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August 4, 2023

BY FIRST-CLASS & ELECTRONIC MAIL

Raymond G. Chesley

Building Inspector & Zoning Enforcement Official

Town of Topsfield

Town Offices

8 West Common Street

Topsfield, MA 01983

rchesley@topsfield-ma.gov

Re: Request for Enforcement & to Cease Any Work or Activity at 97 Main Street

Greetings, Building Inspector Chesley,

This letter is written on behalf of my clients, Michael DiNicola (DiNicola) and Kendra Robbins-Monteith (Robbins-Monteith), the abutting neighbors of Montana Development LLC. Mr. DiNicola and Ms. Robbins-Monteith have filed an appeal with the Zoning Board of Appeals challenging the decision to issue a Building Permit No. 23-154RB, June 8, 2023 (Building Permit), which allows Montana Development LLC, the successor to Orlando Lopez, Trustee of the Orlando Trust, to construct a single-family home on 97 Main Street (Property). This appeal is set to be heard on August 22, 2023.

The Property and its "intermittent stream" are also the subject of an internal Memorandum in the Conservation Commission's file, dated June 23, 2023. It is not clear from this internal memo whether the Commission determined the applicability of the town's Wetlands General Bylaws under Chapter 250, § 250-6. Mr. DiNicola and Ms. Robbins-Monteith would like clarification from the Conservation Commission on what, if any, action was taken to protect this "intermittent stream" under the state the Wetlands Protection Act, G. L. c. 131, § 40, and the town's Wetlands General Bylaws, Chapter 250.

Even though there is an appeal pending, in recent days Mr. Dinicola has observe that a portion of the stone wall has been removed, most of the foliage in the buildable area has been removed, and large construction equipment has been in use moving land on the property. This change of circumstances gives rise to this Request for Enforcement. See Bylinski v. Bldg. Comm'r of Douglas, 97 Mass. App. Ct. 1113, 2020 WL 1969933 at *4) (2000) (unpublished decision issued pursuant to Rule 1:28).

As a result, Mr. DiNicola and Ms. Robbins-Monteith submit this Request for Enforcement under the town's General Bylaws, Article V, § 5.06, based on their good faith beliefs that the Building Permit was improperly issued and there needs to be an official determination of applicability of the state Wetlands Protection Act, G. L. c. 131, § 40, and the town's Wetlands General Bylaws, Chapter 250.

- First, under Article IV, § 4.08 of the town's Zoning Bylaws, the Property does not appear to have a buildable minimal area of twenty thousand (20,000) contiguous square feet because, as the Conservation Commission observed, it includes an "intermittent stream." Thus, the Building Permit may not have been properly issued.
- Second, the presence of an "intermittent stream" falls within the state Wetlands Protection Act, G. L. c 131, § 40. Conroy v. Conservation Com'n of Lexington, 73 Mass. App. Ct. 552, 553 (2009) (noting that "the Department of Environmental Protection [DEP] has classified as an intermittent stream, and a protected resource under the Wetlands Protection Act, G. L. c. 131, § 40"). Moreover, Chapter 250, § 250-3, of the town's Wetlands General Bylaws recognize the applicability of the bylaws to an intermittent stream.

If these Wetlands General Bylaws do apply, "[n]o work shall begin until the permit . . . has been issued, all *appeals periods have expired*....," (emphasis added). Chapter 250, § 250-4 A.

In addition, Mr. DiNicola and Ms. Robbins-Monteith are providing notice that they are appealing the response to their first Request for Enforcement, dated June 20, 2023, which was received on July 7, 2023, i.e., the Commission's internal memo.

In sum, Mr. DiNicola and Ms. Robbins-Monteith respectfully request that you enforce Article IV, § 4.08, and take action to cease any work or other activity on the property until:

- (1) a decision on this Request for Enforcement can be made;

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(2) the Conservation Commission clarifies the applicability of the state Wetlands Protection Act, G. L. c. 131, § 40, and the town's Wetlands General Bylaws, Chapter 250;

(3) the Zoning Board of Appeals can hear and decide the appeal of the issuance of the Building Permit; and

(4) an appeal of the denial of their first Request for Enforcement can be heard and decided.

In the interim, my clients and I are available to meet with town officials and Montana Development LLC or its representatives to discuss the matter.

Regards,

/s/ Christine Baily
Christine Baily

cc: Kevin Harutunian, Town Administrator (by first-class mail)

Heidi Gaffney, Administrator, Conservation Commission (by first-class mail and email conservation@topsfield-ma.gov)

Frank Iovanello of Montana Development LLC (by first-class mail and email carolfoster829@hotmail.com)