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From: "Bernie Waugh" <bernie.waugh@gardner-fulton.com>
Date: Monday, November 19, 2012 2:41 PM
To: "David Scalley" <davidscalley@dscontractorsinc.com>
Cc: <billdowling1@roadrunner.com>; <fostercpm@roadrunner.com>; <ebergum@worldsurfer.net>;
<gerniet@roadrunner.com>; <drevannh@gmail.com>; <skydive3995@gmail.com>; <paulbuss@earthlink.net>;
<NelsonRA25@gmail.com>; <stanb7@myfairpoint.net>; <twinmtn@roadrunner.com>
Subject: RE: Ruby's Way Street and Subdivision Bond

Gardner Fulton & Waugh PLLC
78 Bank Street
Lebanon, NH 03766
603-448-2221

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Dear Mr. Scalley:

I did not want to be rude by not responding to you. However please understand I have not been given any authority by the Town or its Planning Board to discuss or "negotiate" any substantive issues with you concerning your land. Just a couple of procedural points, however:

With respect to your letter to me, I have not "directed" or "instructed" anyone to do anything. I am not an official of the Town, and my role vis-a-vis the Town's officials is to give legal advice, not instructions.

The local body with ultimate legal authority over your subdivision, including any issues relating to enforcement of conditions, is the Planning Board. Thus your letter of today (of which you sent me a copy) asking for a hearing before the Board is, from a purely procedural standpoint, a step in the proper direction. Again, I haven't been authorized to discuss the substantive issues with you.

Sincerely,
H. Bernard Waugh, Jr.

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-----Original Message-----

From: Bernie Waugh <bernie.waugh@gardner-fulton.com>

To: Linda <mtview@roadrunner.com>; twinmtn <twinmtn@roadrunner.com>; ckatman <ckatman@aol.com>; drevannh <drevannh@gmail.com>; billdowling1 <billdowling1@roadrunner.com>; paulbuss <paulbuss@earthlink.net>

Sent: Wed, Nov 21, 2012 3:09 pm

Subject: FW: Hunt request for meeting

Hi Linda & a:

I have made a couple of suggested changes, for the sake of accuracy. In other words, I suppose it would be possible for Mr. Scalley to meet with the Board informally under the rubric of "conceptual consultations" (RSA 676:4, II(a)), without noticing a hearing. But the Board couldn't actually make any actual decisions at such a meeting unless the 10-day notice has been given.

I did speak with Evan briefly about the option of revocation as an enforcement tool. Just to be procedurally clear, if a notice is sent out for a public hearing to be held on the items Mr. Scalley has requested a hearing on, that same hearing could NOT (procedurally) be also used for the purpose of revocation. That is because under the revocation statute (676:4-a), a revocation can only take place if the Board first, at a public meeting, votes to send out a notice stating the reasons for the potential revocation, and gives the owner a chance to request a hearing on THAT issue, prior to recording the revocation in the Registry of Deeds (In making this procedural point, I am not expressing any opinion at this time on whether revocation could be justified in this case).

* * *

Bond Requirement: I spoke with Mark Catalano this morning. He told me Mr. Scalley had suggested to him that there was a provision in the Subdivision Regulations saying he did not need a subdivision bond until he had actually sold one or more lots. I told Mark I would check the regulations on that point. My response is:

1. I do not see any such exception in the regulations. On the contrary, Section 4.19 of the Subdivision Regulations makes it clear that the only type of subdivision where a bond or other security is not required is one where all of the lots are on already-existing roads. Furthermore, a provisions such as Mr. Scalley suggests would make no sense, because the whole purpose of the security is to make sure **no** lots **are** sold without the road construction having been secured. That purpose can't be fulfilled if the security is not in place until after the first lot is sold. [Obviously I can't be sure which language Mr. Scalley was looking at, so I can't go further in saying exactly what clause he might be misinterpreting.]

2. It should be understood that the Planning Board does have the legal authority to waive subdivision requirements, if certain standards are met (see RSA 674:36, II(n)). However as I have said in several prior E-mails, the requirement of adequate security is governed by state law (Paragraph III of RSA 674:36). In this case, in my view, the bonding could not be waived by the Board unless something were filed in the Registry of Deeds putting the sale of lots "on hold" until the road is finished in accord with the Board's decision.

Please don't hesitate to get back to me.