Responses to Questions Concerning Subdivision Plan Filings

by A.D. Makepeace Company, Inc.

A.D. Makepeace Company, Inc. (the “Applicant”) and Borrego Solar Systems Inc. are pleased to offer the following answers to questions posed by Assistant Town Planner Aaron Shaheen concerning the following four subdivision plan filings currently before the Wareham Planning Board:

* #40-21 Definitive Subdivision Plan – 140 Tihonet Road – A/D Makepeace Company, c/o G.A.F. Engineering – Map 111, Lot(s) 1000-F, 1000-H1, 1000-H2 – Three Lot Subdivision (hereinafter “140 Tihonet”)
* #41-21 Definitive Subdivision Plan – 150 Tihonet Road – A/D Makepeace Company, c/o G.A.F. Engineering – Map 111 & 112, Lot(s) 1000-B, 1000-C & 1000 – Three Lot Subdivision (hereinafter “150 Tihonet”)
* #42-21 Definitive Subdivision Plan – 27 Charge Pond Road – A/D Makepeace Company, c/o Beals and Thomas, Inc. – Assessors Map parcels: 110-1015, 110-1016, and 110-1024 – Three Lot Subdivision (hereinafter “27 Charge Pond”)
* #43-21 Definitive Subdivision Plan – 0 Maple Springs – A/D Makepeace Company, c/o Beals and Thomas, Inc. – Assessors Map parcels: 126-3 (aka 126-L1), 115-1010, 115-1011, 115-1012, 115-1013, 115-1014, 115-1015, and 115-LC6 – Three Lot Subdivision (hereinafter “0 Maple Springs”)

1. Does the subdivision and road as designed require any waivers?

Each of the four (4) subdivision roads were designed to not require any waivers from the Wareham Planning Board’s Rules & Regulations Governing the Subdivision of Land (the “Rules”). We note that, based upon the Town’s review of the plan filings, a waiver may be required from Section VI.C of the Rules related to the required shoulder width. The Applicant has reviewed this requirement and is able to modify the plans to eliminate the need for this waiver. Alternatively, the Applicant asserts that the granting of the waiver is in the public interest and is not inconsistent with the subdivision control law because the plans, as designed, provide an adequate shoulder width given the limited use contemplated for this subdivision as further described in this response.

1. Is it the intent of the applicant to build the subdivision road as shown on the plan?

For each of the four filings, there is no intent to build the subdivision road shown on the plans.

1. If you proposed another use for the property would you still want to build the road as designed?

There is no other use contemplated for the property, and no intention to build the road as designed.

1. Standard Conditions of the Planning Board require completion of the subdivision road and infrastructure within 2 years of the approval and in the event of failure to achieve this schedule, the subdivision is automatically rescinded. Could you follow this requirement?

The Applicant has no objection to an automatic rescission condition in the approval. There is no intent to build the subdivision roads shown on the plan. In any event, the eight-year zoning freeze created by approval of the definitive subdivision plan will remain in place even if the subdivision plan approval is rescinded, automatically or otherwise. *Heritage Park Dev. Corp v. Southbridge*, 424 Mass. 71 (1997) (automatic rescission provision in subdivision approval did not deprive applicant of benefits of eight-year statutory freeze).

1. A Covenant is required as the agreement associated with each subdivision approval. Have you reviewed the town's draft covenant and do you agree to its terms?

We have reviewed the covenant and are largely in agreement with the terms and conditions. With respect to condition #4 related to the restriction of use of the lots shown on the plans, we would respectfully request a slight modification to make it clear that the restriction applies to the lots as shown on the Plans, and would not necessarily prohibit other lawful uses of the properties. In any event, the Applicant intends to work toward a mutually acceptable covenant with the Planning Board.

1. Would you put up a bond for construction?

No. Section 81U of the Subdivision Control Law allows the applicant to choose from one or a combination of four methods of ensuring that subdivision ways are constructed and that municipal services are installed before any of the lot are conveyed. The proposed covenant satisfies this requirement for municipal security. In addition, as there is no intent to construct the subdivision road or install municipal services, the applicant has no interest in posting a bond for that construction.

1. Will you leave the subdivision in place if you propose another use for the property?

There is no other use contemplated for the property, and given the rescission condition noted above, this question is likely moot (i.e. if the subdivision is rescinded after the passage of time, it is irrelevant if another use is later proposed).

1. If you propose another use, will it conform to the lot lines shown on the plan; e.g. lot coverage and setbacks?

There is no other use contemplated for the property, and no intention to build the road as designed.

Any future use would need to conform to the applicable zoning, *e.g.*, lot coverage and setbacks, but that compliance could be with respect to the entire property rather than the subdivision lots. *See* *Massachusetts Broken Stone Co. v. Weston*, 430 Mass. 637 (2000).

WBD (US) 55683002v1