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February 12, 2018

*Via E-Mail: wentworthe@hingham-ma.gov
And First Class Mail*

Emily Wentworth, Senior Planner / Zoning Administrator
Town of Hingham
210 Central Street
Hingham, MA 02043

**Re: River Stone
Viking Lane, off of Ward Street, Hingham, MA**

Dear Ms. Wentworth:

At the most recent hearing before the Town of Hingham Zoning Board of Appeals, additional questions were raised regarding the Applicant's title to the 40' right of way connecting Viking Lane to Autumn Circle through Lots 13 and 14 of the Autumn Circle Subdivision.

The Applicant's title derives from easement rights. At the January 11, 2018 hearing, there was discussion about whether the Board had jurisdiction to determine title disputes. The Applicant agreed with the Chair of the Board that the proper resolution of any dispute regarding title to the 40' right of way, at this level, would be a condition on the Comprehensive Permit. As more fully set forth in my letter dated February 1, 2018, complex title disputes such as this one are outside of the jurisdiction of the Board. The Applicant only needs to demonstrate a colorable claim of title before the Board. See Meadowbrook Estates Ventures, LLC v. Amesbury Bd. of Appeals, No. 02-21, slip op. at 17 (Mass Housing Appeals Committee Dec. 12, 2006) ("we have long held that even where not simply access but actual control of the site is at issue, the developer need only establish a colorable claim of title, and that adjudication of complex title disputes or similar matters are best left to the expertise of the courts").

The forgoing notwithstanding, we take this opportunity to set forth the general basis for the Applicant's rights to the 40' right of way for the anticipated connection between Viking Lane and Autumn Circle.

First, the 40' right of way from Autumn Circle, now a public way, to the land controlled by the Applicant, is clearly shown on the approved subdivision plan, Plan of Lots Autumn Circle Hingham, Mass. revised May 10, 1960 and approved by the Hingham Planning Board June 8, 1960 (the "Approved Plan"). The then applicable Rules and Regulations of the Planning Board contain a condition for approval of a subdivision plan as follows: "Provision shall be made for the proper projection of ways, if adjoining property is not subdivided". The Approved Plan is recorded at the Plymouth County Registry of Deeds in Plan Book 11, Page 1053. The current and prior owners of Lots 13 and 14 took title subject to the approved subdivision, and all deeds in the chain of title reference the Approved Plan with the Easement thereon for description of the properties. The property owners received fair notice of the existence of the Easement as a result of the reference in their deeds to the subdivision Plan. Additionally, the town by requirement and by consistent reference to the ROW in the planning process acknowledged the ROW and confirmed that with reference to the taking for each abutter and for Viking Realty and inclusion of the ROW of Viking in the recorded plan of taking.

Second, the Deed for Lot 14 dated June 22, 1961 and recorded at the Plymouth County Registry of Deeds in Book 2871, Page 435 expressly references the right of way. The Deed is from Hingham Estates, Inc., one of the developers of the subdivision, to Lawrence Pickard and Ruth Pickard. The Deed conveys Lot 14 "Together with and subject to a right of way over a strip of land 40 feet wide as shown on [the Approved Plan] extending from Autumn Circle to land of Viking Realty Company, Inc. as shown on said plan, one half of said strip being part of Lot #13 on said plan and the other half being part of said Lot #14 hereinbefore mentioned." The current deed to Lot 14, recorded in Book 10028, Page 159, is subject to the same right of way using the following express language: "subject to and with the benefit of a right of way and drainage easement set forth in a deed of Hingham Estates, Inc. to Lawrence Pickard dated July 31, 1961" and subject to and with benefit of "easements and rights of way shown" on subdivision plan.

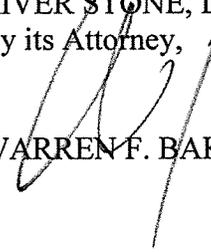
Third, the Town of Hingham took land on April 21, 1964 from various lot owners in Autumn Circle and from Viking Realty Company, Inc. The taking is recorded in Book 3107, Page 400. Specifically, the Town took the layout of Autumn Circle for public highway purposes. The Town also took a drainage easement in all of the 40' right of way. The taking did not affect the land of Viking Realty Company, Inc. in any respects other than the interest of Viking in the 40' way. Accordingly, the taking recognized the legal interest of Viking in the 40' right of way, and the Applicant has the legal benefit of that interest (subject of course to the drainage easement) through various conveyances and the operative purchase and sales agreements.

Emily Wentworth
Senior Planner: Zoning/Special Projects
February 12, 2018
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Please let me know if the Board is requesting anything further on this matter.

Respectfully yours,

RIVER STONE, LLC
By its Attorney,



WARREN F. BAKER

WFB:amg

Cc: Susan Murphy, Esq.
Joseph M. Fisher, Vice-Chair, and members of the Zoning Board of Appeals
River Stone, LLC