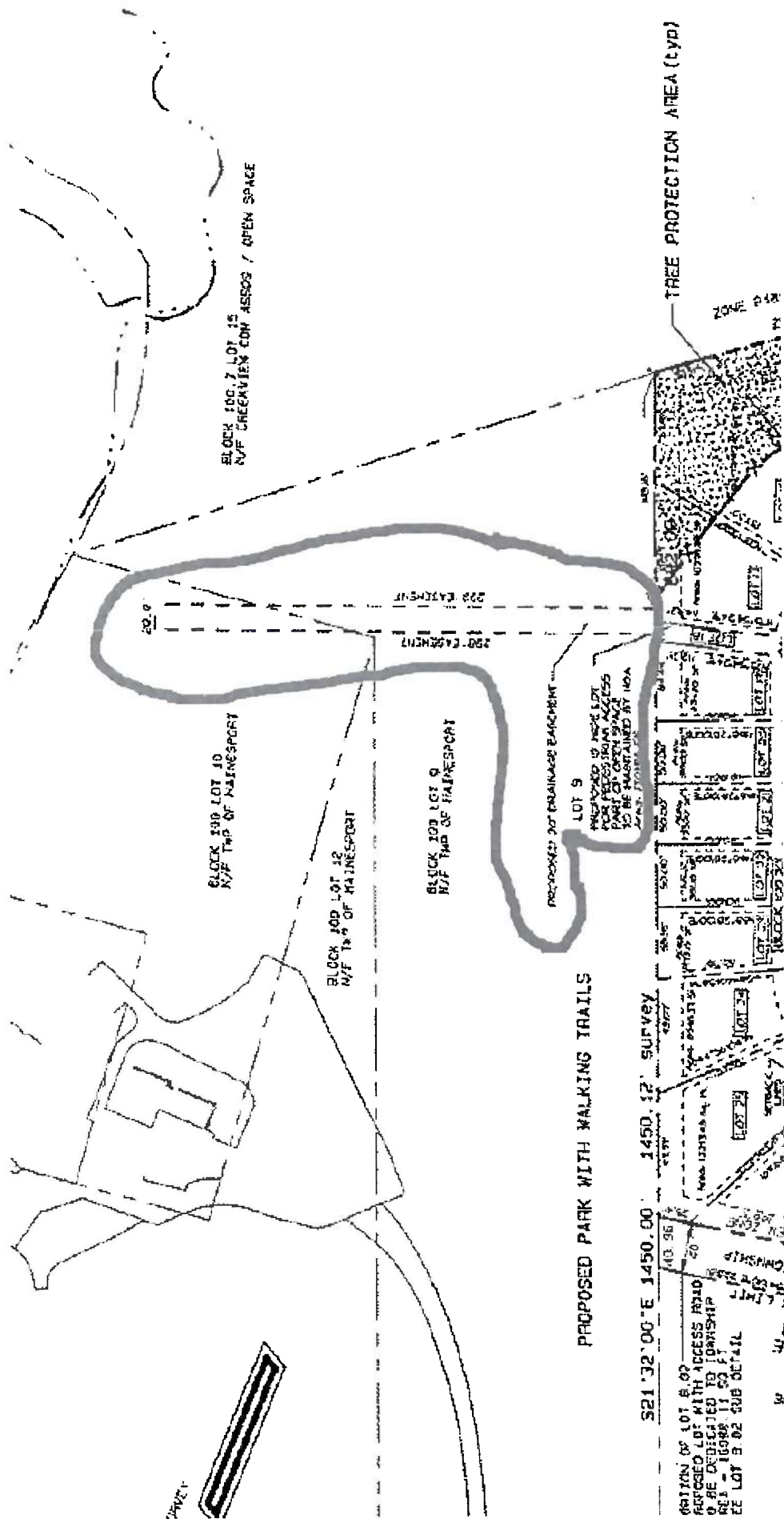


PARKER McCAY

O: 856-985-4083
F: 856-489-6980
jgillespie@parkermccay.com

PARKER McCAY P.A.
9000 Midlantic Drive, Suite 300
Mount Laurel, New Jersey 08054
P: 856-596-8900 F: 856-596-9631
www.parkermccay.com





PROPOSED PARK WITH WALKING TRAILS

S21°32'00"E 1450.00' 1450.12' SURVEY

SECTION OF LOT 8, 00
 PROPOSED LOT WITH ACCESS ROAD
 TO BE DEDICATED TO OWNERSHIP
 SEE LOT 8, 02 SUB DETAIL

LOT 9
 PROPOSED LOT WITH ACCESS
 ROAD TO BE DEDICATED TO OWNERSHIP
 SEE LOT 9, 02 SUB DETAIL

PROPOSED LOT DRAINAGE EASEMENT

TREE PROTECTION AREA (typ)

BLOCK 100 LOT 15
 N/E CREEKVIEW CON ASSOC / OPEN SPACE

BLOCK 100 LOT 10
 N/E TWP OF HAINESPORT

BLOCK 100 LOT 12
 N/E TWP OF HAINESPORT

BLOCK 100 LOT 13
 N/E TWP OF HAINESPORT

220' EASEMENT
 220' EASEMENT

ZONE 0.48

John C. Gillespie

From: David Frank <dave@njlandlawyer.com>
Sent: Tuesday, July 5, 2022 10:58 AM
To: Jack J Gravlin Jr., P.E.; Paula Kosko
Cc: Robert Kingsbury; Rami Hassidim; Chris Aivazoglou; John C. Gillespie; Joan T. Horner; Martin Miller, PE; Scott Taylor
Subject: RE: Township Park Easement for Longbridge Estates, Diamantis / R&M Development

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Ms. Kosko,

This confirms on behalf of my client R&M Development, LLC, the easement request set forth in Mr. Gravlin's letter of even date herewith as shown on the drawings that accompany his letter.

David C. Frank,
Attorney for R&M Development LLC

From: Jack J Gravlin Jr., P.E. <jjgpe@verizon.net>
Sent: Tuesday, July 5, 2022 10:25 AM
To: Paula Kosko <pkosko@hainesporttownship.com>
Cc: David Frank <dave@njlandlawyer.com>; Robert Kingsbury <rekingsbury@kingsburylaw.net>; Rami Hassidim <ramiyh@gmail.com>; Chris Aivazoglou <cvoz1973@gmail.com>; John C. Gillespie <jgillespie@parkermccay.com>; Joan T. Horner <jhorner@parkermccay.com>; Martin Miller, PE <mgmiller@alaimogroup.com>; Scott Taylor <Staylor@tdgplanning.com>
Subject: Township Park Easement for Longbridge Estates, Diamantis / R&M Development

Hi Paula,

Attached are the following: Transmittal Letter / Request for Consent and Plan Sheets 2,4,9, R4 Dated 5/27/2022.

By copy of this Email I am requesting our attorney, David Frank, Esq., confirm the formal request for consent.

Hard copies will be delivered to you office later today. Thank you.

Jack

Jack J. Gravlin Jr., P.E.
Professional Engineer
609-965-0405 (Phone / Voice Mail)
609-965-0105 (Fax)

Mailing Address
P.O. Box 221
West Berlin, NJ 08091

jigpe@verizon.net

John C. Gillespie

From: David Frank <dave@njlandlawyer.com>
Sent: Monday, July 11, 2022 10:08 AM
To: Paula Kosko
Cc: Rami Hassidim; Chris Aivazoglou; John C. Gillespie; Joan T. Horner; Jack J Gravlin Jr., P.E.
Subject: RE: Re[2]: Township Park Easement for Longbridge Estates, Diamantis / R&M Development

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Paula,

I see that a resolution authorizing my client's application to the Land Development Board concerning the drainage improvements on the proposed easement over Twp. lands is on the agenda for tomorrow night's governing body meeting.

My understanding is that our engineer, Jack Gravlin, and I should appear at the meeting and be available to address any questions that may arise. Please let me now if I am incorrect in that understanding and further if it would be advisable for us to provide anything additional to aid the Twp. Committee in deciding the question.

It is also my understanding that while a virtual option for meeting appearance is available, it is the Committee's preference that we be physically present at their meeting.

Please advise.

Thanks,

Dave Frank

From: Jack J Gravlin Jr., P.E. <jjgpe@verizon.net>
Sent: Tuesday, July 5, 2022 10:57 AM
To: Paula Kosko <pkosko@hainesporttownship.com>
Cc: David Frank <dave@njlandlawyer.com>; Robert Kingsbury, Esq <rekingsbury@kingsburylaw.net>; Rami Hassidim <ramiyh@gmail.com>; Chris Aivazoglou <cvoz1973@gmail.com>; John C. Gillespie <jgillespie@parkermccay.com>; Joan T. Horner <jhorner@parkermccay.com>; Martin Miller, PE <mgmiller@alaimogroup.com>; Scott Taylor, PP <Staylor@tdgplanning.com>
Subject: Re[2]: Township Park Easement for Longbridge Estates, Diamantis / R&M Development

Hi Paula,

Attached is a letter listing the areas of the Township easement and the two (2) lots to be dedicated to the Township for Park access. Our attorney asked that I provide this information for your use. Thanks.

Jack

Jack J. Gravlin Jr., P.E.
Professional Engineer
609-965-0405 (Phone / Voice Mail)
609-965-0105 (Fax)

Mailing Address
P.O. Box 221
West Berlin, NJ 08091

jjgpe@verizon.net

----- Original Message -----

From "Paula Kosko" <pkosko@hainesporttownship.com>

To "Jack J Gravlin Jr., P.E." <jjgpe@verizon.net>

Cc "David Frank, Esq" <david@njlandlawyer.com>; "Robert Kingsbury"

<rekingsbury@kingsburylaw.net>; "Rami Hassidim" <ramiyh@gmail.com>; "Chris Aivazoglou"

<cvoz1973@gmail.com>; "John C. Gillespie" <jgillespie@parkermccay.com>; "Joan T. Horner"

<jhorner@parkermccay.com>; "Martin Miller, PE" <mgmiller@alaimogroup.com>; "Scott Taylor"

<Staylor@tdgplanning.com>

Date 7/5/2022 10:33:47 AM

Subject RE: Township Park Easement for Longbridge Estates, Diamantis / R&M Development

Thank you Jack.

Best,

Paula Kosko, MPA/RMC
Administrator/Municipal Clerk
Hainesport Township
1401 Marne Highway
PO Box 477
Hainesport NJ 08036
(609) 267-7114 - Phone
(609) 261-4762 - Fax

From: Jack J Gravlin Jr., P.E. <jjgpe@verizon.net>

Sent: Tuesday, July 05, 2022 10:25 AM

To: Paula Kosko <pkosko@hainesporttownship.com>

Cc: David Frank, Esq <david@njlandlawyer.com>; Robert Kingsbury <rekingsbury@kingsburylaw.net>; Rami Hassidim <ramiyh@gmail.com>; Chris Aivazoglou <cvoz1973@gmail.com>; John C. Gillespie <jgillespie@parkermccay.com>; Joan T. Horner <jhorner@parkermccay.com>; Martin Miller, PE <mgmiller@alaimogroup.com>; Scott Taylor <Staylor@tdgplanning.com>

Subject: Township Park Easement for Longbridge Estates, Diamantis / R&M Development

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Hi Paula,

Attached are the following: Transmittal Letter / Request for Consent and Plan Sheets 2,4,9, R4 Dated 5/27/2022.

By copy of this Email I am requesting our attorney, David Frank, Esq., confirm the formal request for consent.

Hard copies will be delivered to you office later today. Thank you.

Jack

Jack J. Gravlin Jr., P.E.
Professional Engineer
609-965-0405 (Phone / Voice Mail)
609-965-0105 (Fax)

Mailing Address
P.O. Box 221
West Berlin, NJ 08091

jjgpe@verizon.net

JACK J. GRAVLIN JR., P.E.

PROFESSIONAL ENGINEER

MAILING ADDRESS

P.O. BOX 221

WEST BERLIN, NEW JERSEY 08091

TELEPHONE (609) 965-0405, FAX (609) 965-0105

E-MAIL jjgpe@verizon.net

July 5, 2022

Ms. Paula Kosko, MPA/RMC
Administrator / Municipal Clerk
One Hainesport Centre
PO Box 477

Hainesport, New Jersey 08036

VIA E MAIL & TO BE HAND DELIVERED

Re: Land Areas of Easement and Dedications
Drainage Easement Request for Consent
For Longbridge Estates
R&M Development LLC / Diamantis
Township Lands / Park Property
Block 100, Lots 9 & 10
Hainesport Twp, NJ.

Dear Ms. Kosko:

The land areas of the easement and dedications related to the Longbridge Estates and Township property are as follows:

1. 20' Wide Easement, Block 100, Lots 9 & 10 (Township Park Property)
Area = 7960 Sq.Ft., 0.18 Acres
2. Park Access Lot Dedication, Lots 8.02, 8.03 (Diamantis Property)
Area = 16088 Sq.Ft., 0.37 Acres
3. Park Pedestrian Lot Dedication, Lot 8.03 (Diamantis Property)
Area = 1702 Sq.Ft., 0.04 Acres

Our attorney, David Frank, Esq. asked that I provide this information.

Very truly yours,



Jack J. Gravlin Jr., P.E.

cc: David Frank, Esq.
Costas Diamantis
R&M Development

John C. Gillespie

From: David Frank <dave@njlandlawyer.com>
Sent: Friday, July 15, 2022 7:56 AM
To: Paula Kosko
Cc: Rami Hassidim; Chris Aivazoglou; Avra Gross; Jack J Gravlin Jr., P.E.; John C. Gillespie; Joan T. Horner
Subject: RE: Re[2]: Township Park Easement for Longbridge Estates, Diamantis / R&M Development

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Paula,

Thank you for your assistance in getting us before the Committee with our request for authorization to appear before the LDB concerning the Township-owned property.

Is the Board able to docket us to be heard on August 3, 2022?

Dave

From: David Frank
Sent: Monday, July 11, 2022 10:48 AM
To: Paula Kosko <pkosko@hainesporttownship.com>
Cc: Rami Hassidim <ramiyh@gmail.com>; Chris Aivazoglou <cvoz1973@gmail.com>; John C. Gillespie <jgillespie@parkermccay.com>; Joan T. Horner <jhorner@parkermccay.com>; Jack J Gravlin Jr., P.E. <jjgpe@verizon.net>
Subject: RE: Re[2]: Township Park Easement for Longbridge Estates, Diamantis / R&M Development

Paula,

Thank you very much.

Dave

From: Paula Kosko <pkosko@hainesporttownship.com>
Sent: Monday, July 11, 2022 10:46 AM
To: David Frank <dave@njlandlawyer.com>
Cc: Rami Hassidim <ramiyh@gmail.com>; Chris Aivazoglou <cvoz1973@gmail.com>; John C. Gillespie <jgillespie@parkermccay.com>; Joan T. Horner <jhorner@parkermccay.com>; Jack J Gravlin Jr., P.E. <jjgpe@verizon.net>
Subject: RE: Re[2]: Township Park Easement for Longbridge Estates, Diamantis / R&M Development

Good Morning Dave:

Yes, you are correct in all the below. We provided the governing body with Jack's July 5, 2022 Drainage Easement Request for Consent, Land Areas of Easement and Dedications and several plans. I am confident these documents are sufficient for the body ahead of tomorrow evenings meeting. It is my understanding that

Mayor MacLachlan will invite you and Jack up to provide a verbal description of the request prior to the resolution being introduced for consideration.

See you in person tomorrow night.

Best,

Paula Kosko, MPA/RMC
Administrator/Municipal Clerk
Hainesport Township
1401 Marne Highway
PO Box 477
Hainesport NJ 08036
(609) 267-7114 - Phone
(609) 261-4762 - Fax

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Subject: RE: Re[2]: Township Park Easement for Longbridge Estates, Diamantis / R&M Development

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Please advise.

Thanks,

Dave Frank

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Sent: Tuesday, July 5, 2022 10:57 AM

To: Paula Kosko <pkosko@hainesporttownship.com>

Cc: David Frank <dave@njlandlawyer.com>; Robert Kingsbury, Esq <rekingsbury@kingsburylaw.net>; Rami Hassidim <ramiyh@gmail.com>; Chris Aivazoglou <cvoz1973@gmail.com>; John C. Gillespie <jgillespie@parkermccay.com>; Joan T. Horner <jhorner@parkermccay.com>; Martin Miller, PE <mgmiller@alaimogroup.com>; Scott Taylor, PP

<Staylor@tdgplanning.com>

Subject: Re[2]: Township Park Easement for Longbridge Estates, Diamantis / R&M Development

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Jack

Jack J. Gravlin Jr., P.E.
Professional Engineer
609-965-0405 (Phone / Voice Mail)
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P.O. Box 221
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To "Jack J Gravlin Jr., P.E." <jjgpe@verizon.net>

Cc "David Frank, Esq" <david@njlandlawyer.com>; "Robert Kingsbury"

<rekingsbury@kingsburylaw.net>; "Rami Hassidim" <ramiyh@gmail.com>; "Chris Aivazoglou"

<cvoz1973@gmail.com>; "John C. Gillespie" <jgillespie@parkermccay.com>; "Joan T. Horner"

<jhorner@parkermccay.com>; "Martin Miller, PE" <mgmiller@alaimogroup.com>; "Scott Taylor"

<Staylor@tdgplanning.com>

Date 7/5/2022 10:33:47 AM

Subject RE: Township Park Easement for Longbridge Estates, Diamantis / R&M Development

Thank you Jack.

Best,

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Cc: David Frank, Esq <david@njlandlawyer.com>; Robert Kingsbury <rekingsbury@kingsburylaw.net>; Rami Hassidim <ramiyh@gmail.com>; Chris Aivazoglou <cvoz1973@gmail.com>; John C. Gillespie <jgillespie@parkermccay.com>; Joan T. Horner <jhorner@parkermccay.com>; Martin Miller, PE <mgmiller@alaimogroup.com>; Scott Taylor <Staylor@tdgplanning.com>

Subject: Township Park Easement for Longbridge Estates, Diamantis / R&M Development

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Jack J. Gravlin Jr., P.E.
Professional Engineer
609-965-0405 (Phone / Voice Mail)
609-965-0105 (Fax)

Mailing Address
P.O. Box 221
West Berlin, NJ 08091

jjgpe@verizon.net

John C. Gillespie

From: Deborah Plaia <daplaia@yahoo.com>
Sent: Monday, July 25, 2022 6:56 PM
To: John C. Gillespie; Paula Kosko
Cc: Alex DeAngelis; jaime.brooks@comcast.net; Bagley, Tracey R.; Jennifer Novak; Tina Johnson; Alex DeAngelis; Rose Jjn; John Novak
Subject: Re: R&M Notice of Hearing
Attachments: Letter to David C. Frank, Esq..pdf

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Good evening Mr. Gillespie and Ms. Kosko:

Today, I received a notice of hearing from David C. Frank, Esq., counsel for R&M Development. Please see the attached letter which I am in the process of sending to Mr. Frank. Kindly note my objection to any hearing occurring on August 3, 2022 with respect to the application made by R&M Development. They are presently in breach of the Settlement Agreement dated March 9, 2022.

Thank you.

Deborah A. Plaia, Esq.
50 Bancroft Lane
Hainesport, NJ 08036
Tel: 609-206-1861
Fax: 609-267-7869

E-mail: daplaia@yahoo.com

PRIVILEGE AND CONFIDENTIALITY NOTICE: The information in this e-mail communication and any attached documents may be privileged, confidential or otherwise protected from disclosure and is intended only for the use of the designated recipient(s).

Deborah A. Plaia, Esq.

ATTORNEY-AT-LAW

50 BANCROFT LANE
HAINESPORT, NJ 08036

609.206.1861 (TEL)
EMAIL: daplaia@yahoo.com

July 25, 2022

David C. Frank, Esq.
Attorney At Law
126 Gilbert Road
Bordentown, NJ 08505

Re: R&M Development, Notice of Hearing

Subject: Creekview HOA v. R&M Development
Docket No.: BUR-L-1927-21

Dear Mr. Frank:

I am a resident of the Creekview development and a member of the Homeowner's Association. As you may be aware, your client and Diamantis Children's Trust were sued by Creekview HOA. They were represented in that litigation by Kyle Eingorn of Dembo, Brown & Burns. Creekview was represented by John Novak, Esq. of The Law Offices of John J. Novak, P.C. I assisted Mr. Novak in that litigation.

Kindly be advised, your client is in breach of the Stipulation of Settlement filed on March 9, 2022.

The litigation was resolved by way of a Stipulation of Settlement which I have attached for your convenience. I refer you to paragraph 6 which states:

6. In addition, to any statutory service requirements, the Applicants agree to provide the Plaintiff with copies of all documents provided to JLUB and/or the Township in support of an application for amended site plan approval. Applicants will serve said documents upon Plaintiff's counsel **SIMULTANEOUSLY** with any submission to the JLUB and/or Township;

I work with Mr. Novak on a number of cases and speak with him on almost a daily basis. Mr. Novak did not mention to me receipt of any documents from R&M. Consequently, upon receiving your Notice, in an abundance of caution, I called Mr. Novak. He confirmed that he was not provided with a copy of any documents from R&M.

I anticipate that you will advise your client that they were to provide Mr. Novak and Creekview HOA with copies of the documents which were provided to the JLUB. I also anticipate that the hearing will be postponed in order that Creekview HOA can confer with Mr. Novak and determine if it is necessary to engage an engineer to review your documents and if it is necessary to retain Mr. Novak for legal services.

I note that your Notice has an error in it. The previously granted approval for the Applications for Preliminary and Final Major Subdivision were based on an easement which Diamantis and his lawyer Igor Sturm, Esq. claimed existed. I disputed that claim multiple times prior to the filing of the Action in Lieu of Prerogative Writs. The alleged easement was between lots 12 and 13 of Block 100.07 more commonly known as 7 and 9 Wharton Place. There is no Marlton Place in Creekview. Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read "Deborah A. Plaia", written in a cursive style.

Deborah A. Plaia, Esq.

Enclosure

cc: Alex DeAngelis, President, Creekview HOA
John J. Novak, Esq.
John Gillespie, Esq.
Hainesport Joint Land Use Board

NOTICE OF HEARING
HAINESPORT TOWNSHIP
JOINT LAND USE BOARD

In compliance with the Zoning Ordinance of Hainesport Township, Burlington County, New Jersey, and N.J.S.A. 40:55D-1 *et seq.*, notice is hereby given that a hearing will be held by the Hainesport Township Joint Land Use Board on the application of R&M Development, LLC seeking Amended Final Major Subdivision approval concerning development of 41 age restricted residential lots and one basin lot at a property located at 60 Bancroft Lane, and known as Block 100 Lot 8 and part of Lot 8.02 on the Official Tax Map of the Township of Hainesport.

The Board previously granted final major subdivision approval to allow the proposed development by way of Resolution 2021-14. The present application seeks to amend the Board's previous approval to permit installation of a pipe and outfall structure to convey stormwater from the previously approved basin on proposed new lot 12 of Block 100, across adjoining Lots 9 and 10 of Block 100 via an easement to be created for that purpose, and thence to the Rancocas Creek. The Board's previous approval contemplated conveyance of stormwater from the basin via an easement on adjoining Lots 12 and 13 of Block 100.07 to the stormwater piping in the Marlton Place cul de sac, and thence to a basin maintained by the Creekview Community Association. Under the amended plans, no stormwater will be directed from the proposed basin in the proposed new development toward any property within the Creekview development. The subject property lies in Hainesport's Senior Citizen Residential Zone District in which the proposed age restricted lots are permitted as of right. The applicant will request any waivers, design exceptions or variances the Board deems necessary for approval of the submitted plans.

Anyone affected by this application may have an opportunity to be heard at a meeting of the Hainesport Township Joint Land Use Board to be held on August 3, 2022 at 7:00 p.m., at the Hainesport Township Municipal Building, 1 Hainesport Centre, Hainesport, New Jersey 08036.

All documents relating to this application are on file and may be inspected by the public during normal business hours Monday through Friday, in the office of the Hainesport Township Municipal Building, 1 Hainesport Centre, Hainesport, New Jersey 08036.

R&M Development, LLC
By: David C. Frank, Attorney for Applicant

DEMBO, BROWN & BURNS LLP

By: Kyle F. Eingorn, Esquire

NJSC ID# 034382010

1300 Route 73, Suite 205

Mt. Laurel, New Jersey 08054

(856) 354-8866

keingorn@dbblegal.com

ATTORNEYS FOR DEFENDANTS, R&M DEVELOPMENT, LLC AND
DIAMANTIS CHILDREN'S TRUST

CREEKVIEW AND LAKESIDE AT
CREEKVIEW COMMUNITY
ASSOCIATION, INC.,

Plaintiff,

v.

HAINESPORT TOWNSHIP;
HAINESPORT TOWNSHIP JOINT
LAND USE BOARD; R&M
DEVELOPMENT, LLC; DIAMANTIS
CHILDREN'S TRUST; JOHN DOES 1-
10; JANE DOES 1-10; AND ABC CORPS.
1-10,

Defendants.

SUPERIOR COURT OF NEW JERSEY
BURLINGTON COUNTY
LAW DIVISION

Docket No. BUR-L-1927-21

Civil Action

**STIPULATION OF SETTLEMENT
AND DISMISSAL**

THIS STIPULATION OF SETTLEMENT (the "Stipulation") is entered into by and between: Plaintiff, Creekview And Lakeside At Creekview Community Association, Inc.'s (the "Plaintiff") and Defendants, R&M Development, LLC ("R&M"), Diamantis Children's Trust ("Diamnatis" and with R&M, the "Applicants"), Hainesport Township (the "Township") and Hainesport Township Joint Land Use Board (the "JLUB" and with the Applicants, the Township and the Plaintiff, the "Parties"):

WHEREAS, Plaintiff brought this action seeking a determination that the Applicants did not have the right to use a "30' Wide Sanitary Sewer & Storm Sewer Easement" (the "Easement") shown on the Final Plan of Lots Section 3 Creekview, Township of Hainesport, Burlington County,

New Jersey, recorded May 18, 2001, Map Documents Number 3517424 to connect its proposed stormwater management, in the event of a 100-year storm, into the Plaintiff's stormwater sewer system, which runs into the Plaintiff's pond;

WHEREAS, the Plaintiff further brought this action challenge the determinations of the JLUB, as memorialized in Resolution No. 2021-14 (the "Resolution") as it relates to the Applicants' proposed use of the Easement for stormwater management in the event of a 100-year storm;

WHEREAS, the Parties have decided to resolve their differences and claims against each other which did exist or may have existed in the instant matter.

NOW THEREFORE, in consideration of the representations and covenants provided herein and for good and valuable consideration, the sufficiency which is hereby acknowledged, the parties agree as follows:

1. The matter in difference in the above-entitled action having been amicably adjusted between the Parties, it is hereby stipulated and agreed that the same be and it is hereby dismissed with prejudice and without costs against any parties pursuant to the terms that follow;

2. The Applicants, and its successors and assigns, acknowledge and agree that they will take no further action to use the Easement to connect its stormwater management systems to Plaintiff's Pond; however, Applicant, and its successors and assigns, shall have the right to use its previously constructed sanitary sewer connection, through the manhole, which exists on Applicants' Property. Plaintiff does not acknowledge that there was or is a stormwater easement on its Property;

3. Other than the issues related to the discharge of stormwater onto Plaintiff's Property, all of the approvals and waivers granted by the JLUB to the Applicants in the Resolution remain in full force and effect, subject to any conditions contained therein;

4. The Applicants agree to re-engineer the stormwater discharge plans to address a storm event exceeding the 100-year storm, via an easement to be negotiated between the Applicants and the Township and/or to be retained on the Applicants' Property, subject to the review of all designs and engineering by the Township and JLUB professionals and subject to any generally applicable bonding and maintenance obligations;

5. Applicants shall appear before the JLUB, to obtain amended site plan and appurtenant approvals, as it relates to the stormwater discharge arising from a weather event exceeding the 100-year storm, subject to this Order via a hearing pursuant to Whispering Woods v. Middletown Tp., 220 N.J.Super. 161 (Law Div. 1987);

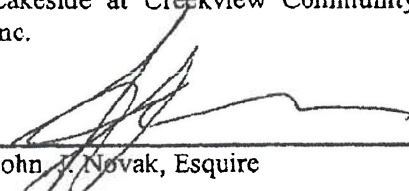
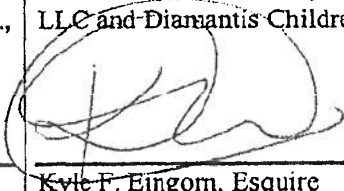
6. In addition, to any statutory service requirements, the Applicants agree to provide the Plaintiff with copies of all documents provided to the JLUB and/or the Township in support of an application for amended site plan approval. Applicants will serve said documents upon Plaintiff's counsel simultaneously with any submission to the JLUB and/or Township; and

7. The Parties shall be deemed to have cooperated in the drafting and preparation of this Stipulation. Hence, any construction to be made of this Stipulation shall not be construed against any Party. This Stipulation may be executed in counterparts and each executed counterpart shall be effective as the original. All faxed, emailed, or electronic signatures affirming this Stipulation constitute an original signature.

8. Each Party to this Agreement acknowledges that it has had the benefit of advice of competent legal counsel or the opportunity to retain such with respect to its decision to enter into this Stipulation.

9. The Parties herein intending to be legally bound hereby agree to the terms and conditions set forth in this Stipulation of Settlement, as of the date last written below.

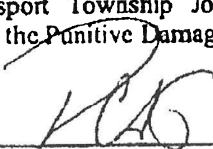
10. The filing of this Stipulation with the Superior Court of New Jersey shall conclude this action and all claims raised thereby and shall close the matter to the Court.

LAW OFFICES OF JOHN J. NOVAK, P.C. Counsel for the Plaintiff, Creekview and Lakeside at Creekview Community Assoc., Inc.  John J. Novak, Esquire	DEMBO, BROWN & BURNS LLP Counsel for Defendants, R&M Development, LLC and Diamantis Children's Trust  Kyle F. Eingom, Esquire
PARKER McCAY, P.A. Counsel for Defendants, Hainesport Township and Hainesport Township Joint Land Use Board as to the Punitive Damages Claim John C. Gillespie, Esquire	MADDEN & MADDEN, PA Counsel for Defendants, Hainesport Township and Hainesport Township Joint Land Use Board Matthew P. Madden, Esquire

8. Each Party to this Agreement acknowledges that it has had the benefit of advice of competent legal counsel or the opportunity to retain such with respect to its decision to enter into this Stipulation.

9. The Parties herein intending to be legally bound hereby agree to the terms and conditions set forth in this Stipulation of Settlement, as of the date last written below.

10. The filing of this Stipulation with the Superior Court of New Jersey shall conclude this action and all claims raised thereby and shall close the matter to the Court.

LAW OFFICES OF JOHN J. NOVAK, P.C. Counsel for the Plaintiff, Creekview and Lakeside at Creekview Community Assoc., Inc.	DEMBO, BROWN & BURNS LLP Counsel for Defendants, R&M Development, LLC and Diamantis Children's Trust
John, J. Novak, Esquire	Kyle F. Eingorn, Esquire
PARKER McCAY, P.A. Counsel for Defendants, Hainesport Township and Hainesport Township Joint Land Use Board as to the Punitive Damages Claim 	MADDEN & MADDEN, PA Counsel for Defendants, Hainesport Township and Hainesport Township Joint Land Use Board  3/4/2022
John C. Gillespie, Esquire	Matthew P. Madden, Esquire

John C. Gillespie

From: Deborah Plaia <daplaia@yahoo.com>
Sent: Tuesday, July 26, 2022 8:03 AM
To: John C. Gillespie; Paula Kosko
Subject: Supplemental letter to David C. Frank re Clean Water Act
Attachments: Letter to David C. Frank July 26, 2022.pdf

***** External Email – This email has come from outside of Parker McCay. Think before you click on links, open attachments, or reply! *****

Please see attached letter.

Deborah A. Plaia, Esq.
50 Bancroft Lane
Hainesport, NJ 08036
Tel: 609-206-1861
Fax: 609-267-7869
E-mail: daplaia@yahoo.com

PRIVILEGE AND CONFIDENTIALITY NOTICE: The information in this e-mail communication and any attached documents may be privileged, confidential or otherwise protected from disclosure and is intended only for the use of the designated recipient(s).

Deborah A. Plaia, Esq.

ATTORNEY-AT-LAW

50 BANCROFT LANE
HAINESPORT, NJ 08036

609.206.1861 (TEL)
EMAIL: daplaia@yahoo.com

July 26, 2022

David C. Frank, Esq.
Attorney At Law
126 Gilbert Road
Bordentown, NJ 08505

Re: R&M Development, Notice of Hearing

Subject: Clean Water Act

Dear Mr. Frank:

I am a resident of the Creekview development and a member of the Homeowner's Association. This letter supplements my letter of July 25, 2022 and is intended to bring to your attention the Clean Water Act.

After drafting my letter of July 25, 2022, I thought about a case in which I, along with Mr. Novak, are presently involved wherein Shark River Cleanup Coalition is suing the Township of Wall and the property owner under the CWA. In your Notice of Hearing, you stated that the new design calls for the installation of a pipe and outfall structure conveying stormwater from the previously approved basin ultimately to the Rancocas Creek. Under the Clean Water Act, your client is required to have permits and meet certain design criteria. Should your client fail to obtain the proper permits and meet the design criteria, your client, along with the Township of Hainesport can be sued under the Clean Water Act. Any private citizen may sue. Anyone pursuing such litigation is entitled to recover attorneys' fees.

FYI: Congress enacted the CWA [Clean Water Act] to 'restore and maintain the chemical physical and biological integrity of the Nation's waters.' 33 U.S.C. § 1251(a). Towards that end, the CDWA prohibits the discharge of any pollutant, including dredged or fill material, by any person into navigable waters unless authorized by an appropriate permit. Altamaha Riverkeeper, Inc. v. U.S. Army Corps of Engineers, 309 F. App'x 355, 356 (11th Cir. 2009) (citing 33 U.S.C. § 1311(a)). Pursuant to section 402 of the CWA (TWA § 402'), parties that discharge pollutants to navigable waters must obtain a permit under the National Pollutant Discharge Elimination System (NPDES) program, which imposes effluent limitations and other water quality standards, from either the Environmental Protection Agency (EPA) or an EPA-approved state permit program. 33 U.S.C. § 1342. Black Warrior River-Keeper, Inc. v.

Drummond Co., 387 F.Supp. 3d 1271, 1278 (N.D. Ala. 2019). The CWA authorizes citizen enforcement actions against any person "alleged to be in violation" of an effluent limitation or standard under the CWA or an administrative order by the EPA or a state. 33 U.S.C. § 1365(a)(1). The Act requires plaintiffs to give notice of the alleged violations at least sixty (60) days prior to commencing a citizen suit. Id. § 1366(b)(1). Courts may award civil penalties and grant equitable relief. Id. §§ 1365(a), 1319(d). To establish a CWA violation, plaintiffs must show that there was a discharge of a pollutant into waters of the United States from a point source without a NPDES permit. State of Ga. V. City of East Ridge, 949 F.Supp. 1571 (N.D. Ga. 1996); Parker v. Scrap Metal Processors, Inc., 386 F.3d 993, 1014 (11th Cir. 2004).

If your client does not have the proper permits and design criteria, your client is exposing itself and the Township of Hainesport to a lawsuit. Thank you.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'Deborah A. Plaia', with a stylized flourish at the end.

Deborah A. Plaia, Esq.

cc: John Gillespie, Esq.
Hainesport Joint Land Use Board

John C. Gillespie

From: David Frank <dave@njlandlawyer.com>
Sent: Thursday, July 28, 2022 6:26 PM
To: Paula Tiver
Cc: Robert E Kingsbury; John C. Gillespie; Paula Kosko; JJN.pc; Jack J Gravlin Jr., P.E.
Subject: RE: Longbridge Estates- Hainesport
Attachments: R&M Hearing Adjournment Request to JLUB Secretary 072822.pdf

***** External Email – This email has come from outside of Parker McCay. Think before you click on links, open attachments, or reply! *****

Ms. Tiver,
Please see the attached correspondence.
David Frank

DAVID C. FRANK

MAIL:
126 GILBERT ROAD
BORDENTOWN
NEW JERSEY 08505

ATTORNEY AT LAW
(609)267-2494
david@njlandlawyer.com

OFFICE:
126 GILBERT ROAD
JACKSONVILLE
NEW JERSEY 08505

July 28, 2022

Ms. Paula Tiver, Secretary
Hainesport Township Joint Land Use Board
Township Municipal Building
1 Hainesport Centre
Hainesport, New Jersey 08036

Via: Email

Re: ***R&M Development, LLC
Block 100 Lot 8 and part of Lot 8.02
Application for Amended Final Major Subdivision
Request for Hearing Adjournment***

Dear Ms. Tiver,

As you know, I represent R&M Development, LLC, which has pending before your Board an application for Amended Final Major Subdivision approval. We are docketed to be heard at your August 3, 2022 regular meeting, and have mailed and published notices for a hearing on that date. I have sent proofs of mailing to you and will send proofs of publication as soon as I receive them from the Burlington County Times.

The Final Major Subdivision approval for which we seek an amendment was memorialized by the Board's Resolution 2021-14. My client's current application addresses concerns of the adjoining Creekview Homeowners' Association that were litigated under Docket No. BUR-1927-21. The Creekview HOA's claims in that case were settled by way of a Stipulation of Settlement and Dismissal filed with the Court on March 9, 2022.

That Stipulation required that my client serve upon the HOA's counsel, simultaneously with any submission to the JLUB and/or Township, copies of all documents provided to the JLUB and/or the Township in support of an application for amended site plan approval.

Through an oversight, we did not serve Plaintiff's counsel with copies of our application documents until yesterday. My client desires that the Creekview HOA have sufficient time to satisfy itself that the proposed plan amendments satisfy the terms of the parties' settlement.

R&M
Hainesport LDB
July 28, 2022
Hearing Adjournment Request

Accordingly, we respectfully request that the Board take jurisdiction of our application at the Board's August 3, 2022 meeting solely for the purpose of adjourning the public hearing on the application to the time and date certain of the Board's September regular meeting, and without further mailed and published notices. My client consents to an extension of time for decision by the Board consistent with this requested hearing adjournment.

Thank you for your assistance.

Very Truly Yours,

A handwritten signature in dark ink that reads "David C. Frank". The signature is written in a cursive, slightly stylized font.

David C. Frank, Esq.

cc via email only:

Client
Robert Kingsbury, Esquire
John Gillespie, Esquire
John J. Novak, Esquire
Paula Kosko
Jack Gravlin, PE

John C. Gillespie

From: David Frank <dave@njlandlawyer.com>
Sent: Thursday, August 4, 2022 2:31 PM
To: Scott Taylor; John C. Gillespie
Cc: Matthew Arnold; Paula Kosko; 'jmancini@hainesporttownship.com'; Joan T. Horner
Subject: RE: Township Park Easement for Longbridge Estates, Diamantis / R&M Development

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Scott

Understood.

Dave

From: Scott Taylor <Staylor@tdgplanning.com>
Sent: Thursday, August 4, 2022 2:30 PM
To: John C. Gillespie <jgillespie@parkermccay.com>; David Frank <dave@njlandlawyer.com>
Cc: Matthew Arnold <marnold@parkermccay.com>; Paula Kosko <pkosko@hainesporttownship.com>; 'jmancini@hainesporttownship.com' <jmancini@hainesporttownship.com>; Joan T. Horner <jhorner@parkermccay.com>
Subject: RE: Township Park Easement for Longbridge Estates, Diamantis / R&M Development

And I left Dave on there.

Dave, nothing confidential there, but its just an internal discussion.

Scott D. Taylor, AICP, PP, LLA, LEED AP
Vice President

856.810.3443 Ext. 201

Taylor Design Group, Inc.

**131 Hartford Road
Mt. Laurel, NJ 08054**

Community Planning Landscape Architecture Park Planning & Design Economic Development

From: Scott Taylor
Sent: Thursday, August 4, 2022 2:29 PM

To: John C. Gillespie <jgillespie@parkermccay.com>; David Frank <dave@njlandlawyer.com>
Cc: Matthew Arnold <marnold@parkermccay.com>; Paula Kosko <pkosko@hainesporttownship.com>; 'jmancini@hainesporttownship.com' <jmancini@hainesporttownship.com>; Joan T. Horner <jhorner@parkermccay.com>
Subject: RE: Township Park Easement for Longbridge Estates, Diamantis / R&M Development

John,

Just sending this to Hainesport folks.

While that easement may have a trail on part of it, it may not extend the full length.

Paula,

Do you think we are at a point to advance discussions about what the Town would like to do for the park, and develop a concept plan?

Scott D. Taylor, AICP, PP, LLA, LEED AP
Vice President

856.810.3443 Ext. 201

Taylor Design Group, Inc.

131 Hartford Road
Mt. Laurel, NJ 08054

Community Planning Landscape Architecture Park Planning & Design Economic Development

From: John C. Gillespie <jgillespie@parkermccay.com>
Sent: Thursday, August 4, 2022 1:23 PM
To: David Frank <dave@njlandlawyer.com>
Cc: Matthew Arnold <marnold@parkermccay.com>; Paula Kosko <pkosko@hainesporttownship.com>; Scott Taylor <Staylor@tdgplanning.com>; 'assessor@twp.stafford.nj.us' <assessor@twp.stafford.nj.us>; 'jmancini@hainesporttownship.com' <jmancini@hainesporttownship.com>; Joan T. Horner <jhorner@parkermccay.com>
Subject: RE: Township Park Easement for Longbridge Estates, Diamantis / R&M Development

Thanks Dave. Can you also get me the plans to make that easement a trail, or some public improvement? My recollection, and I'm including Paula and Scott on this as well as Matt Arnold, who will prepare the Easement Agreement, is that there is value to the easement (which we'll have the assessor, Jim Mancini, who is also copied here, determine); and there's an offset to that value in the value the developer is going to bring to the township in making the easement a nature trail or something like that. We need to both quantify that value (to satisfy the lands and buildings law), and to describe it as consideration in the Agreement. Finally, has your client submitted anything to DEP yet, or are they waiting for JLUB approval? Thanks.

John C. Gillespie, Esquire
Of Counsel

Municipal, Government and Redevelopment

PARKER McCAY P.A.

O: 856-985-4083

jgillespie@parkermccay.com

From: David Frank <dave@njlandlawyer.com>

Sent: Wednesday, August 3, 2022 4:35 PM

To: John C. Gillespie <jgillespie@parkermccay.com>

Subject: FW: Township Park Easement for Longbridge Estates, Diamantis / R&M Development

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John,

The easement R&M want from the Twp. is detailed on the attachment described as 9 Proff OSS DiaSen 5-27-22R4

Dave

From: Jack J Gravlin Jr., P.E. <jjgpe@verizon.net>

Sent: Tuesday, July 5, 2022 10:25 AM

To: Paula Kosko <pkosko@hainesporttownship.com>

Cc: David Frank <dave@njlandlawyer.com>; Robert Kingsbury <rekingsbury@kingsburylaw.net>; Rami Hassidim <ramiyh@gmail.com>; Chris Aivazoglou <cvoz1973@gmail.com>; John C. Gillespie <jgillespie@parkermccay.com>; Joan T. Horner <jhorner@parkermccay.com>; Martin Miller, PE <mgmiller@alaimogroup.com>; Scott Taylor <Staylor@tdgplanning.com>

Subject: Township Park Easement for Longbridge Estates, Diamantis / R&M Development

Hi Paula,

Attached are the following: Transmittal Letter / Request for Consent and Plan Sheets 2,4,9, R4 Dated 5/27/2022.

By copy of this Email I am requesting our attorney, David Frank, Esq., confirm the formal request for consent.

Hard copies will be delivered to you office later today. Thank you.

Jack

Jack J. Gravlin Jr., P.E.

Professional Engineer

609-965-0405 (Phone / Voice Mail)

609-965-0105 (Fax)

Mailing Address

P.O. Box 221
West Berlin, NJ 08091

jjgpe@verizon.net

John C. Gillespie

From: John C. Gillespie
Sent: Monday, August 8, 2022 3:02 PM
To: 'David Frank'
Cc: Joan T. Horner
Subject: FW: R & M Development (Diamantis senior)
Attachments: 2020-03 JLUB Res.pdf; 2020-10 JLUB Res.pdf; 2021-14 JLUB Res.pdf

For our 4:00 discussion; particular att'n to 2020-03, p.2 E and F, and p.3, par. 1; and 2020-10, par. 5-6 on p.5; and par.11 on p.6.

John C. Gillespie, Esquire
Of Counsel
Municipal, Government and Redevelopment

PARKER McCAY P.A.
O: 856-985-4083
jgillespie@parkermccay.com

From: Tara Wicker <twicker@hainesporttownship.com>
Sent: Monday, August 8, 2022 2:49 PM
To: John C. Gillespie <jgillespie@parkermccay.com>
Cc: Paula Kosko <pkosko@hainesporttownship.com>; staylor@tdgplanning.com; Joan T. Horner <jhorner@parkermccay.com>; Matthew Arnold <marnold@parkermccay.com>
Subject: RE: R & M Development (Diamantis senior)

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Hi John,

Here are the resolutions – 2020-03, 2020-10 and 2021-14

Thanks, Tara

Tara Wicker
Assistant to the Township Administrator
Hainesport Township
One Hainesport Centre
PO Box 477
Hainesport, NJ 08036
Phone: 609-267-2730 ext. 100
Fax: 609-261-4762

From: John C. Gillespie [<mailto:jgillespie@parkermccay.com>]
Sent: Monday, August 08, 2022 1:28 PM

To: Paula Kosko <pkosko@hainesporttownship.com>; Tara Wicker <twicker@hainesporttownship.com>
Cc: 'Scott Taylor' <Staylor@tdgplanning.com>; Matthew Arnold <marnold@parkermccay.com>; Joan T. Horner <jhorner@parkermccay.com>
Subject: R & M Development (Diamantis senior)

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Would someone be able to email me the resolutions on this property? Scott says they are 2020-03; 2020-10; and 2020-14. I went online to twp website and couldn't find them. Thanks.

John C. Gillespie, Esquire
Of Counsel
Municipal, Government and Redevelopment



O: 856-985-4083
F: 856-489-6980
jgillespie@parkermccay.com

PARKER McCAY P.A.
9000 Midlantic Drive, Suite 300
Mount Laurel, New Jersey 08054
P: 856-596-8900 F: 856-596-9631
www.parkermccay.com



**TOWNSHIP OF HAINESPORT
JOINT LAND USE REVIEW BOARD
RESOLUTION NO. 2021-14**

**RESOLUTION GRANTING DESIGN WAIVER
AND FINAL MAJOR SUBDIVISION APPROVAL,
SUBJECT TO CONDITIONS, FOR
41 RESIDENTIAL LOTS
ON BLOCK 100, LOTS 8.03 & 8.02 , TAX MAP
TOWNSHIP OF HAINESPORT**

WHEREAS, R & M Development, LLC has made application to the Hainesport Joint Land Use Review Board for final major subdivision approval for 41 single-family, age restricted residential lots (total of 42 lots) on Block 100, Lot 8 and part of Lot 8.02, Tax Map, Township of Hainesport; and

WHEREAS, the matter coming on to be heard at a public meeting on July 1, 2021, pursuant to all notices required by law. and the Board having heard the testimony presented and having examined the exhibits filed, finds the following facts and conclusions of law:

- A. The subject property is an 11.30 acre tract identified as 60 Bancroft Lane, currently zoned SC, Senior Citizen Residential. The parcel is currently vacant, undeveloped and wooded.
- B. The initial public hearing on the subdivision was conducted on December 4, 2019. At that meeting the Board made the following determinations regarding the application:
 - 1. A waiver was granted from the requirement to provide an on-site recreation area.

2. The applicant was required to submit a copy of the 2003 EIS Statement as part of the application.
3. The request for a traffic study waiver was denied.
4. A decision was not made at that time regarding preliminary subdivision approval.
5. A Resolution regarding these decisions was memorialized on June 22, 2020.

C. At the JLUB meeting on June 22, 2020 the applicant again appeared seeking preliminary subdivision approval. The testimony and decisions made as a result of that meeting were memorialized in Resolution 2020-10 adopted August 5, 2020, in which the Board granted preliminary subdivision approval, subject to the conditions specified in the Resolution.

D. The applicant's next appearance before the Board was July 1, 2021, seeking final subdivision approval. Testimony in support of final subdivision approval was presented by Jack J. Gravlin, Jr., P.E., as the Project Engineer. Mr. Gravlin gave detailed testimony regarding the following issues related to final subdivision approval:

1. The Ground Water Mounding analysis indicates that the development of the project for houses will not impact basements on adjoining residential lots.
2. The stormwater drainage basin has been modified to comply with the Board's approval requirement that the entire 100-year storm be stored on-site without discharge impacting adjoining property.

3. The subdivision plan provides a 15-foot wide lot (Lot 48) for pedestrian access to the adjacent public park.
4. Regarding the landscape plan, the applicant has inventoried every tree currently on the site. There are a total of 1,120 trees existing. 226 of these trees will be protected and preserved from removal for the development. 93 new infill trees will be added. Each individual lot will have 2 new trees planted for a total of 82 trees. The applicant is requesting a waiver from the requirement to replace trees on a one-to-one ratio (Ordinance Section 104-14) and to permit tree replacement at a caliber size of 2 ½ inches.
5. The applicant will agree to comply with the review letter of the Board Planner (Taylor Design Group – March 31, 2021).
6. The applicant will agree to comply with the terms and conditions of the review letter of the Board Engineer (Alaimo Association of Engineers – May 18, 2021) with the exception of Item 11 which pertains to approval of the identification of Paris Court.
7. The subdivision will meet all Residential Site Improvement Standards (RSIS).
8. The sewer pipe has already been installed in the 30-foot-wide sanitary sewer and stormwater easement connecting to Windsor Place on the adjacent development. This easement has not expired and continues to be available for use by the applicant.

9. The applicant will install a development identification sign with lighting and location to be approved by the Board Planner and Board Engineer.
10. The drainage basin will be surrounded by a 3-board post and rail fence. The street trees will be located with consideration given to minimizing the heaving of sidewalks as the trees mature.

E. Chris Aivazoglou testified as the Project Builder regarding the style housing. There will be 3 model homes available. The sizes will range from 1,450 square feet to 1,900 square feet. Basements will be available and 2-car garages will be included.

F. In response to comments submitted by a member of the public regarding the possible presence of threatened and endangered species on the property being developed, the applicant presented the testimony of Chris Koutouzakis who is qualified as an Environmental Scientist. Mr. Koutouzakis expanded on his threatened and endangered species assessment report dated June 29, 2021. He summarized the report as follows:

The NJ DEP Landscape Project has no habitat identified for threatened or endangered species mapped on the development site. The most recent version of the Landscape Project was released in 2017. According to current NJ DEP mapping applications, there are no wetlands or State open waters on the development site. As a result, there is no expected impact to bog turtles, swamp pink or sensitive vetch. NJ DEP has responded to

rare wildlife sightings by stating that the barred owl sightings were accepted and the redheaded woodpecker sighting was rejected. Thus the barred owl is the only State or Federal threatened or endangered species that can be documented on this particular site. The preferred method to avoid a violation of the NJ Endangered and Non-Game Species Conservation Act of 1973 is to restrict tree clearing during potential nesting period, which is identified as April 1 thru August 31. Although the presence of the redheaded woodpecker is not accepted as documented on the site, the mitigation regarding tree removal would extend to September 10 for this species of bird.

G. During the public portion of the hearing the Board heard testimony which is summarized as follows:

1. Deborah A. Plaia, Esq., objected to the late submission of the June 29, 2021 report from the applicant's Environmental Scientist. She also expressed concern regarding the potential for stormwater run-off onto adjacent development sites. The applicant responded that the stormwater basin has been designed to accommodate even a 100-year storm event and that the soils in the development area are extremely porous and accommodating to onsite drainage infiltration.
2. Sandra J. Saouaf reemphasized the findings of her submission dated July 2, 2020 regarding the protection of threatened and endangered species. She cited the presence of the bog turtle, barred owl and

redheaded woodpecker on the site supported by photographs. She urged the Township to purchase a strip of the land for environmental preservation of these species.

H. The Board finds that the applicant's final subdivision submission is in substantial compliance with the preliminary subdivision approval granted on June 22, 2020 and memorialized by Resolution 2020-10 adopted August 5, 2020. Subject to compliance with the terms and conditions set forth in this Resolution, the applicant is granted final major subdivision approval as authorized under NJS40:55D-50 of the Municipal Land Use Law. The terms and conditions of the final subdivision approval are identified as follows:

1. A waiver is granted from the 1 to 1 tree replacement ratio set forth in Section 104-14 of the Ordinance. The applicant shall preserve existing trees and plant new trees as proposed in Paragraph D-4 of this Resolution. The tree caliber of 2 ½ inches is acceptable to the Board Planner and approved by the Board. The type of new trees to be planted shall be subject to the approval of the Board Professional Planner.
2. The applicant shall comply with the terms and conditions of the review letter of the Board Engineer (March 21, 2021) except as waived herein regarding Item 11.
3. The applicant shall comply with the terms and conditions of the review letter of the Board Professional Planner.

4. The installation of street lighting shall be subject to the approval of the Board Planner and Board Engineer.
5. In order to provide protection for the possible presence of endangered species, no tree cutting on the property is permitted between the dates of March 1 to September 10 in any given year.
6. The applicant shall provide an easement for the placement of a development identification sign on adjacent property. The form of easement shall be subject to review and approval by the Board Attorney prior to filing.
7. All construction of new dwellings in the subdivision shall be accomplished in accordance with the applicable provisions of the Building Code and all other applicable Municipal Ordinances, Codes and State Statutes. The Applicant shall also be responsible for any COAH fees applicable to the subdivision.
8. The rights, duties and obligations of the applicant with respect to final major subdivision approval shall be as set forth in New Jersey Statute 40:55D-50 (final approval of major subdivisions) and NJS40:55D-53 (guarantees required).

Date: August 4, 2021

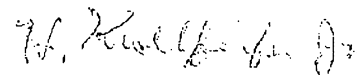
MOTION TO GRANT FINAL MAJOR SUBDIVISION APPROVAL WITH
CONDITIONS

YES

NO

McKay
MacLachlan
Gilmore
Tricocci
Baggio
Bradley
Kosko
Krollfeifer, Jr.

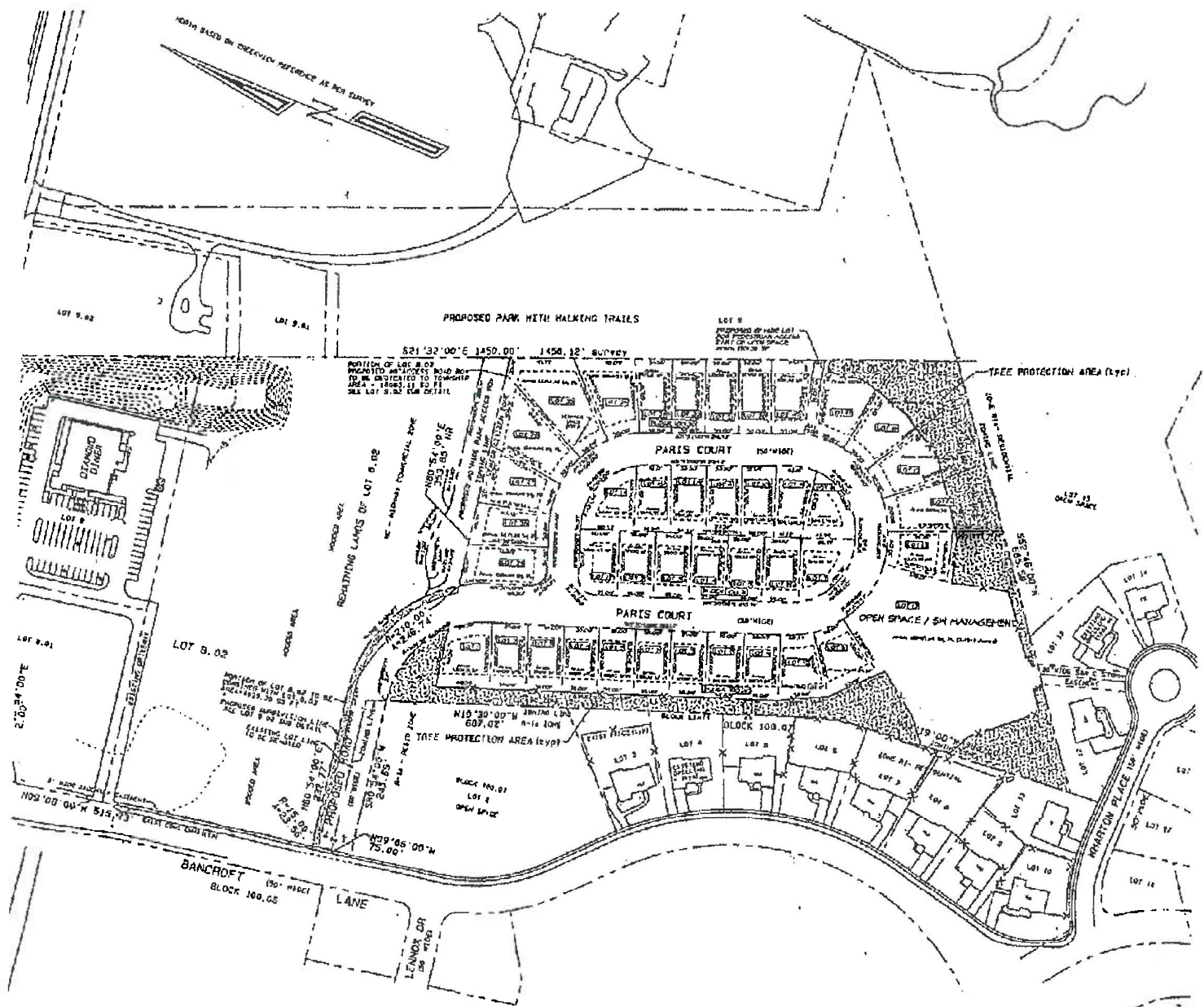
Kelley



H. KROLLFEIFER, JR.,
BOARD CHAIRMAN

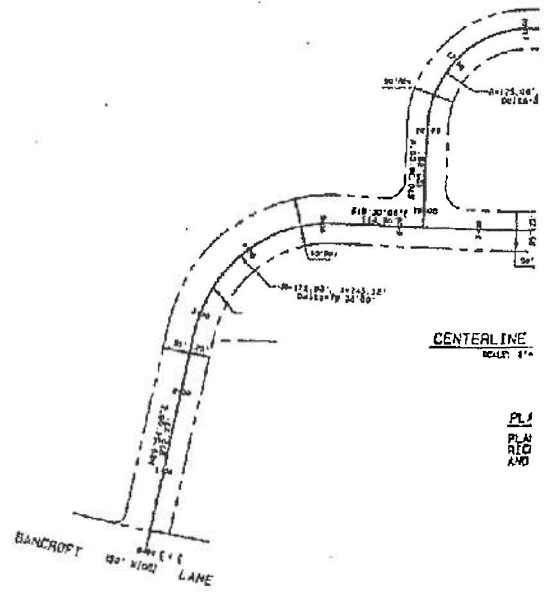


PAULA TIVER,
BOARD SECRETARY



OWNERS WITHIN 200'

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**TOWNSHIP OF HAINESPORT
JOINT LAND USE REVIEW BOARD
RESOLUTION NO. 2020-10**

**RESOLUTION GRANTING PRELIMINARY MAJOR
SUBDIVISION APPROVAL FOR 41 RESIDENTIAL LOTS
ON BLOCK 100, LOTS 8.03 AND 8.02, TAX MAP TOWNSHIP OF
HAINESPORT**

WHEREAS, R & M Development, LLC has made application to the Hainesport Joint Land Use Review Board for preliminary approval of a major subdivision for 41 single family residential lots (total of 42 lots) on Block 100, Lot 8 and part of Lot 8.02, Tax Map Township of Hainesport; and

WHEREAS, the matter coming on to be heard at a public meeting on June 22, 2020 pursuant to all notices required by law, and the Board having heard the testimony presented and having examined the exhibits filed, finds the following facts and conclusions of law:

- A. The subject property is an 11.30 acre tract identified as 50 Bancroft Lane, currently Zoned SC, Senior Citizen Residential. The parcel is currently vacant, undeveloped and wooded.
- B. The applicant's proposal is to subdivide the parcel into 42 lots for age restricted single-family detached dwellings to be constructed on 41 of the lots. The remaining lot will be designated for open space. The development will be accessed by a single road off Bancroft Lane to the residential lots as shown on the attached plan.
- C. At the initial public hearing meeting on December 4, 2019, extensive testimony by the applicant and during the public portion of the hearing was presented. At the December 4, 2019 meeting, the Board granted or

denied as indicated the following relief as adopted by Resolution
Memorialized on June 22, 2020:

1. A waiver was granted from the requirement to provide an on-site recreation area
2. The applicant was required to submit a copy of the 2003 Environmental Impact Statement as part of the application.
3. The request for a traffic study waiver was denied.
4. A decision was not made regarding preliminary subdivision approval and the application was continued without a specific date for future consideration.

D. The applicant next appeared before the Joint Land Use Board on June 22, 2020 seeking preliminary subdivision approval. The bulk of testimony on behalf of the applicant was presented by Jack Gravlin, P.E. as the Project Engineer. Mr. Gravlin submitted the traffic study as required at the December 4, 2019 meeting together with the Environmental Impact Statement from year 2003. Mr. Gravlin further testified that according to NJDEP there are no threatened or endangered species on the site, nor are there any Federally listed species. The bottom of the drainage basin is at a lower elevation than the nearby basement elevations of adjacent residential dwellings. The drainage basin has been designed to accommodate a 100-year storm and the majority of storm water drainage in the basin will infiltrate into the ground. In the event of a 100-year

Robert E. Kingsbury,
Esq.
Jackson Commons
Suite B-3
30 Jackson Road
Medford, NJ 08053

storm the rise in the level of the lake will be approximately 1.9 inches.

The proposed subdivision essentially consists of 41 residential lots, 1 basin lot and 1 lot for access to the subdivision.

E. The drainage basin will be protected with pressure-treated wood fencing and landscape screening. The applicant will provide a maintenance plan for the basin which will be maintained by a Homeowners Association to be formed.

F. Additional testimony was provided by David H. Horner, P.E. as a Traffic Engineer. He submitted a summary of the traffic study which examines existing conditions and the impact of the proposed development. The study began with taking traffic counts at a.m. and p.m. rush hours which demonstrated a "B" level of service currently. The range of service levels is from "A" to "F". The proposed development is estimated to generate 20 trips during peak hours, which are classified as 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m. The current vehicle delay for service level "B:" is 39.9 seconds. The proposed increase in trips will result in a delay of 40.1 seconds which is considered minimal.

G. During the public portion of the hearing the Board heard testimony which is summarized as follows:

1. Debra A. Plaia, Esq. questioned the legitimacy of the utility

easement running between Lots 12 and 13 on Windsor Place in the adjacent Creekview Subdivision. She contends that an easement filed in Deed Book 5842, Page 153, Burlington County identifies the

easement as a "temporary" easement which expired in 7 years after calendar year 2001.

2. Sandra Saouhf contends that there are endangered species on the site including a barred owl and woodpecker.

3. John Mazur is concerned about the drainage impact and who is responsible for drainage pipe maintenance.

4. Christopher Hahn resides at Lakeside at Creekview and he emphasized that he would not grant an easement over his property if that becomes necessary.

5. Tiffany Berch expressed her concerns about traffic issues and speeding on Bancroft Lane. Ms. Kosko responded that the Township will receive a \$500,000.00 grant from NJDOT which will include the installation of a speed bump and improvements on Bancroft Lane.

H. The application has been reviewed by the Board Engineer (Alaimo Association of Engineers) by letter dated November 22, 2019. Martin Miller, P.E. stated at the meeting that he was satisfied with the drainage calculations and the capacity of the 100-year storm basin design.

I. The application has also been reviewed by the Board Planner (Taylor Design Group) whose recommendations will be incorporated into the conditions of this Resolution.

NOW, THEREFORE be it resolved by the Hainesport Township Joint Land Use Board that the Board is satisfied the applicant has met the conditions necessary for preliminary subdivision approval subject to the following terms and conditions set forth below:

1. The applicant will comply with the comments of the reports from the Board Engineer and Board Planner.
2. The access boulevard and park driveway will be constructed as part of Phase 1 of the project. Phase 2 of the project will be the construction of the actual residential dwellings.
3. The applicant will identify all the 8-inch caliper trees to be removed from the site and will plant compensating plantings within the buffers and basin. All clearing limits will be staked in the field and approved by the Board Planner prior to clearing. The applicant will agree to maximize the preservation of existing trees in the proposed 25-foot wide buffer area. Supplemental trees will be provided where necessary.
4. Street trees will be planted at 50 feet on center along all roadways including the Boulevard Drive.
5. The park access driveway will be adequate in width and cross-section for the intended park access use. The driveway will be located on its own lot which will be dedicated to the Township.
6. A separate open space lot will be provided for the pedestrian connection to the Township land to the east in lieu of an easement on an individual lot. All lot lines will be shifted clockwise to accommodate this configuration.
7. The applicant will document compliance with or exemption from the impact of the Threatened and Endangered Species Act.

8. Prior to final subdivision approval the applicant will demonstrate to the Board that they have a legitimate utility easement on the adjacent lots in the Creekview Subdivision.
9. The applicant's Engineer will consider designing the storm drainage basin for a 500-year storm.
10. No site work may begin on the project until final subdivision approval is granted.
11. The Board agrees to waive street quality paving for the access road to the recreation area provided a 2-inch topping is applied.
12. The rights, duties and obligations of the applicant with respect to preliminary major subdivision approval shall be as set forth in New Jersey Statute 40:55D-49 (preliminary approval).

Robert E. Kingsbury,
Esq.
Jackson Commons
Suite B-3
30 Jackson Road
Medford, NJ 08055

Date: August 5, 2020

MOTION TO GRANT PRELIMINARY SUBDIVISION APPROVAL

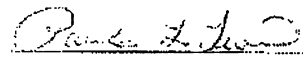
YES

NO

RECUSED

MacLachlan
Kelley
McKay
Wagner
Baggio
Tyndale
Kosko
Levinson
H. Krollfeifer


H. KROLLFEIFER
BOARD CHAIRMAN


PAULA TIVER
BOARD SECRETARY

**TOWNSHIP OF HAINESPORT
JOINT LAND USE REVIEW BOARD
RESOLUTION NO. 2020-03**

**RESOLUTION REGARDING SUBMISSION WAIVERS
AND RECREATION SPACE REQUIREMENT IN CONNECTION
WITH PRELIMINARY MAJOR SUBDIVISION APPLICATION
FOR 41 RESIDENTIAL LOTS ON BLOCK 100,
LOTS 8.03 & 8.02, TAX MAP, TOWNSHIP OF HAINESPORT**

WHEREAS, R & M Development, LLC has made application to the Hainesport Township Joint Land Use Review Board for preliminary approval of a major subdivision for 41 single family residential lots (total of 42 lots) on Block 100, Lot 8 and part of Lot 8.02, Tax Map, Township of Hainesport; and

WHEREAS, the matter coming on to be heard at a public meeting on December 4, 2019, pursuant to all notices required by law, and the Board having heard the testimony presented and having examined the exhibits filed, finds the following facts and conclusions of law:

- A. The subject property is an 11.30 acre tract identified as 60 Bancroft Lane, currently Zoned SC, Senior Citizen Residential. The parcel is currently vacant, undeveloped and wooded.
- B. The applicant's proposal is to subdivide the parcel into 42 lots for age restricted single family detached dwellings to be constructed on 41 of the lots. The remaining lot will be designated for open space. The development will be accessed by a single road off Bancroft Lane to the residential lots as shown on the attached plan.
- C. Extensive testimony by the applicant and during the public portion was presented at the meeting on December 4, 2019. This testimony will be summarized in the Resolution to be memorialized on the preliminary

subdivision application decision to be determined at a future Board Meeting.

D. Prior to a decision on the preliminary subdivision approval the applicant has requested the following relief:

1. Waiver from the requirement to submit a Traffic Study.
2. Waiver from the requirement to submit an Environmental Impact Statement.
3. A determination that the access provided to the adjacent proposed public park satisfies the requirement for an on-site recreation area.

E. The applicant submitted a subdivision plan which includes a proposed park access road and a pedestrian access easement between lots 18 and 19 as shown on the attached plan.

F. Testimony in support of the request to waive the requirement for an on-site recreation area was provided by Jack J. Gravlin, P.E. as the Project Engineer. Mr. Gravlin testified that due to the limited size of the tract and the number of residential lots proposed there is insufficient room to provide a recreation area on site. The project is designed for senior citizen occupancy and the residents will have easy access to the adjacent public park area which is proposed for future approval.

G. Mr. Gravlin further testified that under the Residential Site Improvement Standards (RSIS) it is estimated that each residential dwelling will

generate 3.7 daily vehicle trips and that this is a minimal impact resulting from the overall residential development.

- H. Mr. Gravlin further testified in support of an Environmental Impact (EIS) waiver. The development will have minimal impact and an EIS on the property was completed and submitted in calendar year 2003.
- I. During the public portion of the hearing the Board heard testimony on the waiver issues. Several residents stated their concerns about the increased traffic which will result on Bancroft Lane which is the only access to Rt. 38. There was also general concern about the environmental impact to the site resulting from the senior citizen project which will contribute to the flow of contaminants and fertilizers into the lake which ultimately discharges into the Rancocas Creek.
- J. Prior to further consideration of the requested preliminary subdivision approval the Board makes the following determinations regarding the issues as enumerated in Paragraph D of this Resolution.

NOW THEREFORE BE IT RESOLVED by the Joint Land Use Review Board of the Township of Hainesport as follows regarding the subdivision application:

- 1. A waiver is granted from the requirement to provide an on-site recreation area. The Board is satisfied that the access provided to the adjacent proposed public park will be sufficient to satisfy the recreational needs of the senior citizen homeowners of the project
- 2. The applicant is required to submit a copy of the 2003 Environmental Impact Statement as part of the application. The Board will be guided

by the comments of the Board Planner and Board Engineer regarding the adequacy of the report as it applies to this particular development request.

3. The request for a waiver of a traffic study is denied. The Board is concerned with the impact of traffic on Bancroft Lane and the timing of the traffic light at the intersection of Bancroft Lane and Rt. 38.

Although the timing of the traffic light at Rt. 38 is under the jurisdiction of the New Jersey Department of Transportation, the traffic study may yield information to be considered by NJ DOT regarding the timing of the light.

4. This application is continued without specific date for future consideration. The applicant will give re-notice of the new hearing date in compliance with the requirements for newspaper notice and notice to the property owners within 200 feet under the provisions of the Municipal Land Use Law.
5. This Resolution shall not be interpreted to be an approval of the proposed subdivision application which remains under review by the Board.

Date:

Motion to Approve Waiver of On-Site Recreation Area

<u>Yes Votes</u>	<u>No Votes</u>	<u>Abstain</u>
Clauss		
Gilmore		
Levinson		
McKay		
Baggio		
Wagner		
Tyndale		
Kosko		
H. Krollfeifer, Jr.		

Date: January 8, 2020

Motion to Require Submission of 2003 Environmental Impact Statement
Prior to Consideration of Waiver

<u>Yes Votes</u>	<u>No Votes</u>	<u>Abstain</u>
Clauss		
Gilmore		
Levinson		
McKay		
Baggio		
Wagner		
Tyndale		
Kosko		
H. Krollfeifer, Jr.		

Motion to Deny Waiver of Submission of Traffic Study

Yes Votes

No Votes

Abstain

Clauss

Gilmore

Levinson

McKay

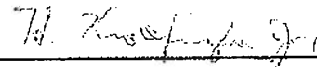
Baggio

Wagner

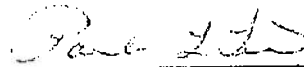
Tyndale

Kosko

H. Krollfeifer, Jr.



H. KROLLFEIFER, JR.
BOARD CHAIRMAN



PAULA TIVER
BOARD SECRETARY

John C. Gillespie

From: John C. Gillespie
Sent: Friday, August 26, 2022 12:07 PM
To: 'David Frank'
Cc: Joan T. Horner; Alexis Smith
Subject: RE: R & M Development (Diamantis senior)

Will check again, but I think [REDACTED]

John C. Gillespie, Esquire
Of Counsel
Municipal, Government and Redevelopment

PARKER McCAY P.A.
O: 856-985-4083
jgillespie@parkermccay.com

From: David Frank <dave@njlandlawyer.com>
Sent: Friday, August 26, 2022 10:52 AM
To: John C. Gillespie <jgillespie@parkermccay.com>
Cc: Joan T. Horner <jhorner@parkermccay.com>
Subject: RE: R & M Development (Diamantis senior)

***** External Email – This email has come from outside of Parker McCay. Think before you click on links, open attachments, or reply! *****

John,

Did the Hainesport Committee have an ask?

Dave

From: John C. Gillespie <jgillespie@parkermccay.com>
Sent: Monday, August 8, 2022 3:02 PM
To: David Frank <dave@njlandlawyer.com>
Cc: Joan T. Horner <jhorner@parkermccay.com>
Subject: FW: R & M Development (Diamantis senior)

For our 4:00 discussion; particular att'n to 2020-03, p.2 E and F, and p.3, par. 1; and 2020-10, par. 5-6 on p.5; and par.11 on p.6.

John C. Gillespie, Esquire
Of Counsel
Municipal, Government and Redevelopment

PARKER McCAY P.A.

O: 856-985-4083

jgillespie@parkermccay.com

From: Tara Wicker <twicker@hainesporttownship.com>

Sent: Monday, August 8, 2022 2:49 PM

To: John C. Gillespie <jgillespie@parkermccay.com>

Cc: Paula Kosko <pkosko@hainesporttownship.com>; staylor@tdgplanning.com; Joan T. Horner <jhorner@parkermccay.com>; Matthew Arnold <marnold@parkermccay.com>

Subject: RE: R & M Development (Diamantis senior)

***** External Email – This email has come from outside of Parker McCay. Think before you click on links, open attachments, or reply! *****

Hi John,

Here are the resolutions – 2020-03, 2020-10 and 2021-14

Thanks, Tara

Tara Wicker
Assistant to the Township Administrator
Hainesport Township
One Hainesport Centre
PO Box 477
Hainesport, NJ 08036
Phone: 609-267-2730 ext. 100
Fax: 609-261-4762

From: John C. Gillespie [<mailto:jgillespie@parkermccay.com>]

Sent: Monday, August 08, 2022 1:28 PM

To: Paula Kosko <pkosko@hainesporttownship.com>; Tara Wicker <twicker@hainesporttownship.com>

Cc: 'Scott Taylor' <Staylor@tdgplanning.com>; Matthew Arnold <marnold@parkermccay.com>; Joan T. Horner <jhorner@parkermccay.com>

Subject: R & M Development (Diamantis senior)

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Would someone be able to email me the resolutions on this property? Scott says they are 2020-03; 2020-10; and 2020-14. I went online to twp website and couldn't find them. Thanks.

John C. Gillespie, Esquire
Of Counsel
Municipal, Government and Redevelopment



PARKER McCAY

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F: 856-489-6980

jgillespie@parkermccay.com

PARKER McCAY P.A.

9000 Midlantic Drive, Suite 300

Mount Laurel, New Jersey 08054

P: 856-596-8900 F: 856-596-9631

www.parkermccay.com



John C. Gillespie

From: John C. Gillespie
Sent: Thursday, September 8, 2022 10:02 AM
To: 'David Frank'
Cc: 'Paula Kosko'; Joan T. Horner
Subject: FW: Opra Request
Attachments: Memo re CWA liability for Township Storm Water Easement Dishcharge July 28 2022.pdf; Courts decision.pdf; Entry of Judgment and Order.pdf

Dave: Please see below and attached. (Although the memo attached says 9/8, it was actually 7/28; our Firm uses some stupid automatic re-dating thing). I need to look into what she's suggesting in order to make sure the township is adequately protected. I will charge the research to R&M's escrow account, since we're only in this discussion, and facing this issue, b/c of the easement request. Any objections, let me know. Thanks.

John C. Gillespie, Esquire
Of Counsel
Municipal, Government and Redevelopment

PARKER McCAY P.A.
O: 856-985-4083
jgillespie@parkermccay.com

From: Deborah Plaia <daplaia@yahoo.com>
Sent: Thursday, September 8, 2022 9:43 AM
To: John C. Gillespie <jgillespie@parkermccay.com>
Subject: Fw: Opra Request

***** External Email – This email has come from outside of Parker McCay. Think before you click on links, open attachments, or reply! *****

Good morning Mr. Gillespie:

I hope you are doing well! I saw that the Land Use Board had my letter re the Clean Water Act listed on the Agenda along with a Legal Memo I assumed you as the managing partner had your associate Mr. Lamilla do. I just got the Memo wherein the conclusion reached was that Hainesport is not a discharger and merely allowing a stormwater outfall pipe to be installed within the easement. Thus, it would not incur liability.

I am writing to you as a professional courtesy to bring to your attention a case which Mr. Novak just won in the 3rd Circuit. The case was brought under the Clean Water Act. Mr. Novak represented the Estate of Fred McDowell (the property owner). I wrote the briefs at the District Court level and for the appeal taken by the plaintiff in the 3rd Circuit. The case was about the deficiencies in the plaintiff's notice. The District Court found that the notice did not meet the statutory requirements. The

3rd Circuit affirmed, but for a different reason. It found that the plaintiff's notice failed to specifically identify the specific violation. I bring this to your attention because the property owner who gave the easement to the township and who was not the alleged discharger, in this case the Estate of Fred McDowell, was still sued!

The case is entitled Shark River Cleanup Coalition v. Wall Township and the Estate of Fred McDowell. (See attached). Fred McDowell owns a huge parcel of land in Wall Township, approximately 485 acres of wooded land. The Shark River runs through the property. In 1988, Wall Township, through a Declaration of Taking, acquired an easement of approximately 3.15 miles in length and 25 feet wide over the northern portion of the property. A pumping station and a sanitary sewer force main was constructed thereon.

In 2015, a hiker noticed soil erosion and reported it to the Shark River Cleanup Coalition. The Coalition retained counsel who sent out letters to Fred McDowell advising him of the problem. Fred McDowell requested more information, but no response was forthcoming. Letters were also sent to Wall Township. Again, plaintiff never responded. No one on the defense side was able to locate the alleged area of discharge, initially. The site was finally located after suit was filed.

Plaintiff filed suit and the case was litigated. After the District Court dismissed on summary judgment, both Wall Township and the Estate of Fred McDowell moved for attorney's fees. Wall Twp incurred approximately \$178,000 which included experts. Fred McDowell incurred approximately \$82,000 in fees. You can find our motion for fees filed with the District Court on Pacer under case number 3:17-cv-08049.

Our motions for fees prompted plaintiff to seek an appeal with the 3rd Circuit which affirmed the District Court.

So, even though Hainesport is not the discharger, they can still be sued. If Hainesport loses, not only do they incur fees and expenses for defending, they may have to pay the plaintiff's attorneys fees and expenses.

Deborah A. Plaia, Esq.
50 Bancroft Lane
Hainesport, NJ 08036
Tel: 609-206-1861
Fax: 609-267-7869
E-mail: daplaia@yahoo.com

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----- Forwarded Message -----

From: Paula Kosko <pkosko@hainesporttownship.com>
To: Deborah Plaia <daplaia@yahoo.com>
Cc: Tara Wicker <twicker@hainesporttownship.com>
Sent: Thursday, September 8, 2022 at 09:16:01 AM EDT
Subject: RE: Opra Request

Good Morning Deborah:

Please find attached the document you requested.

Best,

Paula Kosko, MPA/RMC
Administrator/Municipal Clerk
Hainesport Township
1401 Marne Highway
PO Box 477
Hainesport NJ 08036
(609) 267-7114 - Phone
(609) 261-4762 - Fax

From: Deborah Plaia <daplaia@yahoo.com>
Sent: Wednesday, September 07, 2022 6:09 PM
To: Paula Kosko <pkosko@hainesporttownship.com>
Subject: Opra Request

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Good evening Paula:

Please see attached OPRA request. Thank you.

Deborah A. Plaia, Esq.

50 Bancroft Lane

Hainesport, NJ 08036

Tel: 609-206-1861

Fax: 609-267-7869

E-mail: daplaia@yahoo.com

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John C. Gillespie

From: David Frank <dave@njlandlawyer.com>
Sent: Thursday, July 13, 2023 6:43 PM
To: Paula Kosko
Cc: John C. Gillespie; Mellett, James
Subject: RE: Longbridge Estates - NJDEP Permit Application

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Sounds great. Thank you.

From: Paula Kosko <pkosko@hainesporttownship.com>
Sent: Thursday, July 13, 2023 3:32 PM
To: David Frank <dave@njlandlawyer.com>
Cc: John C. Gillespie <jgillespie@parkermccay.com>; Mellett, James <jmellett@churchillengineers.com>
Subject: RE: Longbridge Estates - NJDEP Permit Application

Hi Dave:

Mayor Clauss will be in tonight to sign the certification. I was planning to call Chris tomorrow morning to arrange for him to pick it up, along with the resolution. Please let me know if you want it returned a different way.

Thanks,



inPaula Kosko,
MPA/RMC/QPA/AHA
Administrator/Clerk

609-267-7114
www.hainesporttownship.com



1401 Marne Highway • PO Box 477 • Hainesport NJ 08036

From: David Frank <dave@njlandlawyer.com>
Sent: Thursday, July 13, 2023 11:25 AM
To: Paula Kosko <pkosko@hainesporttownship.com>
Cc: John C. Gillespie <jgillespie@parkermccay.com>; Mellett, James <jmellett@churchillengineers.com>
Subject: FW: Longbridge Estates - NJDEP Permit Application

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Paula,

It is my understanding that the Twp. Committee authorized execution of the DEP's application's property owner's certification at its meeting Tuesday.

Do you need anything more from the applicant before signing by the Mayor?

We are eager to make the submission as soon as possible.

Thanks,

Dave

From: David Frank

Sent: Monday, July 10, 2023 10:33 AM

To: John C. Gillespie <jgillespie@parkermccay.com>; Paula Kosko <pkosko@hainesporttownship.com>

Subject: FW: Longbridge Estates - NJDEP Permit Application

John,

As you and I just discussed, my client is obliged to make promptly a Waterfront Development Permit application to NJDEP to allow the stormwater outfall on Hainesport Twp.'s property from the proposed basin on my client's property.

No changes are proposed to the easement and pipe on the Township's lands that were discussed last summer.

In order for my client to submit the application, all property owners must sign the attached form.

Thanks,

Dave

From: Rodriguez, Elise <erodriguez@churchillengineers.com>

Sent: Friday, July 7, 2023 3:39 PM

To: David Frank <dave@njlandlawyer.com>

Cc: Mellett, James <jmellett@churchillengineers.com>; Jack J Gravlin Jr., P.E. <jjgpe@verizon.net>; Anen, Steven <sanen@churchillengineers.com>; Chris Aivazoglou <cvoz1973@gmail.com>

Subject: Longbridge Estates - NJDEP Permit Application

Good Afternoon,

As you discussed earlier with Jim, the Longbridge Estates project will require a NJDEP Waterfront Development (WFD) Individual Permit to authorize the installation of the stormwater outfall within the regulated coastal zone in accordance with the Coastal Zone Management Rules, N.J.A.C. 7:7. Attached is the Property Owner Certification Form that all property owners will need to sign for the WFD application.

Please let us know if you have any questions or require any additional information.

Thank you,

Elise



Elise Rodriguez, Environmental Scientist

Churchill Consulting Engineers

344N. Route 73

Berlin, NJ 08009

Office 856-767-6901

Direct 856-554-3158

Cell 518-879-2997

erodriguez@churchillengineers.com

John C. Gillespie

From: John C. Gillespie
Sent: Wednesday, February 14, 2024 4:03 PM
To: 'David Frank'
Cc: Joan T. Horner
Subject: RE: Hainesport Stormwater Easement

Let me find the file first so I can re-acquaint myself w/ the concept; I assume we have a drawing that shows the easement area, and from "whence" the flow begins, and its outlet location, and some engineering gobbledygook describing it? (Gobbledygook being my effort to match "ground truth"; "Whence" was just a bonus.

John C. Gillespie, Esquire
Of Counsel
Municipal and Government



O: 856-985-4083
C: 609-413-2748
jgillespie@parkermccay.com

PARKER McCAY P.A.
9000 Midlantic Drive, Suite 300
Mount Laurel, NJ 08054
P: 856-596-8900 F: 856-596-9631
www.parkermccay.com



From: David Frank <dave@njlandlawyer.com>
Sent: Wednesday, February 14, 2024 3:40 PM
To: John C. Gillespie <jgillespie@parkermccay.com>
Cc: Joan T. Horner <jhorner@parkermccay.com>
Subject: Hainesport Stormwater Easement

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John,

We discussed my starting a draft stormwater easement for the project in Hainesport.

I have all manner of easements in my files as a starting point.

But it may make sense for you to send me something to adapt that you have in the past found acceptable.

Dave

David C Frank
Attorney at Law
126 Gilbert Road
Bordentown, NJ 08505
PH:609-267-2494
david@njlandlawyer.com

John C. Gillespie

From: John C. Gillespie
Sent: Wednesday, February 14, 2024 5:07 PM
To: 'David Frank'
Cc: Joan T. Horner
Subject: 7-5-2022 - Land Areas Kosko R&M Dia Drainage Easement request 4869-9045-9177 v.1
Attachments: 7-5-2022 - Land Areas Kosko R&M Dia Drainage Easement request 4869-9045-9177 v.1.pdf

I'm working on a draft Easement but we still need an agreement to convey first, in exchange for these dedications, and my notes reflect that there was a \$\$ contribution as well coming from R&M. Can you shoot over whatever plans you have showing these three areas; the DEP Waterfront Development Permit and its application/planning documents? Then maybe I can tie them all together into an Agreement but I'll send you a draft Easement in the morning. Thanks.

John C. Gillespie, Esquire
Of Counsel
Municipal and Government



O: 856-985-4083
C: 609-413-2748
jgillespie@parkermccay.com

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www.parkermccay.com



John C. Gillespie

From: John C. Gillespie
Sent: Monday, February 26, 2024 9:47 AM
To: 'David Frank'
Cc: Joan T. Horner
Subject: RE: Longbridge Estates - Storm Sewer Easement in Township Lands

I think that may be right; is there a plan showing that access road from the development to the park? I'd like to get it over to Scott Taylor and Marty Miller for their review and comment; that will at least keep things moving.

John C. Gillespie, Esquire
Of Counsel
Municipal and Government

PARKER McCAY P.A.
O: 856-985-4083
C: 609-413-2748
jgillespie@parkermccay.com

From: David Frank <dave@njlandlawyer.com>
Sent: Monday, February 26, 2024 9:43 AM
To: John C. Gillespie <jgillespie@parkermccay.com>
Subject: RE: Longbridge Estates - Storm Sewer Easement in Township Lands

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Thanks.

I think the developer is of the opinion that there was to be a swap for access to the park via an access road or driveway they are constructing through their lands.

My recollection is that you and/or Paula, and/or the electeds thought more may be necessary and this was not resolved.

Dave

From: John C. Gillespie <jgillespie@parkermccay.com>
Sent: Monday, February 26, 2024 9:25 AM
To: David Frank <dave@njlandlawyer.com>
Cc: Joan T. Horner <jhorner@parkermccay.com>
Subject: RE: Longbridge Estates - Storm Sewer Easement in Township Lands

I can speak w/ Paula about it this week; she was out last week after [REDACTED] Tuesday. I think she's back in today or tomorrow. Not sure if they'll entertain it w/o me there to explain it but I'll check with her. Don't we still have to decide what developer is giving the township for this easement?

John C. Gillespie, Esquire
Of Counsel
Municipal and Government



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C: 609-413-2748
jgillespie@parkermccay.com

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www.parkermccay.com



From: David Frank <dave@njlandlawyer.com>
Sent: Monday, February 26, 2024 8:30 AM
To: John C. Gillespie <jgillespie@parkermccay.com>
Cc: Joan T. Horner <jhorner@parkermccay.com>
Subject: FW: Longbridge Estates - Storm Sewer Easement in Township Lands

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John,

You are likely swamped paying the price to prepare to be away...any progress on this? Or should I set client expectations for April?

[REDACTED]

Dave

From: David Frank
Sent: Wednesday, February 14, 2024 5:38 PM
To: John C. Gillespie <jgillespie@parkermccay.com>
Cc: Joan T. Horner <jhorner@parkermccay.com>
Subject: FW: Longbridge Estates - Storm Sewer Easement in Township Lands

John,

I'll have the plan formatted for attachment to an easement doc.

Dave

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John C. Gillespie

From: John C. Gillespie
Sent: Tuesday, April 9, 2024 4:24 PM
To: 'David Frank'
Cc: Joan T. Horner
Subject: Clerk03087420240409133638
Attachments: Clerk03087420240409133638.pdf

Dave: FYI for tonight's meeting in Hainesport, re: R&M Brothers easement

John C. Gillespie, Esquire
Of Counsel
Municipal and Government



O: 856-985-4083
C: 609-413-2748
jgillespie@parkermccay.com

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Deborah A. Plaia, Esq.

ATTORNEY-AT-LAW

50 BANCROFT LANE
HAINESPORT, NJ 08036

609.206.1861 (TEL)
EMAIL: daplaia@yahoo.com

April 8, 2024

Hainesport Township Committee
1401 Marne Highway
Hainesport, NJ 08036

Re: Resolution 2024-72-4, Extending Consent to Filing of Land Use
Application Involving Municipal Property for Stormwater Discharge
Through Block 100, Lots 9 and 10

Dear Members of the Hainesport Township Committee:

Kindly be advised that I object to the adoption of any Resolution authorizing the filing of Land Use Application Involving Municipal Property for Stormwater Discharge Through Block 100, Lots 9 and 10.

The Township has granted an easement to R&M Development permitting the installation of a stormwater pipe and outfall structure to convey stormwater from the basin to be located by Wharton Place and Bancroft Lane, across Block 100, Lots 9 and 10 and then to the Rancocas Creek. I object for various reasons which will be set forth at the township meeting on April 9, 2024. I write separately to bring to your attention the significant exposure to liability to Hainesport for any violation of the Clean Water Act.

I have attached for your review the following which I am requesting that this letter with the below attachments be entered as an exhibit for the Township Committee Meeting of April 9, 2024:

- Complaint: Shark River Cleanup Coalition v. Twp of Wall and Estate of Fred McDowell
- Motion for Summary Judgment by Wall Township
- Cross-Motion for Summary Judgment by Estate of Fred McDowell
- Opposition to Motion for Summary Judgment filed by Shark River Cleanup Coalition
- Motion for Summary Judgment by Shark River Cleanup Coalition
- Wall Township's Motion for Attorney's Fees
- Estate of Fred McDowell's Motion for Attorney's Fees

- District Court Order granting summary judgment to Wall Township and Est. of Fred McDowell and denying Shark River's motion for summary judgment
- Decision of District Court
- Shark River's Notice of Appeal to Third Circuit Court of Appeals
- Third Circuit Court of Appeals' Opinion
- Wall Township Motion for Fees at Third Circuit Court of Appeals
- Estate of Fred McDowell Motion for Fees at Third Circuit of Appeals
- Letter to John Gillespie, Esq. dated July 26, 2022
- Email to John Gillespie, Esq. dated September 8, 2022
- Parker McCay Legal Memorandum dated September 8, 2022

From 2017 through 2022, I assisted John J. Novak, Esq. in defending, Shark River Cleanup Coalition v. Township of Wall and the Estate of Fred McDowell, case no.: 3:17-CV08049. Mr. Novak and I defended the Estate of Fred McDowell. Shark River is directly on point with the issues surrounding the grant of easement to R&M Development.

In Shark River, Fred McDowell owned property located next to the Shark River. He gave an easement to Wall Township in order that Wall Township could install a sanitary sewer pipe on his property. The sewer pipe was not properly maintained. Under the Clean Water Act, if a private citizen finds a violation of the CWA, they are permitted to file a lawsuit after proper notice has been given.

An unidentified hiker on Mr. McDowell's property found that sand (which is considered a pollutant if caused by a manmade condition) was discharging into the Shark River from the sanitary pipe. The hiker reported the condition to the Shark River Cleanup Coalition who sent out notices to both McDowell as the property owner and the Township of Wall. Thereafter, Shark River Cleanup Coalition filed suit alleging a violation of the CWA.

It should be noted, there was never any discharge from the pipe itself. The allegation of the violation of the CWA arose from the dispersal of sand into the Shark River. See Shark River's brief, page 18-19, "The term 'discharge of a pollutant' and the term 'discharge of pollutants' each means (A) any addition of any pollutant to navigable waters from any point source. 33 U.S.C. § 1362(12). The term 'pollutant' means . . . sand . . . discharged into water. 33 U.S.C. § 1362(6)."

At the conclusion of the case, both McDowell and Wall Township filed motions for summary judgment seeking a dismissal of the case on the basis that the notices required under the CWA were inadequate and not in compliance with the CWA. The District Court agreed and dismissed the case. Plaintiff filed an appeal to the Third Circuit. The Third Circuit affirmed the dismissal.

Although Shark River was ultimately dismissed by summary judgment, Wall Township still had to remediate the pipe. That came at a cost. Wall Township also had to pay lawyers. At the conclusion of the case, Wall Township made an application as the prevailing party for attorney's fees permitted under the Clean Water Act. Wall Township's fees total \$177,000. The Estate of Fred McDowell, *which did not own the pipe*, but which was the property owner who

gave the easement also incurred fees and expenses. McDowell similarly made an application for fees. At the District Court level, fees total approximately \$80,000. The plaintiff filed an appeal to the Third Circuit. The Third Circuit affirmed the dismissal on other grounds. It also denied the request for fees which by that point, legal expenses for Wall Township were \$200,000. For McDowell, the fees were over \$100,000.

The merits of the case, i.e., whether or not there was a violation of the CWA were never reached. You should be aware that if the merits had been reached and if plaintiff had won, under the CWA, the plaintiff would have been entitled to attorney's fees from the party found to be liable. Unquestionably, those fees would have been hundreds of thousands of dollars. That means that if the plaintiff had won in Shark River, either Wall Township and McDowell or both would have had to pay their own attorneys' fees and the attorneys' fees of the plaintiff.

I brought the Clean Water Act and this case to the attention of John Gillespie, Esq. when the case was decided in July 2022 and again in September 2022. (See attached letter and email). Interestingly, Mr. Gillespie requested that Parker McCay's Environmental Unit prepare a legal memorandum regarding my letter. (See attached). Parker McCay's Environmental Unit agreed with me. (See attached). Where we parted ways was with our opinions as to the potential for exposure, a lawsuit and defense costs. Parker McCay said there was no liability because Hainesport Township does not own the pipe. What Parker McCay failed to state in their letter was that, even in the absence of liability, if a lawsuit is filed for the violation of the Clean Water Act, that lawsuit has to be defended. Unquestionably, Hainesport Twp will be named in any lawsuit as the property owner. The property owner is ALWAYS named in a lawsuit.

Note, McDowell did not own the pipe. Like Hainesport, he is the property owner who gave an easement. In fact, he did not willingly give an easement. The easement was taken by Wall Township through condemnation. Yet, McDowell was still named in the lawsuit as the property owner. It is the same argument made in Parker McCay's legal memorandum arguing that because Hainesport does not own the pipe, it has no exposure. It is a meritless argument. As previously stated, McDowell's legal fees were in excess of \$100,000.

In our case, Hainesport owns the property—just like McDowell. Hainesport gave an easement to R&M Development, no different than the easement given by McDowell to Wall Township. R&M Development will be required to form a Homeowner's Association. That Homeowner's Association presumably will be required to maintain the pipe. There is presently no maintenance agreement in place. Additionally, neither R&M nor Diamantis have been required to post a maintenance bond. Indeed, they have not even been asked to provide easement insurance. Thus, first, it is not likely that the HOA will maintain this pipe. It is not even known if the HOA will take possession of the pipe at the time the developer transfers the common elements to the HOA. Over 25 years of practicing law and having a significant percentage of my experience revolve around construction litigation and having done numerous cases involving transitions of common elements to HOAs, I can honestly state, I have never been involved in a case where a utility pipe not located on the HOA's property was considered common element and ownership was transferred to the HOA.

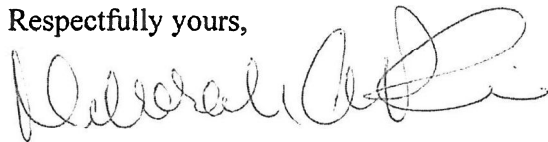
FYI, in a transition, the HOA will hire an engineer who will conduct an inspection of the common elements for design and construction defects and for recommendations as to reserves. It is not at all uncommon that lawsuits arise as the result of those types of transitions. I am presently involved in a huge lawsuit involving the transition of common elements to the HOA. My client constructed the bulkhead. That case is entitled: Harborside at Hudson's Ferry Condominium Association, Inc. v. Pulte Homes, et al., Docket No.: MON-L-304-21. A separate lawsuit was also filed by the owner of the marina against my client: Navesink Capital Partners and Sandy Hook Developers v. Albert Marine and Crane Materials, Inc., Docket No.: MON-L-1970-23. Again, I have never heard of a utility pipe located on other property being transferred as common element.

Secondly, it is not likely that an HOA consisting of 41 homeowners will have hundreds of thousands of dollars to perform remediation if needed and defend any potential lawsuit. They also will not have the funds to defend and indemnify Hainesport in any lawsuit. Further, any general liability insurance (different than easement insurance) obtained by the HOA will not cover the pipe. GL insurance provides insurance coverage for property which is owned by the insured. The pipe is not located on property owned by any proposed HOA. The pipe is on property owned by Hainesport. In the State of New Jersey, property owners have a non-delegable duty to maintain. Even if they enter into a defense and indemnification agreement, that does not discharge the duty to maintain. If the HOA does not have the means or ability to remediate, Hainesport Township taxpayers will become responsible for this pipe, any remediation and will become responsible for any lawsuit alleging a violation of the CWA.

In short, the Hainesport Township Committee has granted an easement to a developer who will leave the site, presumably attempt to turn the maintenance of the pipe to an HOA which does not yet exist. The HOA will consist of only 41 property owners. That HOA will most likely not have sufficient assets to maintain the pipe, perform any remediation for any pipe failures—including the discharge of sand (considered a pollutant under the CWA) into the Rancocas Creek, defend any lawsuits for violations of the CWA or defend and indemnify Hainesport Township. In fact, as an experienced lawyer, I can assure you, if there is a lawsuit, there is nothing to stop the HOA from filing for bankruptcy and escaping any financial responsibility for that pipe. The Township Committee has done absolutely nothing to protect the interests of Hainesport Township residents and taxpayers.

For those reasons, and for additional reasons to be placed on the record, I object and respectfully request that this letter and the attachments be made as an exhibit.

Respectfully yours,

A handwritten signature in dark ink, appearing to read 'Deborah A. Plaia', with a stylized flourish at the end.

Deborah A. Plaia, Esq.

Enclosure:



Memorandum

Date: September 8, 2022
To: John C. Gillespie, Esq.
From: Robert G. Lamilla, Esq.
Re: Hainesport Township- Clean Water Act Letter

Background

The Township received a letter on July 26, 2022 from Deborah A. Plaia, Esq., a resident of Hainesport Township (the "Township") in the Creekview development. The underlying subject of the letter is the development of houses in the Township and the developer's plan to obtain an easement through land owned by the Township for the installation of a stormwater pipe, which will ultimately discharge into the Rancocas Creek. The Township has conditionally approved this plan to deal with the stormwater, provided that the developer obtain all relevant permits.

The letter intimated that the Township may be sued under the Clean Water Act ("CWA"), 33 U.S.C. §1251, et seq., if a discharge occurs from the outfall pipe and into the Rancocas Creek.

Question Presented

Does the developer's plan to run a stormwater pipe through an easement on Township property expose the Township to liability under the CWA?

Discussion

The CWA in New Jersey is administered by the New Jersey Department of Environmental Protection under the Water Pollution Control Act ("WPCA") N.J.S.A 58:10A-1, et seq. Under the WPCA, persons are prohibited from discharging any pollutant into the waters of the State without a valid New Jersey Pollutant Discharge Elimination System ("NJPDES") permit.

The letter is correct in noting that without a proper permit, the "discharger" can face liability under the CWA and WPCA through an enforcement suit by the DEP or EPA as well as through citizen suits brought pursuant to 33 U.S.C. § 1365(a)(1). However, in this case, the Township is not a discharger, as the Township is merely allowing a stormwater outfall pipe to be installed within an easement and the approval of said pipe is conditioned upon the developer obtaining the proper permits from the DEP. The Township is not planning on taking ownership of the stormwater pipe nor is the Township planning to discharge into the pipe. Therefore, the Township will not incur liability as a "discharger" since the Township will only have a properly permitted pipe passing

through its property. By itself, having a pipe running through one's property does not give rise to liability under the CWA or WPCA.

For reference, liability under the CWA requires the establishment of following four elements:

1. the defendant is a "person" under the CWA;
2. the defendant is adding pollutants to the waters of the United States or State;
3. those pollutants are being released from a "point source" such as an outfall pipe; and
4. the defendant either does not have a permit for the discharge of pollutants from the point source, or the defendant does have a permit, but is violating the permit.

See 33 U.S.C. §§ 1311, 1342, 1362.

Additionally, the Township should already have a NJPDES MS4 permit as a Tier A municipality. The MS4 permit authorizes the discharge of stormwater from small municipal separate storm sewer systems.

Based on the circumstances present here, the Township does not appear to have liability under the CWA by virtue of a stormwater pipe passing through an easement on Township property.

Fw: Opra Request

From: Deborah Plaia (daplaia@yahoo.com)

To: jgillespie@parkermccay.com

Date: Thursday, September 8, 2022 at 09:42 AM EDT

Good morning Mr. Gillespie:

I hope you are doing well! I saw that the Land Use Board had my letter re the Clean Water Act listed on the Agenda along with a Legal Memo I assumed you as the managing partner had your associate Mr. Lamilla do. I just got the Memo wherein the conclusion reached was that Hainesport is not a discharger and merely allowing a stormwater outfall pipe to be installed within the easement. Thus, it would not incur liability.

I am writing to you as a professional courtesy to bring to your attention a case which Mr. Novak just won in the 3rd Circuit. The case was brought under the Clean Water Act. Mr. Novak represented the Estate of Fred McDowell (the property owner). I wrote the briefs at the District Court level and for the appeal taken by the plaintiff in the 3rd Circuit. The case was about the deficiencies in the plaintiff's notice. The District Court found that the notice did not meet the statutory requirements. The 3rd Circuit affirmed, but for a different reason. It found that the plaintiff's notice failed to specifically identify the specific violation. I bring this to your attention because the property owner who gave the easement to the township and who was not the alleged discharger, in this case the Estate of Fred McDowell, was still sued!

The case is entitled Shark River Cleanup Coalition v. Wall Township and the Estate of Fred McDowell. (See attached). Fred McDowell owns a huge parcel of land in Wall Township, approximately 485 acres of wooded land. The Shark River runs through the property. In 1988, Wall Township, through a Declaration of Taking, acquired an easement of approximately 3.15 miles in length and 25 feet wide over the northern portion of the property. A pumping station and a sanitary sewer force main was constructed thereon.

In 2015, a hiker noticed soil erosion and reported it to the Shark River Cleanup Coalition. The Coalition retained counsel who sent out letters to Fred McDowell advising him of the problem. Fred McDowell requested more information, but no response was forthcoming. Letters were also sent to Wall Township. Again, plaintiff never responded. No one on the defense side was able to locate the alleged area of discharge, initially. The site was finally located after suit was filed.

Plaintiff filed suit and the case was litigated. After the District Court dismissed on summary judgment, both Wall Township and the Estate of Fred McDowell moved for attorney's fees. Wall Twp incurred

approximately \$178,000 which included experts. Fred McDowell incurred approximately \$82,000 in fees. You can find our motion for fees filed with the District Court on Pacer under case number 3:17-cv-08049.

Our motions for fees prompted plaintiff to seek an appeal with the 3rd Circuit which affirmed the District Court.

So, even though Hainesport is not the discharger, they can still be sued. If Hainesport loses, not only do they incur fees and expenses for defending, they may have to pay the plaintiff's attorneys fees and expenses.

Deborah A. Plaia, Esq.
50 Bancroft Lane
Hainesport, NJ 08036
Tel: 609-206-1861
Fax: 609-267-7869

E-mail: daplaia@yahoo.com

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----- Forwarded Message -----

From: Paula Kosko <pkosko@hainesporttownship.com>
To: Deborah Plaia <daplaia@yahoo.com>
Cc: Tara Wicker <twicker@hainesporttownship.com>
Sent: Thursday, September 8, 2022 at 09:16:01 AM EDT
Subject: RE: Opra Request

Good Morning Deborah:

Please find attached the document you requested.

Best,

Paula Kosko, MPA/RMC
Administrator/Municipal Clerk
Hainesport Township
1401 Marne Highway
PO Box 477
Hainesport NJ 08036

(609) 267-7114 - Phone

(609) 261-4762 - Fax

From: Deborah Plaia <daplaia@yahoo.com>
Sent: Wednesday, September 07, 2022 6:09 PM
To: Paula Kosko <pkosko@hainesporttownship.com>
Subject: Opra Request

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Good evening Paula:

Please see attached OPRA request. Thank you.

Deborah A. Plaia, Esq.

50 Bancroft Lane

Hainesport, NJ 08036

Tel: 609-206-1861

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Memo re CWA liability for Township Storm Water Easement Dishcharge July 28 2022.pdf

40.8kB



Courts decision.pdf

223.5kB



Entry of Judgment and Order.pdf

722.3kB

Deborah A. Plaia, Esq.

ATTORNEY-AT-LAW

50 BANCROFT LANE
HAINESPORT, NJ 08036

609.206.1861 (TEL)
EMAIL: daplaia@yahoo.com

July 26, 2022

David C. Frank, Esq.
Attorney At Law
126 Gilbert Road
Bordentown, NJ 08505

Re: R&M Development, Notice of Hearing

Subject: Clean Water Act

Dear Mr. Frank:

I am a resident of the Creekview development and a member of the Homeowner's Association. This letter supplements my letter of July 25, 2022 and is intended to bring to your attention the Clean Water Act.

After drafting my letter of July 25, 2022, I thought about a case in which I, along with Mr. Novak, are presently involved wherein Shark River Cleanup Coalition is suing the Township of Wall and the property owner under the CWA. In your Notice of Hearing, you stated that the new design calls for the installation of a pipe and outfall structure conveying stormwater from the previously approved basin ultimately to the Rancocas Creek. Under the Clean Water Act, your client is required to have permits and meet certain design criteria. Should your client fail to obtain the proper permits and meet the design criteria, your client, along with the Township of Hainesport can be sued under the Clean Water Act. Any private citizen may sue. Anyone pursuing such litigation is entitled to recover attorneys' fees.

FYI: Congress enacted the CWA [Clean Water Act] to 'restore and maintain the chemical physical and biological integrity of the Nation's waters.' 33 U.S.C. § 1251(a). Towards that end, the CDWA prohibits the discharge of any pollutant, including dredged or fill material, by any person into navigable waters unless authorized by an appropriate permit. Altamaha Riverkeeper, Inc. v. U.S. Army Corps of Engineers, 309 F. App'x 355, 356 (11th Cir. 2009) (citing 33 U.S.C. § 1311(a)). Pursuant to section 402 of the CWA (TWA § 402'), parties that discharge pollutants to navigable waters must obtain a permit under the National Pollutant Discharge Elimination System (NPDES) program, which imposes effluent limitations and other water quality standards, from either the Environmental Protection Agency (EPA) or an EPA-approved state permit program. 33 U.S.C. § 1342. Black Warrior River-Keeper, Inc. v.

Drummond Co., 387 F.Supp. 3d 1271, 1278 (N.D. Ala. 2019). The CWA authorizes citizen enforcement actions against any person "alleged to be in violation" of an effluent limitation or standard under the CWA or an administrative order by the EPA or a state. 33 U.S.C. § 1365(a)(1). The Act requires plaintiffs to give notice of the alleged violations at least sixty (60) days prior to commencing a citizen suit. Id. § 1366(b)(1). Courts may award civil penalties and grant equitable relief. Id. §§ 1365(a), 1319(d). To establish a CWA violation, plaintiffs must show that there was a discharge of a pollutant into waters of the United States from a point source without a NPDES permit. State of Ga. V. City of East Ridge, 949 F.Supp. 1571 (N.D. Ga. 1996); Parker v. Scrap Metal Processors, Inc., 386 F.3d 993, 1014 (11th Cir. 2004).

If your client does not have the proper permits and design criteria, your client is exposing itself and the Township of Hainesport to a lawsuit. Thank you.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Deborah A. Plaia", written in a cursive style.

Deborah A. Plaia, Esq.

cc: John Gillespie, Esq.
Hainesport Joint Land Use Board