Zoning Board of Appeals
135 School Street
Walpole, MA 02081

October 27, 2020

RE: The 15.29' x 20' area; #48 154-6-**B** (Map/Block 20-136) separates 154-6-**A** (20-134 + 135) from 154-6-**C** (20-137); clear end points of then Jennings Ave and now Burns Ave.

It's time for the ZBA to stand by the facts. The ZBA should deny access, and utility access, from Burns Ave. by way of #48 to Developer's proposal, over the 15.29' length (15.29' x 20') which has been proven is beyond the Taking; and is also verified by the 11-20-1895 Jennings to Burns deed which proves #48 never bounded on Jennings Ave. (see underlined at top of page 2). Jennings Ave was not even close to #48. The ZBA should also deny access over the opposing 20' width which extends 95.38'. This 95.38' x 20' parcel is shown by a Plan of Land 31 & 35 Burns Avenue dated October 5, 2018 by A.S. Elliott Associates Professional Land Surveyors and identifies this parcel as Campbell land. This Plan of Land specifically identifies this parcel as remainder of Map 20, Block 139 after Taking for Burns Ave. (Ref. BK 2648, PG 275) area = 1,908 S.F. The Plan of Land further indicates this parcel as 31 Burns Ave. Walpole, MA- Map 20, Block 139 15,049 S.F.- Remainder After Taking + 1,908 S.F.- Total Lot Area 16,957 S.F. (0.39 Acres). This parcel is just beyond the 62.28' identified as frontage for 35 Burns Ave. by ZBA and was verified by granting of a 37.72' variance by the ZBA on 03/07/86; the first 15.29' of the 95.38' is directly opposite the 15.29' I speak of below. And if my memory is correct, Attorney George Pucci said to the ZBA, any entry upon private land would be trespassing. Again, I detail the facts below.

History,

The de-jure sale from Cobb to Marden (1948) created the de-facto lot 154-6-A in the same manner as the de-jure sale from Cobb to Cobb (1926) created the de-facto lot 154-6-C. What is now Conroy land, map 20 blocks 134 +135, was originally created 154-6-A following 7-12-48 sale (42,294 sf.) comprising 154-2 (8000 sf. #8 Burns Ave.) + 154-3 (8000 sf. #10 Burns Ave.) and 26,294 sq. ft. of backlot by Ethel J. Cobb to Henry A. + Helen M. Marden (see E.W. Pilling ANR Plan 4-13-54 (42,268 sf.), Plan 863 of 1954 Bk. 3273 Pg. 151) (also see 8-19-24 Plan 823 of 1924 + 1940+1980 assessors Plat). Lot 154-6-A itself was split following 08-22-67 sale (see ANR plan 09-25-67 Plan 885 of 1967 Pl. Bk. 223) into two lots comprising 154-6-A-1 (#34-36 Burns Ave.) and 154-6-A-2 (#38-40 Burns Ave.). The creation of lot known as #48, though not identified as 154-6-B in 1-16-26 sale from Cobb to Cobb recorded 04-04-27 {see 1930 assessor's book: Cobb, George; house lot (Burns Ave.), 27,000 ft.,300; and by 1955 assessor's book listed as DeLutis 154-6B (aka #48)}, itself would have created assessor's parcel 154-6-C in 1926 by disconnecting it ("C") from the bulk of Cobb's land. Parcel C is first shown in 1960 assessor's book, DeLutis, Guido P. and Janice C., Burns Avenue 154-6C; 50,000 sf, 100. Regarding 154-6-A and 154-6-C, many documents show the square footage in reverse, whereas actual square footage according to ANR plans of 1967 + 1980 indicate A is 53,378 sf. and C is 58,769 sf. For example (with area's shown in reverse), are the 1955 assessor's book Ferguson first listing of 154-6A shows 58,700 sq. ft.; the 1960 assessor's book DeLutis 154-6C shows 50,000 sf. The 1950 assessor's book under Ethel J. Cobb, shows only a 58,700 sf. parcel, requiring a confirmatory deed noting a second parcel, one to each side of #48, (see explanation page 5, 1st full paragraph).

There were no side lengths within deed to #48 (lot B) which along with lots A + C were originally limited to the metes + bounds of the entire parcel (154-6); and lot B was just like lots A + C in that they touched Burns' land on their southwest border. Original deed to #48 referenced a border on Jennings Ave. which would have been on the Campbell side (odd #'s) of the dividing line between Jennings and Cobb lands. Jennings Ave. was only 20'

wide and ended at the property sold to Burns (see deed Jennings to Burns, Book 752 pages 26-27 on 11-20-1895, which states on page 27, "It is hereby agreed that the grantor Lewis A. Jennings gives to Edward Burns, the grantee, and to his heirs and assigns forever a right of way over a private way **to be called** Jennings Avenue, twenty feet in width beside the wall bounding land of Richard Morse, said right of way extending from the **point of beginning** referred to in the above description to Pleasant Street twenty feet in width over land of the grantor, Lewis A. Jennings."). Burns' land is now the Campbell properties (31 + 35 Burns Ave). At time of deed/creation of #48 (aka 154-6-B) in 1926 (see Cobb to Cobb), Jennings Ave. stopped 227.66', which is from the point of beginning noted just above, to the closest point of #48, (see my letter to ZBA 06-19-19 pg. 3 para 7 and third spreadsheet including drawing.) Also see my letter to ZBA 08-06-19, "all my remaining land". So, the 1926 deed describing the lot now known as #48 did not bound on Jennings Ave.

"To the midpoint", is used to describe a line running down the center of Burns Ave. and continuing past the end of Burns Ave. in the same course, being the dividing line between lands of Gay and Jennings and their successive owners; back when there was one person/owner to each side, i.e. a clear delineation.

See cover letter from Ashley Clark (CDD) to ZBA dated November 25, 2019 regarding Memorandum to GXP from JCC, also dated November 25, 2019 RE: Walpole- Burns Avenue access issues. Referenced from the RSB report (05-13-19 pg. 5 of 10), the Memorandum page 3 paragraph 3 quoted below by Attorney Gallogly from the 1895 Jennings to Burns deed, with emphasis added (i.e. italics), "a right of way over a private way to be called Jennings Avenue, twenty feet in width *beside the wall bounding land of Richard Morse,* [meaning it indicates to the midpoint, the "wall"; therefore no way in between is present] said right of way extending from the **point of beginning** referred to in the above description to Pleasant Street twenty feet in width [this line between Attorney Gallogly italics is the important phrase not being paid attention to] and *over land of the grantor, Lewis A. Jennings",* [meaning it refers to an easement that may only provide access not frontage]. Attorney Gallogly has not properly interpreted the 1895 deed and both JCC and GXP fail to see the truth behind the words referred to above. The answer is right in front of them and they deny it. The deed answers there is no frontage or access to #48 from Burns Ave., colorable or otherwise, and the Taking falls 15.29' short of #48. Didn't the ZBA (advised by the Attorneys) say as a condition, if it can be shown the access claimed by the Applicant is not true, then the approval can be withdrawn? (See page 6 end of last paragraph) Is the ZBA, as advised by the attorneys, passing the buck to the Court versus providing, as is their duty, a determination; the attorneys have also been clear that Wall Street Development has not proven access via Burns Ave. The Campbells, on the other hand, have proven ownership to their land contrary to Wall Street Development's claim. Am I missing something or are the attorneys? Because Attorney Gallogly's own use of the quote from the 1895 deed, from the RSB report, **defeats** Wall Street Development's claim of frontage and access from Burns Ave. The Taking after the 1895 deed did not alter these facts. I agree that Clara Morse likely did not gain access to Jennings Avenue between 1895 and 1899 as referenced in the 3rd reason. After reviewing the Norfolk County Registry of Deeds website, I found no record of any deed/document regarding Clara Morse's right to use Jennings Ave.

Regarding the Memorandum from JCC to GXP noted above that I first read September 20, 2020. Most of this Memorandum does not support Wall Street Development, and I would ask the ZBA to review all of it. The line containing "the point of beginning" from the deed establishes a clear-cut endpoint to Jennings Avenue, and is the basis of this letter and why I called attention to the above quote within the Memorandum. Note: unlike #48 (Cobb to Cobb), the Jennings to Burns deed specifies its metes + bounds with angles and lengths, so its location can be exactly fitted in relation to surrounding properties.

The Memorandum was not the reason for this letter, but here are a few comments regarding the Memorandum: See footnote page 1 regarding that DHCD may not have scrutinized private access rights at all; see list of 7 assertions by Attorney Gallogly on page 2 that may prove incorrect; the 1st reason says the 1899 Morse to Gay deed does not provide specific measurements to establish the precise location of any of the Wall Street Development properties, nor that the deeded property borders on Jennings Avenue (it bordered land of Lewis A. Jennings, with an easement over the land for the use of Edward Burns), and does not provide access to said land or easement thereon. Was this deed chosen because of its vagueness in order to fabricate the needs of the Developer's project?; I agree that the Derelict Fee Statute, MGL Chap 183 sect 58, does not apply where the grantor has no fee interest in abutting way (i.e. Morse/Gay/Cobb in Jennings Ave.) at the time of conveyance as stated in 2nd reason; I agree that the 1895 deed contradicts the 40' width claimed by the Developer, I disagree with comments made in the 4th reason at top of page 4 saying no documentation exists to show the exact length of Jennings Avenue to Pleasant Street, the Plan and Profile along with the 1982 Pilling Plan provide the lengths (T=17.00' and 313.84') adding to 330.84' as the length of Jennings Avenue on the odd numbered side; because the Campbell lot line meets Burns Ave. at an angle, the length at the middle of Burns Ave. would be slightly different (shorter by 9 inches because of difference in angles at lot line and Pleasant street) because the shape of Jennings Avenue is a parallelogram not a rectangle. So, you can ascertain the distance from Jennings Avenue to #48; I agree with the 5th reason (pg. 4 para 3) that the ANR's do not depict a private way in front of #48, and that the October 29, 2019 Appeals Court (Barry vs Planning Board of Belchertown) ruling upheld the Planning Board's decision that the Applicant's ANR lacked adequate frontage, as does #48 lack frontage. Referencing beyond the point of acceptance: (1) the 15.29' x 20' was not Taken by the Town of Walpole and a new subdivision has not been created; (2) an ANR as already stated by JCC is not approval of a Plan; (3) disregard whether this parcel is a public or private way, but rather the only remaining alternative is an easement, if the rights to one exists.

The length of the road (Burns Ave.) was defined by the Taking documents and the Plan and Profile. The Taking contains an additional footage past the 440'+/- Town Meeting acceptance point; on odd side 519.33' and on even side 526.61' (see comments page 5 end of 1st full paragraph). This later section of Taken/public Burns Ave. (beyond the acceptance point up to the end of the Taking) should be considered a public way by the Town of Walpole, and is used by the residents, (i.e. the Conroys' renters at 34-36 & 38-40 Burns Ave. and the Campbells at 31 + 35 Burns Ave. as they do have frontage, (see variance granted for 37.72' {which is beyond Taking} for #35, 3-7-86). However, beyond the Taking, there is no way to maintain.

Attorney Gallogly has not and cannot prove the private way he claims was in existence prior to the SDCL. Clearly, the Town is not maintaining nor plowing the unpaved 100'x 20' portion along the Southwest lot line of #48 beyond the endpoint of the Taking and on the far side (SE) of the 15.29'x 20' portion of Conroy land; both portions are maintained by their owners. Of this unpaved/unimproved 100', 80.09' **abuts** Campbell land (i.e. remainder of Map 20, Block 139 after Taking for Burns Ave. {Ref. Bk. 2648, Pg. 275} area = 1,908 S. F.); and the remaining 19.91' abuts a portion of lot B-2 (2000 sf. purchased from Campbells) an overlap GLM Plans still fail to show. Note: Previous owners Cobb, Ferguson, and DeLutis failed to construct a road over their own land (doctrine of Laches) or even Guisti and successive owners up to Conroy did not attempt to change the status of the 15.29' x 20' area (See Pg. 5, 1st full Paragraph, last sentences). Final disclaimer of Memorandum states that ZBA should include condition that they are not confirming old or new access rights.

The length of the road (Burns Ave.) was defined by the Taking documents and the Plan and Profile. The Taking contains an additional 100' past the 440'+/- Town Meeting acceptance point and is laid out on the ground, see 1934 Plan and Profile and the Order of Taking Bk. 2648 Pg. 275-277, which states, from a described stone bound

on easterly line of Pleasant Street, thence S + SE 37.73' on a curve with a radius of 29.26', thence E 526.61' to a cement bound thence SW 40' to a cement bound [i.e. the terminus of Burns Ave.]; layout filed with Town Clerk 10-17-1946 (Plan states 10-16-1946). After adding the tangent of 22' (see insert on plan), this would increase the length to 548.61'. The October 28, 1946 Special Town Meeting unanimously voted to accept said Town Way as laid out or relocated. The Board of Selectmen under provisions of Chapter 79 of the general laws took this land for the Town of Walpole. The 526.61' distance shown on Plan and Profile is not to the line of acceptance but to the cement bounds shown on said Plan of Land.

The length of Burns Ave. along the odd numbered side is shown to be 519.33' from end of round at Pleasant St. to end of way at cement bound per Taking (1946) and Plan and Profile (1934). This exact same distance is shown by a combination of the Pilling Engineering ANR Plan dated 02-16-82 (showing a distance of 313.84' from end of round to beginning of #31 Burns Ave and a distance of 143.21' as frontage of #31 Burns Ave.) and based on these two plans the Zoning Board was satisfied in granting the 03-07-86 variance for frontage of #35 Burns Ave (37.72' short of the 100' required) verifying its frontage along Burns Ave. as 62.28'. The sum of these three amounts equals 519.33' which is in exact agreement with the length of that side of way per the Taking. Thus, the Taking by the Town has at two independent times (1946 and 1986) determined that the length of Burns Ave., along the odd numbered side, is 519.33'. Is this Zoning Board saying that these two previous decisions (the Taking under the authority of the Board of Selectmen with the acceptance "as laid out or relocated..." at Town Meeting and the approval by the Zoning Board of the variance) are not valid? Isn't ZBA estopped from denying the previous determinations of length by these 2 Town Boards?

The 1926 deed to #48 never referenced Burns Ave. because Burns Ave. did not exist in 1926. Also, Gay Ave. appears added to the E. W. Pilling Plan dated 03-20-53 (also appears on Plan dated 02-16-82 by Pilling Engineering Co. Inc.) to match reference in the deed; and that area of land shown as Gay Ave. was sold by Ethel Cobb (widow of Herbert A. Cobb) to Russell O. & Ethel M. Ferguson on 03-28-51 as part of "all my remaining land". Also, "included" would have been the 15.29' x 20' since it touched Burns land and was beyond the 1946 Taking. Regarding Gay Ave.: Bk. 4382 Pg. 337-338 deed from DeLutis to Robert E. Guisti for 154-6-A, states, "... also included is that area of land shown as Gay Ave. on a plan recorded as Plan No. 400 of 1953 in Book 3159, Page 139 of the Norfolk County Registry of Deeds".

The Cobb to Cobb deed from 1926 is faulty, in that it does not accurately describe its metes and bounds. One of the bounds used was described as Jennings Ave., which has been proven by the quote underlined above (see top page 2) to stop short of #48, in our calculation, by 227.66'. All we know for sure is that #48 was between lot 5 [#30 Burns], shown on the Aug. 19, 1924 Plan by E. Worthington Eng., and Fuller land (see deed Jennings to Burns 11-20-1895). The Cobb to Cobb deed (#48) also created lot 154-6-C. The Engineer for the March 20, 1953 Plan (basically a rectangle) likely placed the beginning point of #48 along a trail/driveway to the barn out back, calling it Gay Ave, as in **Gay** to Cobb. There is no previous Plan or deed showing a Gay Ave. since Gay Ave. had never been placed before.

The 227.66' represents points J thru P, as shown on third spreadsheet, plus a 6.88'correction for the tip of Burns' land that extended to the midpoint of what is now Burns Ave. The following figures (6.88'+25.49'+80'+20'+ 17.72+62.28'+15.29') were calculated by comparing the alignment of several different plans along Burns Ave. Apart from the 15.29' which is beyond Burns Ave., the 227.66 can be calculated by using distances on recorded plans of either side of Burns Ave.; the 6.88' by trigonometry.

The 03-28-1951 deed (Bk. 2991 Pg. 537) from Cobb to Ferguson of "all my remaining land" refers back to deed of Gay to Cobb July 18, 1922 (Bk. 1526 Pg. 626-627); it's important to note that neither of these two deeds

mentions any road past the end of Jennings Avenue which is the beginning of Burns land. The 1922 deed clearly states the Cobb land directly borders Burns' land; therefore the 2 lots (154-6-A & 154-6-C) sold by Ferguson to DeLutis (9-16, 1955) also directly bordered the land originally owned by Burns, which at that time (09-16-1955) was owned by the Campbell family. Regarding "all my remaining land" Bk. 2991 Pg. 537 (Cobb to Ferguson 03-28-51), all this land was then sold to DeLutis (Bk. 3445 Pg. 62-63, 09-16-55) and was clarified in a confirmatory deed (Bk. 6226 Pg. 98, 03-29-83) which referenced, "Deeds Book 3445, Page 62 in which deed we neglected to convey all the property conveyed to us by deed of Ethel J. Cobb, recorded with said Registry of deeds book 2991, Page 537 and dated March 28, 1951." Thus, confirming that "all my remaining land" consisted of two distinct parcels that by 1960 were recorded as such, and listed separately under DeLutis in assessor's book as 6A, 6B (#48) and 6C. Verifying there were 2 separate lots of land, one on each side of #48. The above is acknowledged by Ferguson giving and DeLutis receiving that in addition to lot 154-6-A there was a second parcel 154-6-C. To clarify, reference to lot B in the above confirmatory deed refers to the 6090 sf. parcel shown on Plan 959 of 1980 as being part of original lot 154-6-C, not # 48 (i.e. 154-6-B). At that time, Plan 959 of 1980 was the only survey showing metes and bounds of lot 154-6-C, and matched the outline of the 1980 assessors plat map which showed no road; and is in agreement with the 1940 assessors plat map which also shows no road.

Thus, by a combination of facts from: Taking [1946], Plan + Profile [1934], Deed Jennings to Burns [11-20-1895], Deeds Morse to Gay [06-15-1899] and Gay to Cobb [07-18-1922], it is shown/proven that Cobb land continued to border Burns land beyond the end of the Taking. Therefore #48 directly borders Burns land; and confirms that the 2 parcels (assessors #154-6-A & 154-6-C) comprising "all my remaining land" became split by the 1926 transfer of #48 (154-6-B) and became non-abutting properties. The Taking as shown on the Plan + Profile, shows Burns Ave. extended a distance of 526.61', a distance allowing just enough frontage to provide access to the open land beyond the existing lots. The odd numbered side made use of the non-accepted portion of the Taken distance, whereas the even numbered side limited their use to 154-6-A while ignoring 154-6-B and 154-6-C.

The RSB report is a frivolous attempt showing a right to use a private way that does not exist. The RSB report offered no proof of a private way beyond the "Taking" at all! Neither the RSB report nor Wall Street Development provided any information to answer a ZBA request proving Wall Street's ownership rights to support its claim of a private way. RSB's contention, that access was granted over Campbell land (no rights to grant) to the B-2 parcel, has no basis in fact. Any easement that is shown and/or proven to exist thru an operation of law over the 15.29' x 20' (Conroy) to #48, certainly cannot be overloaded, which is a change in intensity and not to be confused with overburdening which is a change in use. That said, does the ZBA believe that a change from single-family to multi-family development is a change in use rather than intensity?

The reality is Wall Street Development presently has no vehicle or utility access through the 15.29' x 20' or over the 95.38' x 20'. The Memorandum advises ZBA that thus far no evidence has been provided by the Developers to dispute the previous sentence. Maybe #48 (house) was grandfathered (but now voluntarily demolished), the increase in lot size (6090 sf.) changes nothing; however, a demolition and rebuild on the 34,402 sf lot, originally a 28,312 sf lot, would have required a ZBA special permit if compatible with the neighborhood (maximum 2-family). Problem is #48 has no minimum lot frontage (9-4-D [n/a]), the lot's deficiency in frontage would not allow conversion into a 2-family (9-5-B). Now that a voluntary demolition of #48 has occurred, ZBL 9-2-G-4 now applies and states, "Voluntary demolition of a structure without a prior determination by the Board of Appeals that the structure may be rebuilt shall constitute evidence of abandonment."

Even if you disregard the fact that Wall Street Development has no frontage, the remaining 20' width that Applicant is claiming as road to the northeast beyond Campbell land shown on A.S. Elliott Plan dated 10-05-

2018, would not have allowed Wall Street Development's initial attempt to use 6-C-4-A. A 20' easement, over what could only be considered Conroy land, to a private way does not benefit Wall Street Development and is why they needed to call it a road, to show frontage. MGL c.183 s.58 indicates the end of a road (lacking a cul-de-sac) cannot be used to count frontage. Wall Street Development and its surveyors from GLM could clearly see the deeds failed to match the Plans shown incorrectly by E.W. Pilling and Sharon Survey Service. Wall Street Development always knew that exclusive to land purchases, their potential was limited to one house lot off a 20' x 15.29' easement, and without frontage not even an allowance to convert into a two-family.

Now, with the acquisition of 7 Brook Lane to provide access to the Developer's land, there is no need of any easement over land of abutters on Burns Ave. So, if any easement did legally exist, there would no longer be a necessity for one, and any easement would now be considered abandoned. Remember Jennings already sold his land to Burns in 1895, so in the Cobb to Cobb deed (1926) (aka #48), Jennings Ave. should have been labeled Burns land or, at a minimum, land now or formally of Jennings. There is no reference to an easement over Jennings Ave in Morse/Gay/Cobb deeds. The wording within the Jennings to Burns deed states, "... to be called Jennings Avenue, twenty feet in width ..." which indicates that this deed was creating the easement and also that it began at, "... the point of beginning ..." referenced in the deed (see top of page 2 underlined section).

Mass Housing's use of the term "colorable access" leaves one with the impression that they are unwilling to determine the obvious lack of access as shown by Oct. 5, 2018 Plan of Land by A.S. Elliott & Associates; yet this term is acceptable enough to Mass Housing that they are willing to go along with Developer's application knowing that it would violate the fundamental rights of the abutters (i.e. trespass on Campbell land and Conroy land). Mass Housing is passing the buck, willing to call access colorable rather than dismiss the 40B application. Barring court action, Mass Housing (being the determining party) is biased (taking a side), given they are there to help people develop land and if they don't, they go against their mission statement. The information provided by the neighbors is conclusive, not questionable as colorable access implies. What is the basis for Mass Housing's finding that "colorable access" exists? Though colorable suggests more wrong than right, wouldn't no frontage be all wrong (i.e. no right); thus, the term colorable is not applicable. Wall Street Development's weak claim of adequate access has been soundly defeated by evidence presented by the abutters. Therefore, Mass Housing should require that Wall Street Development, who has the burden of proof, prove the existence of their pretend road. Important to note that past the end of Taking, no claim of a public road, a paper street, or an easement has been made by the Town or anyone else, and the Campbells have proven their claim of ownership to the 95.38' x 20' parcel; consequently, the strategy of the Applicant and his Engineer to repeat measuring from the rear of the properties, versus the known markers from Pleasant Street, compounds the previous Plan errors mislabeling the location of the end of the Taking and the borders of the Applicant's lots.

Since the Developer is using a common driveway for their proposal, and since an ANR does not approve frontage, on what document(s) is this **approved frontage**, which is a requirement of 10-E-2, coming from? Waivers to 10-E-2 + 6-C-4-A are needed, only upon evidence of frontage. This is not a court issue, but rather a commonsense issue; instead, Mass Housing is acting as judge, jury, and executioner. Wall Street Development's initial plan through Burns Ave. should be denied. Wall Street Development cannot request changes of an approved application because they first need to record the plan as originally approved (see enclosed MGL chap 41 s 81W) (i.e. a deterrent not to abuse SDCL). Wall Street Development simply has a new project through Brook Lane, since Wall Street Development never had access from Burns Ave. Any idea given to Mass Housing by Wall Street Development's new plans that there are 2 access points is flat out obfuscation of the above fact. The attorneys themselves have requested that conditions be met by providing proof of ownership and/or access to the disputed area. Evidence of proof, by the attorney's own words, has not been sufficiently met.

Consequently, ZBA would be adjudicating their unmet condition(s), not the Developer's rights, if any, in the disputed area. The attorneys can't have it both ways; a condition that isn't being met can be adjudicated by the ZBA. If not, it isn't a condition, but a disclaimer; but if they had met the condition, ZBA would move forward as adjudication would not be at issue.

PS. Simple to state the obvious and it makes sense that the 15.29' x 20' is attached to 154-6, now comprising of 154-6-A-1/ 154-6-A-2, currently Map 20 Block 134 &135, specifically Block 135; however, difficult to explain 94 years later, especially with the failures of Engineers E.W. Pilling, Sharon Survey Service, and GLM to accurately portray the deeds. The mere fact that prior to ZBA's denial of Applicant's initial request under 6-C-4-A, a GLM exec/owner ignored the microphone podium and directly addressed the ZBA on stage; and if I heard the ZBA correctly, GLM indicated they had measured from the wrong wall at the border of Fuller land (i.e. SE corner of 154-6-C) and did not calculate from the Pleasant Street end. This came only after they had been caught duplicating the errors of previous Plans. Did GLM conduct a field survey of Burns Ave? If so, my belief is that GLM is following their clients wishes, above their professional code of ethics. This calls into question the accuracy of all the Applicant's plans. GLM's Plans while appearing accurate in and of themselves do not accurately link to the existing lots laid out on Burns Ave. Most past plans do not correctly portray the 95.38' Campbell parcel, the true end point of Burns Ave., the 15.29'x 20' Conroy parcel, the +/- 20' overlap of the B-2 parcel to the front of #48, they do not accurately display the absence of a way in front of #48, and the general outline (i.e. portion of the metes + bounds) and ownership of abutting properties. (see 1st +2nd spreadsheets)

To recap, the NE border of Burns (now Campbell) land per deed was 424' in length. Examining this entire length to a depth of 20'; a parcel 212.37' (6.88 +143.21 +62.28) long x 20' deep was Taken by the Town to create Burns Ave. Another parcel 100' long x 20' deep was sold to DeLutis (see Plan 1520 of 1987), while also showing a length of 16.25' still belonging to the Campbells at the SE endpoint. Deducting these 3 lengths (328.62') from the original total of 424' leaves a remaining parcel 95.38' long x 20' deep (between the Taking and the Delutis purchase) still owned by the Campbells.

If 6-C-4-A is both required (multiple units on lot) and being waived (elements of?), under what legal statute does the Developer proceed when he has multiple lots? If 6-C-4-A is a special condition, not a customary use, then statues/bylaws derogating from the common law are to be *strictly construed*. How can the 40B both *override + expand* on 6-C-4-A when this ZBA has denied, (without determining the frontage access issue), the developer 12 units under 6-C-4-A; and now Mass Housing by means of a 40B might allow up to 40 units. Why doesn't Mass Housing allow only the 12 units that the Town denied? Where is the oversight for Mass Housing?

The ZBA acting as Planning Board under the 40B Comprehensive Permit could waive frontage under MGL Chap 41 s 81R (however you can't waive no frontage at all), but as Zoning Board a second independent requirement to grant a variance under the highly restrictive criteria of MGL Chap 40A s 10 is needed. However, this isn't a question of inadequate frontage (minimum of 20' per MGL definition of subdivision), it is a case of NO frontage, thus no access. Whereas Mass Housing may overrule ZBA and the ZBA may waive elements of local ZBL'S, neither can bypass the SDCL itself, as noted in the two general laws referenced above, where there is no road there is no frontage. Now that access appears to be provided via Brook Lane, with the new plan, there is no reason for the ZBA to pretend there is legal access (nor colorable access) via Burns Ave., when it has been conclusively shown that there is no access via Burns Ave. By making no decision regarding access to Burns Ave., isn't the ZBA creating the very situation that the attorneys have advised the ZBA to avoid, leading to the inclusion of the Town in a future lawsuit if the trespassing intensifies to the point of legal action?

Robert O'Leary 776 Washington Street, Walpole, MA 02081

Robert O O'Leary

Section 81W. A planning board, on its own motion or on the petition of any person interested, shall have power to modify, amend or rescind its approval of a plan of a subdivision, or to require a change in a plan as a condition of its retaining the status of an approved plan. All of the provisions of the subdivision control law relating to the submission and approval of a plan of a subdivision shall, so far as apt, be applicable to the approval of the modification, amendment or rescission of such approval and to a plan which has been changed under this section.

No modification, amendment or rescission of the approval of a plan of a subdivision or changes in such plan shall affect the lots in such subdivision which have been sold or mortgaged in good faith and for a valuable consideration subsequent to the approval of the plan, or any rights appurtenant thereto, without the consent of the owner of such lots, and of the holder of the mortgage or mortgages, if any, thereon; provided, however, that nothing herein shall be deemed to prohibit such modification, amendment or rescission when there has been a sale to a single grantee of either the entire parcel of land shown on the subdivision plan or of all the lots not previously released by the planning board.

So far as unregistered land is affected, no modification, amendment or rescission of the approval of a plan nor change in a plan under this section shall take effect until (1) the plan as originally approved, or a copy thereof, and a certified copy of the vote of the planning board making such modification, amendment, rescission or change, and any additional plan referred to in such vote, have been recorded, (2) an endorsement has been made on the plan originally approved as recorded referring to such vote and where it is recorded, and (3) such vote is indexed in the grantor index under the names of the owners of record of the land affected. So far as registered land is affected, no modification, amendment or rescission of the approval of a plan nor change in a plan under this section shall take effect, until such modification, amendment or change has been verified by the land court pursuant to chapter one hundred and eighty-five, and in case of rescission, or modification, amendment or change not so verified, until ordered by the court pursuant to section one hundred and fourteen of said chapter one hundred and eighty-five.

10-E. COMMON DRIVEWAYS

1. Purpose

The purposes of providing access to more than one residence or business, rather than by individual driveways on each lot are:

A. To enhance public safety by reducing the number and frequency of points at which vehicles may enter upon the ways used by the public;
B. Encourage the protection and preservation of significant natural features such as wetland, riparian corridors, mature trees, stone walls, landscaped areas, scenic vistas and other open space areas;
C. To preserve, protect and enhance other natural resources, including aquifer recharge areas, wetlands and flood plains, by reducing the area of land that is cleared, excavated, filled and/or covered with impervious surface; and,
D. To encourage residential development at a lower density or impact than would otherwise be allowed by the minimum dimensional requirements of the Town of Walpole Zoning Bylaw, Section 6, and thereby to reduce the amount of public roadways and utilities to be maintained by the Town.

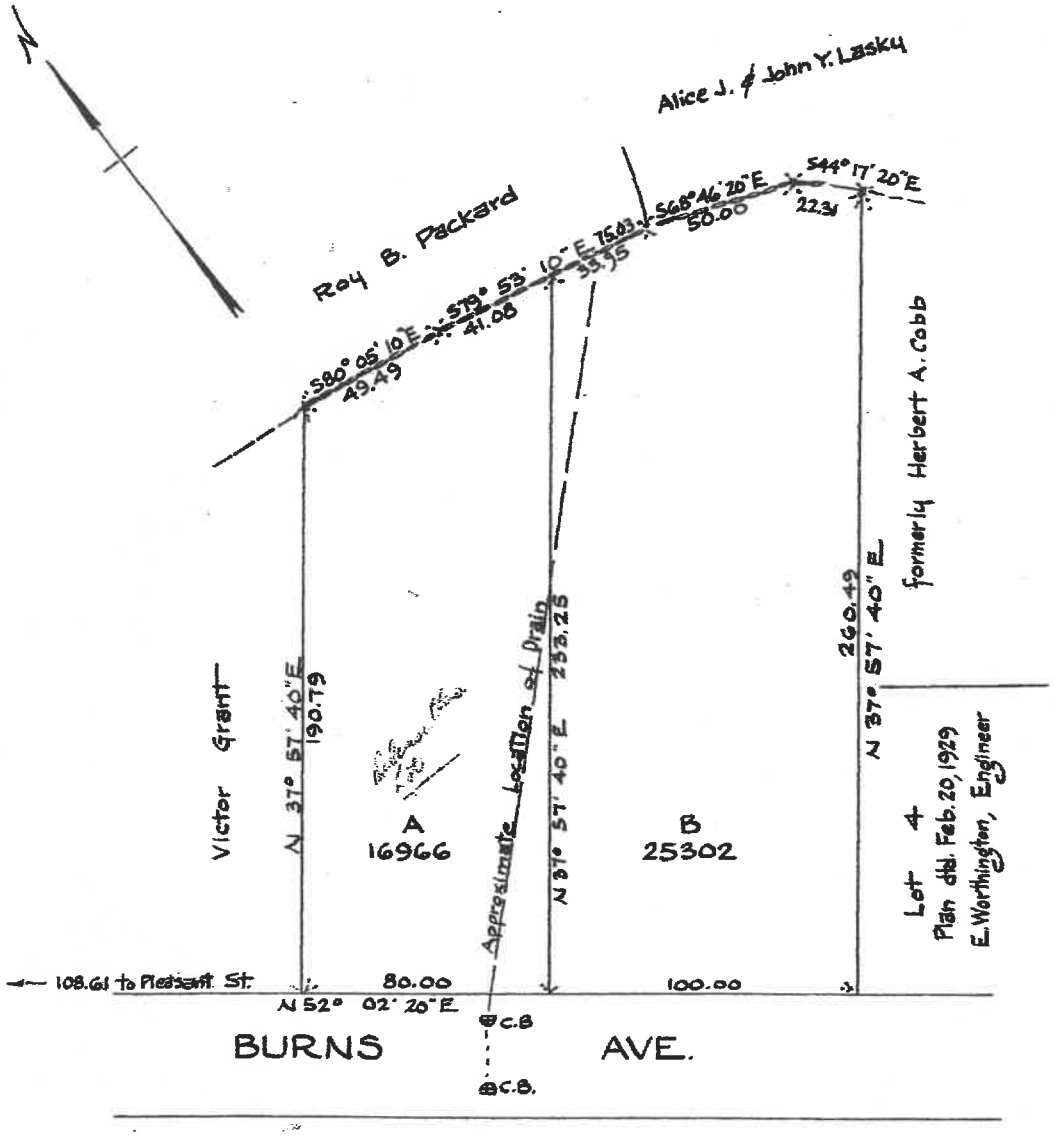
2. Applicability

A Common Driveway is a driveway used as common access to no more than three lots or dwelling units. Common Driveways shall access lots from no more than one access point on an existing street or a street shown on an approved subdivision plan. A Common Driveway shall access lots over a portion of the approved frontage of one of the lots served and shall require a Special Permit from the Planning Board.

3. Application Requirements

An application for a Special Permit for a Common Driveway shall be filed in accordance with Section 2 of the Zoning Bylaw and shall be accompanied by ten copies of the Common Driveway Plan, and a proposed Common Driveway Agreement. The Special Permit application shall be exempt from those requirements listed in Section 13 for Full Site Plan Review. The Common Driveway Plan shall contain: the Common Driveway; the Common Driveway easement; the area of the lots served which falls within seventy-five (75) feet of the Common Driveway easement; the width and proposed surface of the Common Driveway with a cross-section including berms and cleared shoulders; and the locations of turnarounds for emergency vehicles. The Planning Board may require a locus plan showing the entire area of the lots served, the adjoining access road, and the Common Driveway. The Common Driveway Agreement shall name the party(ies) responsible for the maintenance of the Common Driveway. Violation of the Common Driveway Agreement shall constitute a violation of any approved Special Permit and shall be enforced accordingly.

The Common Driveway Plan shall be prepared and stamped by a Registered Professional Engineer and/or a Registered Professional Land Surveyor as applicable. A note shall be placed on the plan, and the deed for each lot served by a Common Driveway shall include, a restrictive covenant stating that the Common Driveway shall never be considered for acceptance as a town road and that all maintenance and repair of the Common Driveway and drainage facilities shall be the responsibility of the owners of the properties served by the Common Driveway; and, further that all lots accessed by the Common Driveway shall never be further subdivided so as to create additional buildable lots, and this shall be set forth as a condition of any favorable action under this Section in the decision on the Special Permit, and on the accompanying plan, restrictive covenant, and all deeds to the lots so affected.



Approval under Subdivision Act not required.

WALPOLE BOARD of APPEAL

Plan of Land in

WALPOLE, MASS.

Scale: 1 inch = 40 feet

E.W. Pilling
Engineer

April 13, 1954

Norfolk Registry of Deeds
Dedham, Mass.
Received June 24 1954 with Par. Rel.
Walpole Co-operative Bank to
Henry A. Marden tux.
Filed as No. 863 1954 Bk. 3273 Pg. 151
Attest: Sheila M. Lane Asst. Register

Norfolk Registry of Deeds
Dedham, Mass
A true copy of Pl No 863 1954
Bk 3273 Pg 151
Attest: William P. O'Donnell
Register