

**STATE OF NEW YORK  
COUNTY OF DUTCHESS  
TOWN OF LA GRANGE**

**TOWN BOARD MEETING  
December 11, 2013**

- Present:** Supervisor Joseph Luna  
Councilman Edward Jessup  
Councilman Alan Bell
- Absent:** Councilman Gary Polhemus  
Councilman Andrew P. Dyal
- Recording Secretary:** Christine O'Reilly-Rao, Town Clerk
- Others Present:** Ron Blass, Esq. Van De Water & Van De Water  
Diana Campaglione, Environmental Consultants

The regular meeting of the Town Board was held on Wednesday, December 11, 2013, at 120 Stringham Road, LaGrangeville, New York. Mr. Luna called the meeting to order at 7:00 p.m. The Town Clerk led the flag salute.

Mr. Luna asked for a motion to accept the minutes for November 13, 2013. Councilman Jessup moved to do so, seconded by Councilman Bell. The motion carried unanimously.

Mr. Luna asked for a motion to accept the monthly reports for November 2013. Councilman Jessup so moved, seconded by Councilman Bell. The motion carried unanimously.

• Building, Zoning, Public Works & Planning	Total
• Highway Department	Total \$300.00
• Justice Egitto (incl. State Share)	Total \$17,237.00
• Justice O'Hare (incl. State Share)	Total \$449.00
• Recreation	Total \$1,052.00
• Town Clerk	Total \$1,166.48

**PUBLIC HEARING**

Mr. Luna stated that the Public Hearing for a proposed Local Law on a moratorium on drive-throughs in Town Center would have to be re-scheduled due to a glitch in the publication of the Notice of Public Hearing.

Mr. Luna asked for a motion to re-set the Public Hearing for January 8, 2013 at 7:30 pm. (SEE ADDENDUM)  
Councilman Bell moved to do so, seconded by Councilman Jessup. The motion carried.

## **Correspondence**

Supervisor Luna asked for a motion to accept the resignation letter of Senior Court Clerk, Sandra Dillon, who has served the Town for the past 30 years.

Councilman Jessup, seconded by Councilman Bell moved to acknowledge the resignation with regret, adding that they appreciated Ms. Dillon's service.

## **Agenda Items**

**RESOLUTION:** Tax Certiorari Settlement for 266 Titusville Road (SEE ADDENDUM)

Mr. John Lyons, conflict attorney for the Town, explained to the Board that the resolution before them was drawn up to facilitate referral of the ODA for the Whispering Pines Subdivision to the Planning Board for review and recommendations.

**RESOLUTION:** Whispering Pines (SEE ADDENDUM)

The Building Inspector requested approval to waive the sign permit fee for a temporary sign for the Noxon Road PTA, which is a not-for-profit organization.

Councilman Jessup moved to approve the request, seconded by Councilman Bell. The motion carried unanimously.

Justice O'Hare requested approval to have Carol Harklerode fill in for Sandra Dillon at the Court office for December 5,6,12 and 13.

Councilman Bell moved to approve the request, seconded by Councilman Jessup. The motion carried unanimously.

Justice O'Hare requested approval to close the Court office on Monday, December 9, 2013 from 11:30 am to 2:30 pm in order for the Clerks to attend the Dutchess County Clerks Luncheon.

Councilman Jessup moved to approve the request, seconded by Councilman Bell. The motion carried unanimously.

Supervisor - Elect Bell requested permission to attend the Newly Elected Officials 2014 Training on January 15<sup>th</sup> through the 17<sup>th</sup> in Albany. The cost will be approximately \$584.00.

Councilman Bell moved to approve the request, seconded by Councilman Jessup. The motion carried unanimously.

Highway Superintendent Kelly requested a transfer of funds in the amount of \$6,000.00 from General Repairs Contractual # 5110.4 to Machinery Contractual # 5130.4.

Councilman Bell moved to approve the request, seconded by Councilman Jessup. The motion carried unanimously.

Highway Superintendent Kelly requested a transfer of funds in the amount of \$12, 500.00 from Snow Removal Personnel # 5142.1 to Machinery Personnel # 5130.0.

Councilman Jessup moved to approve the request, seconded by Councilman Bell. The motion carried unanimously.

**Agreement: Expenditure of Highway Monies (SEE ADDENDUM)**

Councilman Jessup moved to approve signing the agreement, seconded by Councilman Bell. The motion carried unanimously.

Mr. Luna asked for a motion to expend LPI monies for a chlorination system for Lagrange Park on Noxon Road in an amount not to exceed \$20,000.00. (SEE ADDENDUM)  
Councilman Jessup, seconded by Councilman Bell moved to approve the expenditure.

Councilman Bell moved to authorize signing the NYS DOT Right of Way Assignment of Claim Release. Councilman Jessup seconded the motion and it carried unanimously.

Mr. Luna asked for a motion to accept a road use policy and procedures for events requiring a police presence. (SEE ADDENDUM)  
Councilman Jessup so moved, seconded by Councilman Bell. The motion carried unanimously.

The Building Inspector requested Town Board approval for the reimbursement of stolen and damaged equipment. The losses were incurred during renovations to the Town Hall.  
Councilman Jessup moved to approve the reimbursement, not to exceed \$900.00.  
Councilman Bell seconded the motion and it carried unanimously.

The Comptroller requested Town Board approval of budget transfers and amendments. (SEE ADDENDUM)  
Councilman Bell moved to approve the requests, seconded by Councilman Jessup. The motion carried.

The Building Inspector requested acceptance of Soil Erosion Control Bonds in the amount of \$1,500.00 for grid numbers 6361-03-1604000; 146 Ridgeline Drive, Lot 77 and 6361-03-228371; 35 Somerset Drive, Lot 82.  
Councilman Jessup moved to approve the request, seconded by Councilman Bell. The motion carried unanimously.

**Committee Reports**

**Water and Sewer**

No Report

**Recreation**

No Report

**Open Space**

No report

## **Highway**

No report

## **Town Attorney**

Mr. Blass stated that he had drawn up a resolution to address guidelines for public improvements and a performance security for the Harvest Ridge Subdivision. (SEE ADDENDUM)

## **Town Board Comment**

No comments

## **Environmental Consultants**

Diana Campaglione stated that work would be done on the water main at the intersection of Noxon Road and Titusville Road on December 12<sup>th</sup>. Most of the businesses in the area had been contacted about the disruption to service. She advised the Clerk that EC would update the Town as to the status of the situation as work progressed.

## **Public Comment**

Councilman Jessup moved to open the Public Comment, seconded by Councilman Bell. The motion was carried by all.

A student from Arlington High School asked the Board if everything on the agenda had passed.

Mr. Luna replied in the affirmative.

Gary Beck Sr. stated that he was appalled that the Town would be using tax payers dollars to reimburse the Building Inspector for his lost and damaged equipment. He stated that no police report had been filed regarding the matter. He suggested that a claim should be filed with Mr. Mc Laughlin's homeowner's policy after a police report is filed. He added that the contractors who damaged the equipment should be responsible for the reimbursement.

Mr. Jessup stated that no claim could be filed with homeowner's insurance since the equipment had been used in a business capacity.

A brief discussion followed.

Mr. Luna stated that Mr. Mc Laughlin had worked very long and hard on the renovations for no compensation and that the reimbursement was the fair thing to do.

Councilman Bell moved to close the Public Comment, seconded by Councilman Jessup. The motion was carried by all.

Councilman Bell made a motion to adjourn the meeting to Executive Session at 7:26 pm, to discuss personnel matters for Justice Court and Recreation as well as salaries. The motion was seconded by Councilman Jessup. The motion carried.

The Board returned at 9:15 pm. Councilman Jessup, seconded by Councilman Bell moved to adjourn. The motion carried unanimously.

Respectfully Submitted,



Christine O'Reilly-Rao  
Town Clerk

#### ADDENDUM

- Resolution: Public Hearing for a Proposed Moratorium on Drive - Throughs in the TC-B District
- Tax Certiorari: 266 Titusville Road
- Resolution: Whispering Pines Residential Subdivision
- Agreement; Expenditure of Highway Monies
- LPI Monies for La Grange Park Chlorination System
- NYS DOT Right of Way Assignment of Claim Release
- Road Use Policy & Procedures
- Budget Transfers and Amendments
- Resolution: Harvest Ridge Subdivision

**RESOLUTION**

Councilman Bell re-introduced, and Councilman Jessup seconded, the following local law for the Town of LaGrange, to be known as Local Law No. 1 of the Year 2014, and entitled A LOCAL LAW OF THE TOWN OF LAGRANGE, DUTCHESS COUNTY, NEW YORK, AMENDING CHAPTER 240, "ZONING", OF THE LAGRANGE TOWN CODE TO ADD A NEW SECTION 240-106 ENTITLED "REGULATION FOR AN INTERIM PERIOD OF DEVELOPMENT AND USE OF DRIVE-THROUGH SERVICE FACILITIES WITHIN THE TC-B ZONING DISTRICT".

Section 1. BE IT ENACTED by the Town Board of the Town of LaGrange that Section 240-106, entitled "REGULATION FOR AN INTERIM PERIOD OF DEVELOPMENT AND USE OF DRIVE-THROUGH SERVICE FACILITIES WITHIN THE TC-B ZONING DISTRICT" is added to Chapter 240, "Zoning", of the Town Code as follows:

Section 240-106. REGULATION FOR AN INTERIM PERIOD OF DEVELOPMENT AND USE OF DRIVE-THROUGH SERVICE FACILITIES WITHIN THE TC-B ZONING DISTRICT

A. LEGISLATIVE INTENT AND FINDINGS

Consistent with its comprehensive plan, and in 2003, the LaGrange Town Board enacted legislation establishing standards for the Town Center Business District "TC-B" and the Town Center Residential District "TC-R". The use and design standards for

Town Center were established to create walkable, highly integrated, multi-functional public and private spaces through a network of connected uses, streets, and sidewalks. A primary objective of the TC-B District was to create a traditional main street environment. The TC-B District standards called for new buildings to have 2-3 stories, with retail on the ground floor and office or residential uses above.

Design principles for the TC-B District included:

- (1) establishing a coordinated image for the Town Center;
- (2) bringing buildings up to sidewalk and street edges;
- (3) promoting a mix of commercial and residential uses in multi-story buildings;
- (4) prominent positioning of civic buildings and central green spaces;
- (5) promoting pedestrian activity through a safe and walkable environment;
- (6) establishing narrow tree-lined streets to slow traffic;
- (7) minimizing visual impacts of the automobile;
- (8) creating an interconnected street system for both pedestrians and vehicle traffic; and
- (9) encouraging on-street parking and parking areas shared among nearby uses.

The TC-B District regulations encourage a mixture of retail uses, restaurants, services, work places, entertainment and civic

facilities, and moderate to high density housing in a compact pattern that balances automobile access with strong pedestrian elements to create a walkable environment.

In furtherance of a pedestrian-centric theme, the regulations envision restaurants able to operate outdoor cafes in front of and along public sidewalks, as well as the facilitating the enjoyment by retail businesses of sidewalk display of store merchandise. There is a goal of establishing frequent store entrances along town center streets to maintain the retail continuity and viability. There was specific opportunity for the relaxation of height and setback requirements landmark civic buildings, and for pedestrian-oriented places such as plazas or outdoor eating areas.

On-street parking was encouraged, as well as the placement of off-street parking areas behind buildings as opposed to locating them in front yards between business establishments and streets.

In furtherance of these legislative purposes (particularly the promoting of pedestrian activity in a safe and walkable environment of traditional main street design including interconnected streets systems, on-street parking, and public spaces for civic buildings and green space), the 2003 TC-B District regulations prohibited drive-through windows and lanes (Town Code, Section 240-35[H][2][a][8]). The policy was to increase the range of pedestrian activity and to reduce

consumerism in reliance upon, and from within, vehicles.

In 2012, in the context of establishing special permit regulation of drive-thru facilities in the town-at-large (See Town Code Section 240-70.1), the municipality amended Section 240-35(H) (2) (a) (8) to prohibit drive-through facilities in the TC-B Zoning District for restaurants or fast-food restaurants. The amendment allowed potential establishment of drive-through facilities for other commercial uses in the TC-B district, such as banks and pharmacies, subject to special permit review by the Planning Board.

The Town Code's definition of fast-food restaurant is as follows:

"Any premises where the principal business is the preparation and retail sale of food and beverages in a ready-to-consume state where two or more of the following procedures are followed: the food is served in paper, plastic, or other similar disposable containers; the customer orders the food at a central point on the premises and the food is distributed to the customer at a central distribution point within the building or at a drive-in window facility, or both; the food is consumed within the building, at a dining area located outside the building, in motor vehicles parked on the premises, or off the premises. Without limitation of the foregoing definition and solely for illustrative purposes, it is the intention of this definition to

include franchise and nonfranchise restaurants commonly selling pizza, doughnuts, hamburgers, fried chicken, fired fish, tacos and sandwiches using the procedures set forth herein.”

Reliance upon the current definition of fast-food restaurant within the zoning law’s prohibition of drive-through service facilities in the TC-B district raises issues of interpretation not anticipated by the legislative body at the time of the 2012 drive-through amendment, a purpose of which was to address the sale and distribution of ready-to-consume foods or beverages in the TC-B district from drive-through facilities. The issue of interpretation is (a) whether a fast-food restaurant or operation needs to be a distinct principal use of premises in the TC-B zone before the drive-through proscription would apply, or (b) whether the drive-through proscription covers any commercial or retail establishment’s sale and dispensing of ready-to-consume food or beverage items regardless of whether it is asserted that such activity will be an accessory or subordinate aspect of the use. This issue of interpretation is particularly problematic within the TC-B District, because its regulations allow for multiple uses on the same lot (Section 240-35[H][1][b][2]).

Additionally, it is apparent that commercial trends for various retail establishments, which may or may not fall into the category of restaurants or fast-food restaurants, either associated with or independent of the sale of fuel for vehicles, include the sale and dispensing of ready-to-consume foods or

beverages, either with or without the incorporation of fast-food franchising, thereby creating the dynamic of potential multiple commercial uses and users at retail premises and the challenge of ascertaining which user or which activity is principal, and indeed whether the use of a drive-through facility itself is, or may become, principal. This fluid and adjustable mixture of commercial activity and users threatens, absent clarifying legislative amendments, to interfere with zoning administration and to thwart the policy of the municipality to proscribe the dispensing of ready-to-consume foods or beverages from a drive-through service facility in the TC-B District, whether based on a franchise model or not, in order to preserve and to promote the Town Center land use goals which are set forth above.

In order to maintain the goals and standards underlying its Town Center land use plan, The Town of LaGrange requires the time and opportunity to amend this Chapter to develop more particular standards governing use and development of drive-through service facilities within the Town Center-Business (TC-B) zoning district. It is anticipated that these activities may culminate in significant legislative revisions.

Interim development of drive-through facilities in the TC-B zoning district, or the issuance of approvals for such development, which are inconsistent with the current purposes or future result of this legislative revision process would negate or circumvent the process and, thus, would be contrary to the

public interest and welfare.

In order to prevent land use development which may be inconsistent with the results of this legislative exercise, appropriate interim measures should be taken in the form of a temporary moratorium on review and approval of drive-through service facilities within the TC-B zoning district.

B. SCOPE OF COVERAGE

1. Chapter 240 of the Code of the Town of LaGrange (the local law entitled "ZONING") shall be superseded, only where inconsistent herewith, to the extent that in the TC-B zoning district:

a) No application for issuance of special use permits for drive-through service facilities pursuant to Section 240-70.1 or 240-71 of the LaGrange Town Code for properties within the TC-B zoning district shall be accepted by the officers or boards authorized to do so under the provision of local laws of the Town relating to such applications.

b) No filed and pending applications for issuance of special use permits for drive-through service facilities pursuant to Section 240-70.1 or 240-71 of the LaGrange Town Code for properties within the TC-B zoning district shall be processed, reviewed or granted by the officers or boards authorized to do so under the provisions of local laws of the Town relating thereto.

C. EXCLUSIONS

Notwithstanding the foregoing provisions hereof, this

local law shall not apply to:

1. Certificates of occupancy for any and all construction pursuant to building permits or construction permits issued prior to the effective date of this local law; or

2. Renovation or repair of any structure or accessory site development devoted to any lawfully existing drive-through service facility in the TC-B district.

D. PENALTIES

Any person or entity that shall undertake, or permit, the use of, development upon, construction upon, or alteration of any lands or buildings in violation of the provisions of this local law, or shall otherwise violate any of the provisions hereof, shall:

1. Be guilty of an offense, punishable by a fine not exceeding two hundred and fifty dollars (\$250.00) or imprisonment for a period not to exceed 15 days, or both. Each week's continued violation shall constitute a separate offense, and

2. Be subject to appropriate action or proceedings by the proper authorities of the Town to enjoin, correct, or abate any violation(s).

E. VARIANCES

The Town Board is authorized to accept and to review applications for variances from application of the provisions of this local law, in the case of unnecessary hardship to the applicant for a variance as defined within Town Law § 267-

b(2)(b).

F. VALIDITY

The invalidity of any provisions of this section shall not affect the validity of any other part of this section which can be given effect.

G. EFFECTIVE DATE AND DURATION

This section shall remain in force and effect for a period of 180 days after the effective date of the local law adopting it.

Section 2. This local law shall take effect immediately upon filing with this state's Secretary of State.

Supervisor Luna advised the Town Board that, pursuant to the Municipal Home Rule Law of the State of New York, it will be necessary to hold a public hearing upon this re-introduced local law. He offered the following resolution which was seconded by Councilman Bell, who moved its adoption:

WHEREAS, on December 11, 2013, Councilman Bell re-introduced this local law for the Town of LaGrange, to be known as "Town of LaGrange Local Law No.1 of the Year 2014, AMENDING CHAPTER 240, "ZONING", OF THE LAGRANGE TOWN CODE TO ADD A NEW SECTION 240-106 ENTITLED "REGULATION FOR AN INTERIM PERIOD OF DEVELOPMENT AND USE OF DRIVE-THROUGH SERVICE FACILITIES WITHIN THE TC-B ZONING DISTRICT".

WHEREAS, this local law in this form was previously introduced by the Town Board by resolution adopted on November 13, 2013, but a notice of public hearing was not published for the date of December 11, 2013 which was designated as the date for public hearing for the local law.

WHEREAS, due to the non-publication of the initial public hearing notice, this local law is being re-introduced for the purpose of establishing a new public hearing date.

RESOLVED, that a public hearing be held in relation to the proposed changes as set forth in the form of notice, hereinafter provided, at which hearing parties in interest and citizens shall have an opportunity to be heard, to be held at the Town Hall, 120 Stringham Road, LaGrangeville, New York, on January 8, 2014, at 7:30 o'clock p.m., Prevailing Time, and that notice of said meeting shall be published in the official newspaper of general circulation in the Town of LaGrange, by the Town Clerk, at least five (5) days before such hearing and that such notice shall be in the following form:

**NOTICE OF PUBLIC HEARING**

TAKE NOTICE, that the Town Board of the Town of LaGrange will hold a public hearing at the Town Hall, 120 Stringham Road, LaGrangeville, New York on January 8, 2014, at 7:30 o'clock p.m., Prevailing Time on Local Law No. 1 of the Year 2014, to amend Chapter 240 "Zoning" of the Town Code of the Town of LaGrange, Dutchess County, New York to add a new Section 240-106 to limit for an interim period of 180 days development of drive-through service facilities within the TC-B Zoning District pending revision of the Town's existing land use laws.

TAKE FURTHER NOTICE, that copies of the aforesaid proposed local law will be available for examination at the office of the Clerk of the Town of LaGrange, at the Town Hall, 120 Stringham Road, LaGrangeville, New York, between the hours of 8:30 a.m. and 4:00 p.m. on all business days except Tuesdays when the hours are between 8:00 a.m. and 3:30 p.m., from the date of this notice and the date of the public hearing.

TAKE FURTHER NOTICE, that all persons interested and citizens shall have an opportunity to be heard on said proposal at the time and place aforesaid.

DATED: LaGrangeville, New York  
December 11, 2013

  
CHRISTINE O'REILLY-RAO  
TOWN CLERK

The foregoing resolution was voted upon with all councilmen voting as follows:

Supervisor Luna	AYE
Councilwoman Jessup	AYE
Councilman Polhemus	ABSENT
Councilman Dyal	ABSENT
Councilman Bell	AYE

DATED: LaGrangeville, New York  
December 11, 2013

  
CHRISTINE O'REILLY-RAO  
TOWN CLERK

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**RESOLUTION**

IT IS HEREBY RESOLVED that Van DeWater & Van DeWater, LLP, Kyle W. Barnett, Esq., of counsel, is authorized to enter into a Stipulation settling the tax certiorari proceedings brought by 266 Titusville Road LLC against the Town of LaGrange for the 2012 and 2013 tax years and to sign such other and further papers as are necessary to effectuate the settlement, said refunds to be without interest if paid within ninety (90) days of service of a copy of the Judgment with notice of entry.

Dated: LaGrangeville, New York

~~November~~, 2013

December 11, 2013

MOVED BY:

Councilman Jessup

SECONDED BY:

Councilman Bell

AYES:

3

NAYES:

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*Christine O'Reilly*  
Town Clerk

**Resolution of  
the Town of LaGrange Town Board**

In the Matter of the Application of Carrington Development Corp.  
for the Designation of an Open Development Area  
Pursuant to Section 280-a(4) of the New York State Town Law  
in the Proposed Whispering Pines Residential Subdivision

**Whereas:**

**I. Background**

1. The Applicant is Carrington Construction Corporation (the "Applicant"). The Applicant has been represented before this Board by Brian J. Stokosa, P.E., of the firm of M. Gillespie & Associates Consulting Engineering, PLLC. The Applicant's proposed project is called the Whispering Pines Residential Subdivision.
2. The Applicant is the owner of a parcel of property approximately 50.20 acres in area located on Route 55 in the Town of LaGrange (the "Town"), also identified as Tax Parcel No. 133400-6360-02-972772 (the "Property").
3. The Applicant proposes to subdivide the Property into five (5) building lots for single family residential homes catering to individuals with horses.
4. The Applicant's property is what is sometimes called either a "pot handle lot" or a "flag lot". The lot is large in the back away from the road but has only 100 feet of frontage where the lot meets Route 55, which is a Town road. As configured in the Applicant's proposed project, only two (2) of the five (5) lots to be created will have the frontage on Route 55. It is proposed that the five (5) building lots will be served by a common driveway. Each lot to be created will be given an easement over the common driveway and the common driveway will provide each lot access to Route 55.

**II. Application to Establish Open Development Area**

5. Vehicular access from newly created lots to existing roads is regulated by both State law and the Town of LaGrange Zoning Law ("Zoning Law").
6. Sections 280-a(1) and (2) of the New York State (NYS) Town Law provides that a building permit for the erection of a new building can only be issued if the following two conditions are met: (1) the street or road giving access to the structure must be an existing state, county or town road or it must be a street shown on an approved, filed subdivision plat map [NYS Town Law § 280-a(1)]; and (2) the road giving access must be suitably improved as to be adequate for the anticipated traffic and for the purposes of safety [NYS Town Law § 280-a(2)].
7. NYS Town Law § 280-a(5) notes that, as used in that section, the word "access" means that the plot upon which the new structure is proposed should either directly abut the street or have "sufficient frontage thereon to allow the ingress and egress of fire trucks, ambulances, police cars and other emergency vehicles."

8. In LaGrange, our Zoning Law imposes a similar regulation. Zoning Law § 240-26(G) says:

G. Required street frontage. No building permit shall be issued for any structure unless the lot upon which that structure is to be built has frontage on a street or highway, as defined in the [NYS] Town Law, which street or highway shall have been suitability (sic) improved or a bond posted therefor to the satisfaction of the Town Board as provided in said law.

9. The underlying goals of the provisions of both of these laws are the same, to ensure that newly created lots will have safe, suitable and reliable access for ingress and egress as well as for emergency vehicles.
10. In this case, the subdivision currently proposed by the Applicant does not meet the requirements of either Town Law § 280-a or Zoning Law § 240-26(G) because not all of the lots will have direct access to Route 55. Access is instead provided by easement over the common driveway.
11. We have consulted with our conflict counsel in this matter, John Lyons, Esq. of Grant & Lyons, LLP, and he has advised us that NYS Town Law § 280-a(4) offers an alternative method to allow building permits to be issued where the access/frontage requirements are not met.
12. Town Law § 280-a(4) provides that where the other requirements of § 280-a cannot be met, the Town Board may establish an Open Development Area ("ODA") within which building permits may be issued for the erection of buildings where access is given by right-of-way or easement. Under the Town Law, road access within the ODA shall be subject to whatever conditions the town planning board places on the private road or common driveway used for access. This can include a variety of conditions on a common driveway such as width, grade, surfacing materials, maintenance agreements.
13. We are advised by counsel that the thinking behind ODAs as an alternative is that the review process to be conducted by the Planning Board will result in conditions of approval that will assure that the right-of-way or easement access to the new lots will be suitable for the anticipated ingress and egress traffic and for emergency vehicle access.
14. We are further advised by counsel that the ODA alternative in Town Law § 280-a(4) operates to remove the frontage requirements of Town Law § 280-a(1) because the assurance of proper access and safety has been achieved another way. For the same reason, the ODA alternative removes the frontage requirements of Town of LaGrange Zoning Law § 240-26(G). There is no point in requiring the frontage minimums to be met if alternate steps have been taken to assure proper ingress and egress and public safety. Hence, if an ODA is established in this case, the applicant should not be required to comply with Zoning Law § 240-26(G).
15. On October 10, 2013, the Applicant made an application to us to establish an ODA in accordance with NYS Town Law § 280-a(4) for the project proposed for the Property called the Whispering Pines Residential Subdivision as proposed and configured on the Subdivision and Development Plan by M. Gillespie & Associates Consulting Engineers,

PLLC, Sheets #1 through #7, dated last revised on October 10, 2013.

16. Following this application, we have met with the Applicant on several occasions during workshop meetings to discuss the need for an ODA for this project and to discuss with the Applicant the considerations we think are appropriate.
17. Based on these communications, and upon our review of the proposed subdivision plan, we have determined that the establishment of an ODA is likely to be an appropriate method of providing access to Route 55 for the lots to be created in this proposed subdivision given our review of the following factors: (a) the proposed configuration of the lots in this subdivision; (b) the limited access of this property to frontage onto Route 55; and (c) the small number of lots proposed in relation to the overall size of the property to be subdivided.

### **III. Procedures to Be Following in Establishing Open Development Area**

18. We are advised by counsel that NYS Town Law § 280-a(4), which authorizes the creation of ODAs, gives little guidance on procedure. That section provides only minimal procedural requirements:

- the Town Board is the town body with approval authority;
- the Town Board approval (or disapproval) must be by resolution;
- before taking action, the Town Board must refer the matter to the Planning Board for advice and a recommendation; and
- the Planning Board shall be given a reasonable period of time in which to review the matter and report its recommendation.

We are further advised by counsel that, beyond compliance with the aforementioned requirements, we are free to establish our own procedures for the establishment of an ODA.

19. For the purposes of this project, we will establish the procedure to be followed in this case in the portions of our Resolution set forth below.

### **NOW, THEREFORE BE IT RESOLVED, as follows:**

- Section A. We accept as complete the Applicant's application to establish an Open Development Area ("ODA") for the Whispering Pines Residential Subdivision.
- Section B. We determine that the establishment of an ODA is likely to be an appropriate method of providing access to Route 55 for the lots to be created in this proposed subdivision given our review of the following factors: (a) the proposed configuration of the lots in this subdivision; (b) the limited access of this property to frontage onto Route 55; and (c) the small number of lots proposed in relation to the overall size of the property to be subdivided.
- Section C. As required by Town Law § 280-a, by this Resolution we refer this application for the establishment of an ODA to the Town of LaGrange Planning Board for a

review and recommendation.

Section D. We direct the Planning Board to review this application for the establishment of an ODA in parallel with its review of the Applicant's application for subdivision approval and site plan approval under the Town of LaGrange Zoning Law.

Section E. We anticipate that the Planning Board will be the Lead Agency for the environmental review of this project to be undertaken pursuant to the State Environmental Quality Review Act (SEQRA). We direct the Planning Board to include the establishment of an ODA by the Town Board, and the use of a common driveway as proposed by the Applicant, as part of the environmental review of this project. We further direct the Planning Board to specifically address the establishment of the ODA in its SEQRA Determination of Significance, and in the event that a Positive Declaration is issued for this project, also in its SEQRA Findings Statement.

Section F. We direct the Planning Board to issue and provide to us its written recommendation as to whether we should act to establish the ODA as requested by the Applicant. We direct the Planning Board to include in that recommendation any and all conditions which, in its judgment, should be attached to the establishment of an ODA. We further direct that the Planning Board shall include in its recommendation, whether recommending for or against the establishment of an ODA, its reasons in support of its recommendation.

Section G. We direct that the Planning Board shall issue its written recommendation on the establishment of an ODA at the same time that it issues its preliminary plat approval for this project.

Section H. In the event that the Planning Board issues a positive recommendation that we establish an ODA for this project, we direct that the Planning Board shall make the issuance of a resolution by this Town Board establishing an ODA for this project, along with appropriate conditions thereto, a condition of final subdivision approval.

Section I. Finally, we direct that the Planning Board shall consider the following concerns of the Town Board in the formulation of its recommendation and determination of what conditions should be attached to any positive recommendation:

The Town Board directs the Planning Board to assure through its review, and any conditions to be placed on subdivision approval, and the approval of the establishment of an ODA, that the design of the common driveway and its related infrastructure will provide safe, reliable access to these lots for both lot owners and the operators of emergency services equipment (Fire-Rescue and Ambulance).

The Town Board directs the Planning Board to seek and receive the evaluation and recommendation of the Town of LaGrange Fire Department that the lots created using the proposed ODA design

can be accessed by emergency vehicles in case of danger or peril from fire, flood or other similar threat to public health and safety.

The Town Board directs that subdivision approval, and any positive recommendation regarding the application for the establishment of an ODA, shall be conditioned on the Applicant's recording of a "*Declaration of Common Driveway and Utility Easement and Maintenance Agreement*" (the "Declaration") in the office of the Dutchess County Clerk prior to the sale of any lots in this subdivision.

The Town Board directs that the Declaration shall contain provisions and content similar to the provisions and content set forth in the *Declaration of Common Driveway and Utility Easement and Maintenance Agreement* by Providence Realty of LaGrange LLC, dated March 21, 2013, a copy of which Declaration is annexed to this Resolution, along with any additional provisions which are appropriate in the judgment of the Planning Board. The Town Board also directs that the Declaration shall contain a provision that will prohibit the common driveway from ever being dedicated to the Town of LaGrange or becoming a user road maintained by the Town of LaGrange.

Motion to approve resolution by: Councilman Jessup

Seconded by: Councilman Bell

	In Favor	Against	Abstain
Vote: Joseph Luna	✓		
Edward Jessup	✓		
Gary Polhemus	ABSENT		
Andrew P. Dyal	ABSENT		
Alan Bell	✓		

Result: Motion passes by the following margin: 3 - 0

Dated: December 11, 2013

*Christine O'Reilly-Rao, Town Clerk*

Filing: A copy of this resolution was filed in the office of Christine O'Reilly-Rao, Town Clerk of the Town of LaGrange, on December 11, 2013.

Copies of this Resolution were provided to:

Carrington Construction Corporation (c/o Gillespie & Associates)

The Town of LaGrange Planning Board  
Wanda Livigni, Town of LaGrange Administrator of Public Works  
Gregory W. Bolner, Clark Patterson Lee  
John F. Lyons, Grant & Lyons, LLP

# Correction

## DECLARATION OF COMMON DRIVEWAY AND UTILITY EASEMENT AND MAINTENANCE AGREEMENT

THIS DECLARATION made this 21<sup>st</sup> day of March, 2012, by  
PROVIDENCE REALTY OF LAGRANGE, LLC, a Limited Liability  
Company, with offices situate at 1136 Route 9, Wappingers  
Falls, New York 12590, hereinafter referred to as the  
"DECLARANT", and referring to real property in the Town of  
LaGrange, County of Dutchess and State of New York consisting  
of residential building lots designated as Lot Nos. 1 through  
5 on a subdivision map entitled Re-Subdivision of Providence Estates, bearing  
last revision date of 1/2/13 and which was the subject of a  
resolution of final approval issued by the Town of LaGrange  
Planning Board on 12/20 2012, and which map having been  
assigned Filed Map No. 12223 A upon filing with the Clerk  
of Dutchess County (hereinafter referred to as the "MAP"); and

WHEREAS, pursuant to the Resolution of Subdivision Approval  
granted by the Town of LaGrange Planning Board and as identified  
and depicted on the MAP, Lot Nos. 1, 2, 3, 4 and 5 will share a  
common driveway and utility easement, which common driveway  
provides access to each of said lots from the nearest public  
highway; and

WHEREAS, the DECLARANT desires to establish a permanent  
easement over the common driveway and utility easement area  
serving each of the lots on the MAP, and to provide for the

continued maintenance of said common driveway, as well as to provide common rights among the lot owners to install, replace, repair and maintain utilities within the permanent easement area.

NOW, THEREFORE, the DECLARANT hereby declares that the Lot Nos. 1, 2, 3, 4 and 5 on the MAP shall be held, sold, conveyed, transferred and occupied subject to the covenants and conditions hereinafter set forth.

1. Recitations Incorporated. The recitations above set forth are incorporated in this Declaration as if fully set forth and adopted herein as is the re-subdivision plat referred to in the same.

2. Property Subject to Easement. The real property subject to this Declaration is identified as Lot Nos. 1, 2, 3, 4 and 5 on the MAP.

3. Permanent Driveway and Utility Easement.

3.1 The DECLARANT hereby establishes and imposes a Permanent Easement and Right of Way ("Permanent Easement Area") in favor all Lots Nos. 1, 2, 3 and 4 and 5, above described. That Permanent Easement Area is more particularly described in Schedule "A" attached hereto.

3.2 A portion of the aforesaid Permanent Easement Area, identified in Paragraph 3.3, infra, shall create a common

driveway ("Common Driveway") which shall be for the mutual benefit of said Lot Nos. 1, 2, 3, 4 and 5. All of the Permanent Easement Area shall establish and create a common utility easement for the respective lot owners to install underground utilities through, across and under said Permanent Easement Area. Installation of utilities shall be deemed to include the right to install and maintain electric, gas, cable TV, high speed computer access lines, water, sewer and storm water lines, pipes or other conduits, as well as the rights to access such utilities for purposes of maintenance, repair and replacement. Owners shall not erect any buildings, walls, fences, structures or other improvements, or plant any trees or shrubs on the Permanent Easement Area; shall not interfere with or cause injury or damage to said subsurface utility lines; and shall do nothing in the premises which would prevent, impede or disturb the full use and intended purpose of this easement.

3.3 The Permanent Easement Area located within and across Lots No. 1, 4 and 5 shall constitute the Common Driveway.

#### 4. Obstructions.

4.1 The owners of Lot Nos. 1, 2, 3, 4 and 5 and their respective business and personal invitees, shall not obstruct, impede, or interfere with the reasonable use of the Common Driveway for the purposes of pedestrian and vehicular ingress

and egress to and from their respective lots to Red Oaks Mill Road, the nearest public highway, and for the installation and maintenance of utilities serving their respective lots. Parking of any vehicles on the Permanent Easement Area is prohibited at all times.

4.2 The lot owners and any party utilizing the Common Driveway under the authority granted herein shall maintain the Common Driveway in a usable, neat, uniform and passable manner.

#### 5. Maintenance

5.1 It is in the best interest of all parties who do or will own the aforesaid properties ("Owners") to have an agreement that covers maintenance of the Common Driveway in a passable condition, and sets forth the responsibility for expenses for the maintenance or repair of said Common Driveway.

5.2. Declarant, and the subsequent Owners of each lot, their successors, heirs and assigns, shall expressly refer to this Declaration in any deeds conveying title to their lots and shall transfer such title subject to the terms and conditions of this Declaration.

5.3 All decisions for any improvement, maintenance and/or repair of the Common Driveway, and for the election of a Manager as hereinafter provided, shall be made only upon the majority vote of the Owners. Each lot shall have one vote irrespective

of the number of owners of that lot. "Maintenance" shall include, but shall not be limited to, surfacing, paving, regravelling, filling potholes, grading, sweeping, drainage improvements associated with the Common Driveway (including but not limited to a stormwater swale located on Lot 1, and a culvert located on Lot 2 and Lot 3, as each are shown on the MAP), snow and ice removal, and tree trimming.

5.4. Any and all expenses for the improvement, maintenance and/or repair of the Common Driveway shall be borne by the Owners, in the following proportionate shares:

- a. Lot 1: (20%) percent thereof;
- b. Lot 2: (20%) percent thereof;
- c. Lot 3: (20%) percent thereof;
- d. Lot 4: (20%) percent thereof; and
- e. Lot 5: (20%) percent thereof.

5.5 The Owners shall meet at least annually to discuss the condition of and the need for improvement, maintenance and/or repair of the Common Driveway. The Owners may elect a Manager, in the event a majority thereof shall deem it necessary, who will advise them of the condition, and any need for and the expenses of the improvement, maintenance and/or repair of the Common Driveway. The Manager shall serve for a term of one (1) year or such other term(s) as the Owners by majority vote shall

determine. The Manager may also be an Owner. If any improvement, maintenance and/or repair of the Common Driveway is performed, the Manager shall immediately notify the Owners of the total amount of any invoice(s) and their proportionate share thereof, and the Owners shall immediately deliver payment of the same to the Manager who in turn shall immediately pay the contractor or entity retained to perform such improvement, maintenance and/or repair.

5.6 In addition to the foregoing, each lot owner agrees to indemnify and hold the other lot owners harmless from any and all liability for injury or damage when such injury or damage shall result from, arises out of, or be attributable to any maintenance for snow plowing conducted pursuant to this agreement.

5.7 Unless otherwise agreed by a majority of the lot Owners, in the event accumulation of snow exceeds three (3) inches in depth (as an average depth), the Manager is authorized to engage a contractor to remove the snow from the Common Driveway without further consultation with or authorization from the Owners.

5.8 If any Owner does not comply with a decision made by the majority of the Owners and does not contribute his/her proportionate share of the expenses for the improvement,

maintenance and/or repair of the Common Driveway within ten (10) days of the due date for the same, then such non-compliant Owner shall be liable to the other Owners and shall be obliged to pay interest at a rate of twelve percent (12%) per annum on the unpaid charges, together with all expenses, including reasonable attorney's fees incurred to collect the same whether or not any legal proceeding is commenced. Such non-compliant Owner shall also be liable to the other Owners and subject to an action or actions brought by the other Owners for damages or equity, and the non-compliant Owner shall be responsible for the other Owners' reasonable attorneys fees and court costs if they prevail in the action or actions. Additionally, nonpayment of proportionate expenses shall be grounds for filing a lien against the property of offending party.

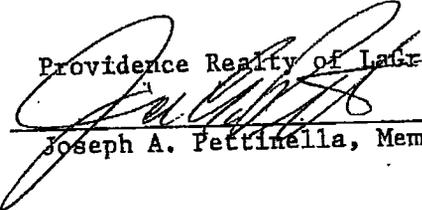
5.9 In the event of deadlock between the owner(s) of either lot in reaching a decision on maintenance improvement, maintenance and/or repair issues, owners of either respective lot shall be entitled to demand binding arbitration as a remedy to address the deadlock. In the event that Owners cannot agree upon an impartial arbitrator, then either may pursue arbitration pursuant to the prevailing and applicable rules of the American Arbitration Administration. The non-prevailing party shall

suffer the costs of arbitration, including the reasonable and necessary attorneys fees incurred by the prevailing party(ies).

6. This Declaration shall be recorded and shall be deemed a covenant running with the lands affected hereby in perpetuity and shall inure to the benefit of and be binding upon the Declarants, all Owners, and their successors, heirs and assigns forever.

7. This Declaration will not be effective until and unless the aforesaid subdivision MAP is filed with the Clerk of Dutchess County.

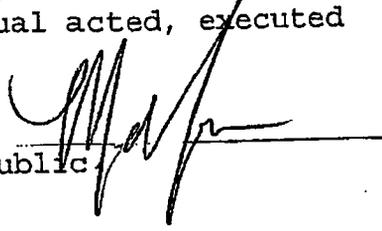
IN WITNESS WHEREOF, Declarant has executed this Declaration as of the date first set forth above.

By:   
Providence Realty of Lorange, LLC  
Joseph A. Pettinella, Member

STATE OF NEW YORK )  
 ) SS.:  
COUNTY OF DUTCHESS )

On the 21<sup>st</sup> day of March in the year 2013, before me, the undersigned, a notary public in and for said state, personally appeared Joseph P. Hinzall, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

  
MARIA L. JONES  
Notary Public, State Of New York  
No. 01JO6090516  
Qualified In Dutchess County  
Commission Expires April 16, 2015

**Robert V. Oswald Jr. - Land Surveying**

175 Walsh Road  
Lagrangeville, New York 12540  
845-226-6436  
fax - 845-226-1315

December 5, 2012

Providence Estates  
Filed map no. 12223A  
Driveway & Utility Easement

Description of a certain parcel of land situated in the Town of LaGrange, County of Dutchess and the State of New York

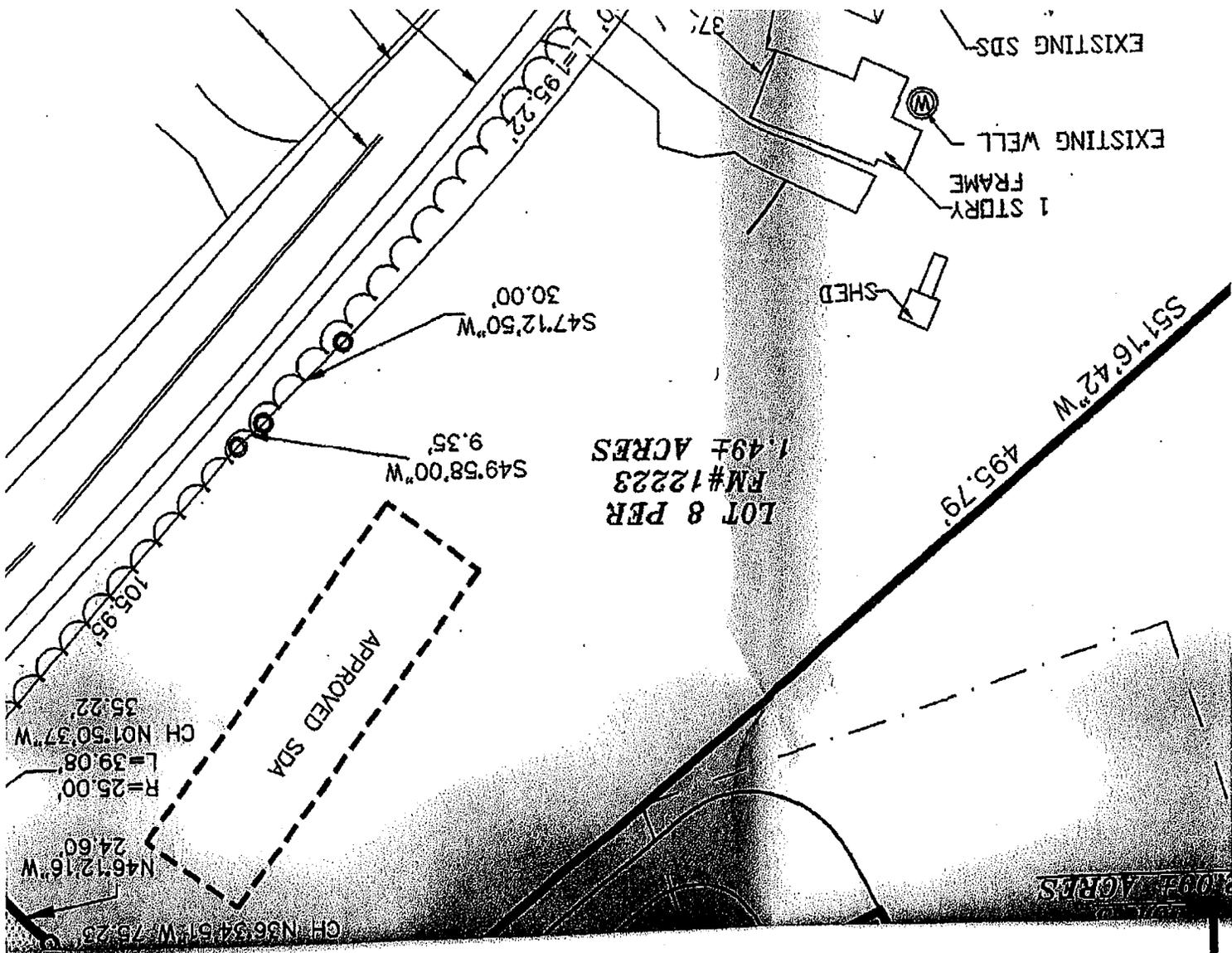
Beginning at a point along the northerly line of Red Oaks Mill Road and said point being the easterly corner of Lot no. 1 as shown on a certain map entitled Providence Estates and filed in the Dutchess County Clerk's Office as filed map no. 12223A, thence in a westerly direction along the northerly line of Red Oaks Mill Road, SOUTH 43-22-10 WEST 140.07 feet to the southeasterly line of Lot no. 8, thence in a westerly direction along Lot no. 8 the following courses and distances, thence on a curve to the left with a radius of 25.00 feet and a length of 39.08 feet and on a chord bearing and distance of NORTH 01-50-37 WEST 35.22 feet to a point, thence NORTH 46-12-16 WEST 24.60 feet to a point, thence on a curve to the right with a radius of 225.00 feet and a length of 75.58 feet and on a chord bearing and distance of NORTH 36-34-51 WEST 75.23 feet to a point, thence in a northerly direction over and through Lot's 5,4,1,3 the following courses and distances NORTH 11-15-47 WEST 84.70 feet to a point, thence NORTH 02-37-28 EAST 36.41 feet to a point, thence NORTH 10-34-26 EAST 61.61 feet to a point, thence NORTH 29-43-58 EAST 81.62 feet to a point, thence NORTH 06-24-59 EAST 175.68 feet to a point along the northerly line of Lot no. 3, thence in a easterly direction along the northerly line of Lot no. 3, NORTH 50-44-45 EAST 197.53 feet to a point along the southerly line of Titusville Road, thence an easterly direction along the southerly line of Titusville Road, SOUTH 40-26-18 EAST 39.90, feet to a point, thence in a southerly direction over and through Lot's 3,2,1 the following courses and distances, SOUTH 50-44-29 WEST 182.36 feet to a point, thence SOUTH 05-37-07 WEST 89.96 feet to a point thence, SOUTH 49-59-48 EAST 29.92 feet to a point, thence SOUTH 21-38-26 WEST 76.55 feet to a point, thence SOUTH 31-27-49 WEST 78.12 feet to a point, thence SOUTH 09-51-05 WEST 51.17 feet to a point along the southerly line of Lot no. 1, thence in a easterly direction along the southerly line of Lot no. 1, SOUTH 47-26-29 EAST 175.29 feet to the point of beginning. Containing 0.97 acres of land more or less.

Subject to the rights of public utilities of record.

This Declaration of Common Driveway and Utility Easement and Maintenance Agreement is being re-recorded to attached the missing Schedule "A" and to correct a scrivener error on Page 1 of the Declaration which was recorded in the Office of the Dutchess County Clerk on March 12, 2013 as Document No. 02-2013-1425.

5

DECLARATION OF COMMON DRIVEWAY AND UTILITY EASEMENT AND MAINTENANCE AGREEMENT  
AND SCHEDULE "A"  
BETWEEN  
[Faint text]



**ADDITIONAL DRIVEWAY NOTES:**

1. THE PROPOSED COMMON DRIVEWAY AND ALL INDIVIDUAL DRIVEWAYS FOR THE PROPOSED LOTS ARE TO BE PAVED THEIR ENTIRE LENGTH.
2. THE 2" BINDER COAT SPECIFIED FOR THE PROPOSED COMMON DRIVEWAY TO THE EXTENT SPECIFIED ON THESE PLANS SHALL BE INSTALLED PRIOR TO ISSUANCE OF A CERTIFICATE OF OCCUPANCY FOR ANY OF THE PROPOSED LOTS SHOWN HEREON.
3. THE FINAL TOP COURSE FOR THE COMMON DRIVEWAY SHALL BE INSTALLED BEFORE ANY ISSUANCE OF A CERTIFICATE OF OCCUPANCY FOR A THIRD RESIDENCE, BUT IN NO EVENT LATER THAN TWO (2) YEARS LATER THAN THE ISSUANCE OF A CERTIFICATE OF OCCUPANCY FOR THE FIRST RESIDENCE. A MANDATORY PROVISION OF A COMMON DRIVEWAY MAINTENANCE AGREEMENT SHALL BE THAT REPAIR OF DAMAGE TO THE TOP COURSE FROM RESIDENTIAL CONSTRUCTION OR IMPROVEMENT ACTIVITY SHALL BE THE RESPONSIBILITY OF THE LOT OWNER FOR WHOM THE CONSTRUCTION OR IMPROVEMENT ACTIVITY WAS UNDERTAKEN.

**AGREEMENT FOR THE EXPENDITURE  
OF TOWN HIGHWAY MONIES**

AGREEMENT between the Town Superintendent of the Town of LA GRANGE,  
DUTCHESS COUNTY, New York, and the undersigned members of the Town Board.

Persuant to the provisions of Section 284 of the Highway Law, we agree that monies levied and collected in the Town for the repair and improvement of highways, and received from the State for State Aid for the repair and improvement of highways, shall be expended as follows:

- 1) GENERAL REPAIRS The sum of \$117360 shall be set aside to be expended primary work and general repairs upon 118.6 miles of town highways, including sluices, culverts and bridges having a span of less than five feet, and boardwalks or the renewals thereof.
- 2) PERMANENT IMPROVEMENTS: The following sums shall be set aside to be expended for the permanent improvement of Town Highways:

(a) On the road commencing at \_\_\_\_\_ and leading to \_\_\_\_\_,  
a distance of \_\_\_\_\_ miles, there shall be expended no over the sum of \$ \_\_\_\_\_.  
TYPE \_\_\_\_\_ Width of traveled surface \_\_\_\_\_  
THICKNESS \_\_\_\_\_ SubBase \_\_\_\_\_

ALL TOWN ROADS

(b) On the road commencing at \_\_\_\_\_ and leading to \_\_\_\_\_,  
a distance of \_\_\_\_\_ miles, there shall be expended no over the sum of \$ \_\_\_\_\_.  
TYPE \_\_\_\_\_ Width of traveled surface \_\_\_\_\_  
THICKNESS \_\_\_\_\_ SubBase \_\_\_\_\_

(c) On the road commencing at \_\_\_\_\_ and leading to \_\_\_\_\_,  
a distance of \_\_\_\_\_ miles, there shall be expended no over the sum of \$ \_\_\_\_\_.  
TYPE \_\_\_\_\_ Width of traveled surface \_\_\_\_\_  
THICKNESS \_\_\_\_\_ SubBase \_\_\_\_\_

Executed in duplicate this 11<sup>th</sup> day of December, 2013.

[Signature]  
Supervisor

[Signature]  
Councilperson

[Signature]  
Councilperson

[Signature]  
Councilperson

[Signature]  
Town Superintendent

\_\_\_\_\_  
Councilperson

\_\_\_\_\_  
Councilperson

\_\_\_\_\_  
Councilperson

\_\_\_\_\_  
Councilperson

NOTE: This agreement to be signed in duplicate by a majority of the members of the Town Board and by the Town Superintendent. One copy must be filed in the Town Clerk's Office and one in the County Superintendent/Commissioner of Public Works' Office. *COPIES DO NOT HAVE TO BE FILED IN ALBANY*



# TOWN OF LAGRANGE

Planning & Public Works  
120 Stringham Road  
LaGrangeville, New York 12540-5507

Wanda Livigni, Administrator of Public Works  
845-452-8562 ~ 845-452 7692 fax ~ [wlivigni@lagrangenyc.org](mailto:wlivigni@lagrangenyc.org)

DATE: December 11, 2013

TO: Supervisor Luna & Town Board

CC: Christine Toussaint, Town Comptroller  
Donna Lindo, Parks & Recreation Department

FROM: Wanda Livigni

RE: Noxon Road Baseball Fields  
Potable Water – Chlorination System – LPI monies

Gentlemen,

The Noxon Road Park was issued a violation in regards to our potable water on site by the DCDOH earlier this year. It required the immediate posting of signs that stated that the water was not potable and the requirement that we bring it into compliance by disinfection. Peter Huff immediately posted the signs that remained in place until the season closed at that park. I began working with the Town Engineer to come up with the disinfection system to comply with the DCDOH. At that time, Peter and I agreed that the LPI monies were the best fit for funding this work.

We currently have a design submitted to the DCDOH that is under review. The Town Engineer and I are planning on the review to be completed this winter so that the installation can occur prior to the beginning of baseball season. I have notified both the DCDOH and the Parks & Recreation Department staff of this schedule.

Attached please find the approved proposal for soft costs (\$1,500) and the estimate for construction costs (\$18,000) submitted by the Town Engineer. I am respectfully requesting that the Town Board approves **utilizing LPI monies with a cap of \$20,000** for this project.

Thank you for your consideration.



June 28, 2013

Clark Patterson Lee  
DESIGN PROFESSIONALS

Ms. Wanda Livigni  
Administrator of Public Works  
Town of LaGrange  
120 Stringham Road  
LaGrangeville, NY 12540

Re: LaGrange – Noxon Road Fields  
Potable Water Disinfection

Dear Ms. Livigni:

Clark Patterson Lee (CPL) is proposing to provide professional services to complete an Engineering Report and Recommendations to address disinfection for the potable water supply at the Noxon Road Baseball Fields. This is in response to the Health Departments letter dated June 18, 2013 in which they indicate that testing resulted in the Maximum Contaminant Level for Bacteria was exceeded. As a public water supply, modification of the treatment will require Department of Health (DOH) approval.

As an initial step, CPL is recommending that we collect some basic information about the system and prepare a recommendation letter for the DOH review. We will estimate flow rate of the well, review records the Town may have on the original well construction, and document the locations where water is being provided. We would anticipate a simple recommendation that chlorination be provided as disinfection. This will not only address sources of bacteria in the well but also potential sources of bacteria in the water distribution system at the site. CPL will prepare a brief letter report recommending the proposed method of disinfection.

CPL proposes to complete the above described services for a lump sum fee of \$1,500. Once the DOH has agreed with the scope of work required to address the issues at the site, CPL will then provide the Town with a proposal for the development of the plans and specifications required to receive DOH approval.

Should you have any questions, please do not hesitate to contact us.

Sincerely,

CLARK PATTERSON LEE

Greg W. Bolner, P.E.  
Principal Associate

Please acknowledge acceptance of this proposal by signing below.

Signature:

Date:

7/2/13

900 Corporate Boulevard  
Newburgh, NY 12550  
clarkpatterson.com  
800.274.9000 TEL  
845.567.9614 FAX

4/12/10 45059 12/2/13



**Clark Patterson Lee**  
DESIGN PROFESSIONALS

December 11, 2013

Ms. Wanda Livigni  
Administrator of Public Works  
Town of LaGrange  
120 Stringham Road  
LaGrangeville, NY 12540

Re: LaGrange – Noxon Road Fields  
Potable Water Disinfection

Dear Ms. Livigni:

In October 2013, Clark Patterson Lee (CPL) provided a proposed plan to the Dutchess County Department of Health (DOH) to provide chlorination for the existing water supply at the Noxon Road Field in the Town of LaGrange. Based on that proposed plan, Clark Patterson Lee estimates the work, performed by the Town's Water System Operator, to cost approximately \$16,000, which includes paying prevailing wage rated and our previous proposal. As this plan has not yet been approved by the DOH, the Town may wish to budget \$18,000 which would allow for approximately 15% contingency. This cost does not anticipate preparing specifications and coordination of a bidding process or construction observation.

CPL anticipated receiving approval from the DOH in the early part of 2014 which would allow time for the work to be done in March prior to the opening day of baseball. Should this schedule be delayed due to lack of approvals, CPL will advise the Town.

Should you have any questions, please do not hesitate to contact us.

Sincerely,

CLARK PATTERSON LEE

Greg W. Bolner, P.E.  
Principal Associate

900 Corporate Boulevard  
Newburgh, NY 12550  
clarkpatterson.com  
800.274.9000 TEL  
845.567.9614 FAX



**Supervisor Joseph J. Luna**

120 Stringham Rd. Lagrangeville NY 12540

(845) 452-9064 Fax 473-7079

jluna@lagrangeny.org

## **GUIDELINES FOR USE OF TOWN OF LAGRANGE ROADS**

- **Organizers of events requiring the use of Town Roads must notify the Office of the Town Supervisor. All requests are subject to Town Board approval.**
- **CONTACT: Kathy Kowgios, Legislative Aide  
(845)452-9064 - e-mail [kkowgios@lagrangeny.org](mailto:kkowgios@lagrangeny.org)**
- **Please provide exact details regarding the route, i.e. a map, as well as any anticipated delays or closures which may occur.**
- **Organizers must notify the following regarding the route and any traffic control issues:**
  - **Dutchess County 911 (845) 486-2080**
  - **LaGrange Fire Dept. / First Responders (845) 452-4989**
  - **NY State Police (845) 677-7300**
  - **Dutchess County Sheriff's Dept. (845) 486-3800**
  - **LaGrange Highway Dept. (845) 452-2720**
- **A Road Use Fee of \$25 will be required in order for the Town to co-ordinate payment for Sheriff Department services.**
- **Upon receipt of the fee, the Town Clerk shall issue the Road Use Permit.**
- **Freedom Park Facility Use Permits should be submitted to the Parks & Recreation Department (845) 452-1972.**

BUDGET TRANSFERS

<u>FROM</u>	<u>TO</u>	<u>AMT.</u>
<b>General Fund:</b>		
Bond Anticipation Notes, Princ. (9730.06)	Statutory Installment Bond, Interest (9720.07)	45.61
Personnel, Cont. (1430.04)	Engineer, Cont. (1440.04)	1,000.00
Independent Auditor, Cont. (1320.04)	Buildings, Pers. Serv. (1620.01)	2,000.00
Special Items, Cont. (1910.04)	Buildings, Cont. (1620.04)	6,000.00

BUDGET AMENDMENTS

**General Fund**

Inc. State Aid-Court Facilities (3021)	5,320.88	
Inc. Judicial, Contractual Exp. (1110.04)		5,320.88
Amend budget for receipt of court grant		
Inc. Planning Board Fees (2115)	70,000.00	
Inc. Appropriated Fund Balance (599)	32,132.41	
Inc. Judgements & Claims, Cont. (1930.04)		102,132.41
To cover County chargebacks		
Inc. Zoning Fees (2110)	1,000.00	
Inc. Zoning, Cont. (8010.04)		1,000.00

**Highway Fund**

Inc. Permits, Other (2590)	3,200.00	
Inc. Sales of Scrap (2650)	500.00	
Inc. Sale of Surplus Equipment (2665)	17,213.00	
Inc. Machinery Repair, Equipment (5130.02)		20,913.00
Amendment at the request of the Highway Superintendent for purchas of a dump body		
Inc. State Aid-CHIPS (3501)	63,809.48	
Inc. Permanent Improvements, Cont. (5112.04)		63,809.48
Adjust CHIPS amount to actual amount of aid available for 2013		

**Grandview Water District**

Inc. Water Service Charges (2144)	3,000.00	
Inc. Source of Supply, Cont. (8320.04)		3,000.00
Increase budget due to shortage		

**Noxon Knolls Sewer District**

Inc. Appropriated Fund Balance (599)	3,000.00	
Inc. Sewage Treatment & Disposal, Cont. (8130.04)		3,000.00

## RESOLUTION

Supervisor Luna offered the following resolution which was seconded by Councilman Jessup, as follows:

WHEREAS, Nesheiwat Estates, Inc. ("Developer") is the Developer of a residential subdivision project in the Town of LaGrange known as the Harvest Ridge Subdivision; and

WHEREAS, the Developer has applied to the Town of LaGrange Planning Board for reapproval of conditional final subdivision approval; and

WHEREAS, the Town of LaGrange and the Developer are parties to a Supplemental Agreement, dated April 20, 2011, establishing terms for Developer's deferral of providing performance security for improvements of the Harvest Ridge Subdivision; and

WHEREAS, the Developer agreed that compliance with its obligations under the Supplemental Agreement were to be conditions of reapproval of the subdivision by the Planning Board; and

WHEREAS, among the terms and conditions of the Supplemental Agreement that the Developer has not fulfilled are the following:

- (a) providing the Town with a performance security, in an amount and form acceptable to the Town, for improvements not completed as of September 15, 2011; and
- (b) posting of performance security by March 1, 2012 for completion of the top course or coat of the subdivision roads; and
- (c) filing of the subdivision plat for the Project no later than before March 1, 2012.

WHEREAS, in the Supplemental Agreement, Developer agreed that it would not request further modifications or extensions of the timeframes for performance bonding or for the filing of the subdivision plat; and

WHEREAS, by resolution dated in October, 2013, the Town Board previously determined that it was not able to recommend the Planning Board's granting of reapproval given the above circumstances; and

WHEREAS, the Town and the Developer have been in discussions regarding the Developer's requests, in effect, to be relieved of non-performance of the terms of the Supplemental Agreement, and to modify said terms of the Supplemental Agreement by way of a Second Supplemental Agreement; and

WHEREAS, a copy of a Second Supplemental Agreement prepared by the Town, and shared with the Project, based on discussions between the parties, is annexed hereto as Exhibit "A", and the Town Board is advised that the Agreement is consistent with discussions between representatives of the parties; and

WHEREAS, among other things, the Second Supplemental Agreement provides for performance by the Project no later than December 31, 2013, in terms of providing among other things performance security for uncompleted improvements of the Subdivision in a fixed amount of \$1,044,678 for completion not later than November 1, 2016 of the uncompleted improvements; and

WHEREAS, the Town Board has received a recommendation to approve the attached Second Supplemental Agreement, and to authorize the Supervisor to execute an agreement in the same or substantially similar form.

NOW, THEREFORE, BE IT RESOLVED that:

1. The Town Board approves of the Second Supplemental Agreement, and it authorizes the Supervisor to sign that form of agreement, or one in substantially the same or similar form.
2. In the event that the Developer approves and executes the Second Supplemental Agreement, in a form acceptable to the Town, and in the event that the Developer fully and timely performs all provisions thereof, including but not limited to providing of the performance security not later than December 31, 2013, the Town Board will consider a favorable recommendation of reapproval of the Project by the Planning Board.

The foregoing resolution was voted upon with all Councilmen voting as follows:

Supervisor Luna	AYE
Councilman Jessup	AYE
Councilman Polhemus	ABSENT
Councilman Dyal	ABSENT
Councilman Bell	AYE

DATED: LaGrangeville, New York  
December 11, 2013

  
CHRISTINE O'REILLY-RAO, Town Clerk

**SECOND SUPPLEMENTAL AGREEMENT**  
**HARVEST RIDGE SUBDIVISION**

SUPPLEMENTAL AGREEMENT this \_\_\_ day of \_\_\_\_\_, 2013 between the TOWN OF LAGRANGE, a municipal corporation with offices at 120 Stringham Road, LaGrangeville, New York, 12540 ("Town") and NESHEIWAT ESTATES, INC., a domestic corporation with offices at c/o Mitch Nesheiwat, 785 Broadway, Kingston, New York, 12401 ("Developer").

WHEREAS, Developer entered into an earlier Agreement ("Initial Agreement") with the Town, dated September 1, 2010 addressing, among other things, the terms and conditions under which Developer might commence and undertake construction of public improvements in accordance with approved plans and specifications for the residential subdivision known as the Harvest Ridge Subdivision ("Project"), and in advance of providing performance security to the Town; and

WHEREAS, on April 20<sup>th</sup> 2011, the Town and Developer entered into a Supplemental Agreement ("Supplemental Agreement") for purposes including the extension of the time frame within which the Developer might continue to make public improvements at the Project in advance of providing performance security to the Town; and

WHEREAS, Developer requires reapproval of the subdivision comprising the Project, as the prior reapproval of the subdivision expired on or about April 19, 2012; and

WHEREAS, the reapproval of the subdivision on April 19, 2011 was conditioned on Developer's performance of its obligations under the Supplemental Agreement;

WHEREAS, Developer requires further extension of the time to perform its obligations under the Supplemental Agreement including the time to provide performance security to the Town, and one purpose of this Second Supplemental Agreement is to establish an amount of such performance security and an outside date for Developer's providing of same; and

WHEREAS, Developer requires further extension of its commitment to file a subdivision plat for the project beyond the outside date of March 1, 2012 to which it committed in the Supplemental Agreement, and one purpose of this Second Supplemental Agreement is to provide an extension of the date for performance of that commitment.

IT IS HEREBY AGREED, as and for this Second Supplemental Agreement between Town and Developer, as follows:

1. The terms and conditions of the Initial Agreement and the Supplemental Agreement shall remain in full force and effect, except to the extent they are inconsistent and modified by the provisions of this Second Supplemental Agreement.

2. Paragraph "2" of the Supplemental Agreement shall be deemed amended to the extent that:

- a) No later than December 31, 2013, Developer shall deposit performance security in a form acceptable to the Town in the sum of \$1,044,678 for completion not later than November 1, 2016 of the improvements for the Project identified within Schedule "A" to the Supplemental Agreement.
- b) On or before March 1, 2015, Developer shall perform and complete all preconditions necessary for filing of the subdivision plat, and it shall file the subdivision plat not later than March 1, 2105.
- c) The Developer's compliance with these modified obligations, as well as all other obligations set forth in the Initial Agreement and this Supplemental Agreement not otherwise modified by this Second Supplemental Agreement, shall be made an express and consensual condition of recommendation of reapproval of the subdivision by the Town Board and reapproval

of the subdivision by the Planning Board;  
and

- d) Developer will not request further modifications or extensions of the timeframes for performance bonding of the public improvement work for the Project or for the filing of the subdivision plat before March 1, 2015.

3. The restoration bond previously provided by Developer to the Town under the Initial Agreement shall continue until the Developer has provided acceptable performance security for completion of the Project's public improvements.

4. Performance security to be provided by the Developer may, at Developer's option, take the form prescribed within Section 199-8(B) of the Town Code. Otherwise, the performance security shall take the form prescribed within Section 199-8(A) of the Town Code.

5. Developer acknowledges and agrees that no requests will be made to the Town to reduce the amount of the performance security given the fact that the amount of the performance security established by this Second Supplemental Agreement is already no higher than 25% of the original performance bond estimate for the Project.

6. All consulting fee costs and expenses incurred by the Town in connection with the making, management, and enforcement of the terms of the Initial Agreement, the Supplemental Agreement, or this Second Supplemental Agreement shall be the responsibility of the Developer who shall continue to escrow adequate funds as determined by the Town to cover such ongoing costs of the Town, and Developer shall remain responsible for all reasonable attorney's fees incurred by the Town in the enforcement of the Initial Agreement, the Supplemental Agreement, or and this Supplemental Agreement.

7. Upon the making of this Second Supplemental Agreement, Developer shall pay to the Town the additional nonrefundable sum of \$18,000 (\$6,000 for the retrospective extension for the period March 1, 2012 to March 1, 2013, and \$12,000 for the prospective period of extension to March 1, 2015) representing a further contribution, in addition to the contributions made under the Initial Agreement and the Supplemental Agreement, to lessen the effect on assessed valuation of potential non-filing of the plat prior to taxable status date March 1, 2015.

8. Either party may record this Second Supplemental Agreement or a memorandum of this Second Supplemental Agreement with the Clerk of Dutchess County.

9. This Second Supplemental Agreement constitutes the full and complete agreement between the parties concerning modification of the terms and conditions of the Initial Agreement and the Supplemental Agreement.

**TOWN OF LAGRANGE**

**NESHEIWAT ESTATES, INC.**

By: \_\_\_\_\_  
Joseph Luna, Supervisor

By: \_\_\_\_\_  
Majed Nesheiwat, President

STATE OF NEW YORK, COUNTY OF DUTCHESS } ss.:

On the \_\_\_\_ day of \_\_\_\_\_, 2013, before me, the undersigned, a notary public in and for said state, personally appeared JOSEPH LUNA, SUPERVISOR OF THE TOWN OF LAGRANGE, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity and that by his/her/their signature on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
NOTARY PUBLIC

STATE OF NEW YORK, COUNTY OF DUTCHESS } ss.:

On the \_\_\_\_ day of \_\_\_\_\_, 2013, before me, the undersigned, a notary public in and for said state, personally appeared MAJED NESHEIWAT, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity and that by his/her/their signature on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
NOTARY PUBLIC

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