

January 11, 2020
Lancaster Planning Board
701 Main Street
Lancaster, MA 01523

Lancaster Board of Selectmen
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Lancaster, MA 01523

Members of the Lancaster Select Board,

The Planning Board recommends that you act immediately to protect the open space that the town will receive the benefit of as a result of the Flexible Development Special Permit issued to the "Poras Realty Trust and Weinerwald II Realty Trust" in a certificate of approval dated January 11, 2016.

A "Flexible Development Special Permit" (see [220-15 Flexible Development](#)) grants special allowances for a subdivision in exchange for a commitment to place an open space parcel, typically including 40% of the total land on the plan, under either an agricultural restriction or conservation restriction or for conveying the parcel to the town for restriction.

For the permit issued to the "Poras Realty Trust and Weinerwald II Realty Trust" Conditions 5 and 6 of the approval for this special permit set the expectations for this open space:

5. Prior to the Planning Board's endorsement of Definitive Subdivision Approval on the Flexible Development plan, and in the event the Open Space parcel is not conveyed to the Town or its Conservation Commission, the Applicant shall provide to the Planning Board a proposed perpetual conservation or agricultural preservation restriction, of the types described in M.G.L. Chapter 184, Section 31 and Lancaster Zoning Bylaw Section 220-15, running to and enforceable by the Town, with respect to the ownership, maintenance and use of the Open Space parcel. Such proposed restriction shall provide that said parcel shall be retained in perpetuity for one or more of the following uses: conservation, agriculture, passive recreation; and that said parcel shall not be used as the site of any buildings or other permanent structures; except that the two (2) Drainage Easements on the Open Space parcel may be used for storm water management as represented on the Flexible Development plan. Any and all documents required for this condition shall be submitted to Town Counsel for review and approval prior to Planning Board endorsement.
6. Prior to the Planning Board's endorsement of Definitive Subdivision Approval on the Flexible Development plan, the Applicant shall make provision pursuant to Lancaster Zoning Bylaw Section 220-15 for the ownership and maintenance of the Open Space parcel either by the Town of Lancaster acting by and through its Board of Selectmen or Conservation Commission; or by a nonprofit organization, the principal purpose of which is the conservation of open space; or by a membership corporation, trust or association of lot owners within the development upon proper finding by the Planning Board and review and approval by Town Counsel of all documents creating and establishing same.

As of today this “Open Space” is still owned by the current developer, “Melanson Bros. Inc” and has not been conveyed or restricted. Furthermore, the developer has constructed a substantial water pump station to service the homes in the subdivision on the open space. Town Administrator Orlando Pacheco had a conversation with the developer in November, 2020 in which the developer indicated his intention to convey the parcel to the Conservation Commission.

Had the developer acted in accordance with the conditions of the special permit, he could have met the requirements of the special permit by following one of several paths:

1. **Prior to the definitive subdivision plan endorsement, convey the open space to the town.** Had this occurred the town would have received an open space parcel free of structures.
2. **Prior to the definitive subdivision plan endorsement, provide a proposed conservation or agricultural restriction that “...said parcel shall not be used as the site of any buildings or other permanent structures; except that the two (2) Drainage Easements on the Open Space parcel may be used for stormwater management as represented on the Flexible Development plan.”** Had this occurred the town would have received the benefit of an open space parcel free of structures.

The developer failed to do either and subsequently used the open space for a structure to serve the development. It would not have been possible for the developer to use the open space parcel for structures had it been restricted or conveyed as required in the special permit decision.

The town must insist that this parcel either be restricted or conveyed as it should have been in 2016: free of buildings and structures.

1. If any buildings or structures are permitted to remain on that parcel when this lot is conveyed to the conservation commission, the town is at risk of accepting a reduced and less useful amount of open space or assuming maintenance and future responsibility for a pump station that serves a handful of private homes.
2. The abutters to this subdivision had a right to appeal the 2016 approvals granting this special permit and approving this subdivision. Based on the decision issued by the Planning Board, which explicitly forbids any structures or buildings should the parcel be restricted or that it be conveyed prior to the site plan decision, they could never have anticipated that a pump station would be placed on this property. Ignoring this deviation, which would certainly not have stood if challenged, would be unsympathetic to those abutters: some are clearly aggrieved.

60 The town's expectation should be that this open space parcel be free of buildings and structures when it is
61 conveyed to the town as that is the enduring commitment that the town received in exchange for the special
62 allowances granted to the applicant.

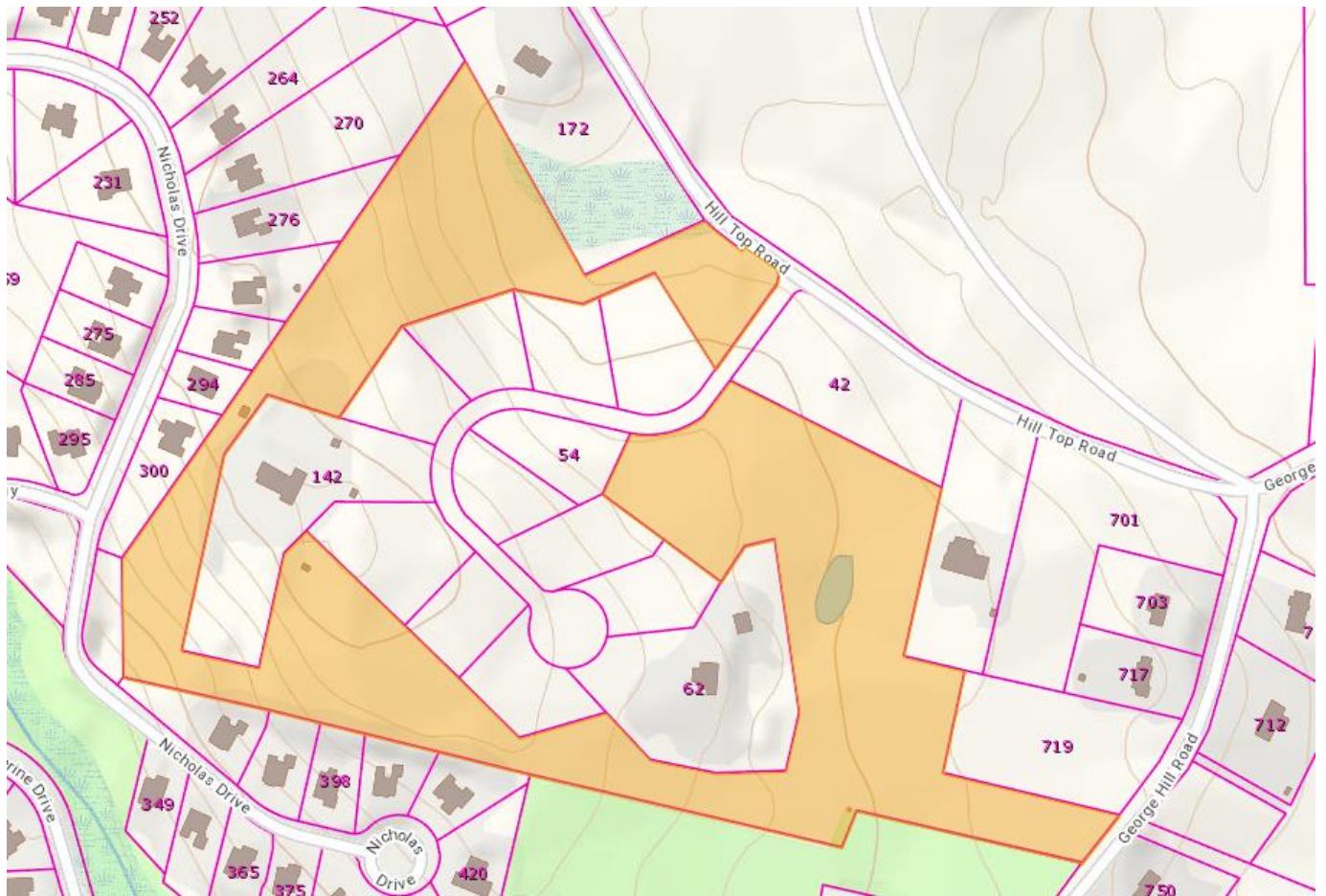
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64 To protect the town's interest in this parcel, it is important that you immediately request enforcement from the
65 building inspector. On January 11 the Planning Board met, reviewed the issue, and voted to send your board
66 this recommendation.

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68 Sincerely, on behalf of the Lancaster Planning Board,

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71 Russell W. Williston
72 Chair, Lancaster Planning Board

73
74 Enclosed:

75 A copy of the January 11, 2016 "Flexible Development Special Permit" certificate of approval
76 A copy of the January 26, 2016 "Definitive Subdivision Plan" certificate of approval
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An image showing the “Water Pump Station” constructed on the above parcel, adjacent to George Hill Road

