

September 6, 2016

**Via Email and Federal Express**

Town of Medway  
Zoning Board of Appeals  
195 Village Street  
Medway, MA 02053  
Attn: Chairman David Cole, Esquire



**Re: NOTICE OF PROJECT CHANGE  
Timber Crest Estates Comprehensive Permit Application**

Dear Chairman Cole:

Timber Crest, LLC (“Timber Crest”) recently engaged me to assist with its revised project plans for the Timber Crest Estates comprehensive permit subdivision. Because Timber Crest’s revised plans call for the inclusion of an additional parcel in the development, Timber Crest has submitted a “Notice of Project Change” to MassHousing, pursuant to 760 CMR 56.04(5), in order to confirm that Timber Crest’s project eligibility letter remains applicable to the revised proposal. I have enclosed a copy of the Notice of Project Change for the Board’s review pursuant to Section 56.04(5). MassHousing will render a determination within fifteen (15) days. In order to keep the record before the Board clear and precise, please also accept this correspondence as a formal Notice of Project Change for the Board’s purposes in the context of the local hearing process as well.

I have been in communication with Medway Town Counsel to discuss a plan for moving forward with the revised plans. In particular, I have assured Town Counsel that Timber Crest is more than willing to extend any deadlines applicable to the Board’s review of Timber Crest’s application, in light of this latest plan submission. The 180-day deadline described at 760 CMR 56.05(3) is only consequential in the event a zoning board unnecessarily prolongs or otherwise manipulates the local hearing process for the purpose of delay. It is my understanding that the Board and Timber Crest have worked productively to conduct a fair and expeditious review of Timber Crest’s plans; therefore, the 180-day timeline is not applicable to the present situation and Timber Crest is willing to confirm whatever reasonable extensions the Board may require.

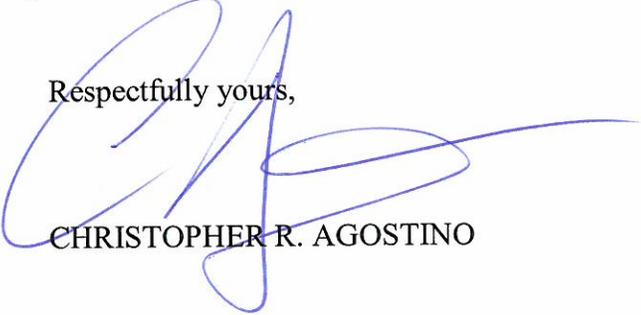
Given the addition of the “Holliston Parcel” to the development site, Timber Crest will provide new statutory notice pursuant to G.L. c. 40A, § 11, in order to ensure that all interested parties have adequate notice of Timber Crest’s latest plan set and an opportunity to voice any concerns. It is important to point out that the notice requirements under G.L. c. 40A, § 11, which are incorporated under G.L. c. 40B, §§ 20-23, are not “jurisdictional” in nature, insofar as

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defective or insufficient notice under the law does not invalidate or otherwise compromise a pending application. Rather, in relevant cases the question becomes whether defective or inadequate notice actually prejudiced the rights of any third party. See Kasper v. Bd. of Appeals of Watertown, 3 Mass. App. Ct. 251 (1975); see also Kramer v. Zoning Bd. of Appeals of Somerville, 65 Mass. App. Ct. 186 (2005). To be sure, the remedy for defective notice is simply a remand for additional hearings in which adequate notice is provided. In this instance, Timber Crest plans to provide duplicative and supplementary statutory notice to ensure that all parties have an opportunity to be heard before the public hearing is closed. Therefore, where Timber Crest has sent actual notice and all interested parties have an opportunity to be heard and to protect their rights, there can be no finding of actual prejudice under the law.

I look forward to discussing these and other procedural implications of Timber Crest's revised project layout, as well as any other questions or concerns the Board may have, at the hearing tomorrow evening. Thank you for your assistance in this matter.

Respectfully yours,



CHRISTOPHER R. AGOSTINO

CRA:cb

enclosures

cc: Timber Crest, LLC (via email only)  
Outback Engineering, Inc. (via email only)  
Paul Cusson (via email only)