

## **EXECUTIVE SESSION**

**June 26, 2012  
Medway Planning and Economic Development Board  
155 Village Street  
Medway, MA 02053**

**BOARD MEMBERS PRESENT:** Bob Tucker, Andy Rodenhiser, Karyl Spiller-Walsh, Tom Gay, and Chan Rogers.

**ABSENT WITHOUT NOTICE:**

**ALSO PRESENT:** Susy Affleck-Childs, Planning and Economic Town Coordinator  
Amy Sutherland, Meeting Recording Secretary  
Gino Carlucci, PGC Associates  
Dave Pellegri, Tetra Tech  
Tom Holder, Director Medway Department of Public Services

The Board entered into Executive Session at 8:00 pm after the Board unanimously approved a vote to go into executive session to discuss the purchase, exchange, lease or value of real property at the Applegate Subdivision (northeast corner of Coffee and Ellis Streets.)

Mr. Holder communicated that he visited the site at Applegate to look at the situation relative to the storm drain. He recommended that a title search will be performed on the subject parcel to determine if the easement was ever recorded or whether prescriptive easement may be applicable.

It was also communicated that Ralph Costello prepared a proposal regarding costs associated with drainage construction, easement compensation and impact to property values.

Town Counsel has provided information about a prescriptive easement. This is established by showing continuous, open, notorious, and adverse use of another's land, for a period of twenty years.

If the Town wants to establish an easement by prescription, then the usage during the twenty years prescriptive period would need to be shown.

The Town currently conveys stormwater from Virginia Road through a small system of pipes within the public right of way onto the subject property on the east side of Ellis Street.

Tom Holder is looking to determine whether the Town is released from performing any stormwater improvements because of a condition preexisting over a period exceeding 20 years.

The Board is in receipt of a letter dated May 22, 2012 from Unique Homes, the developer and owner of the Applegate subdivision, regarding the drainage problems at Virginia Road and Ellis Street **(See Attached)**.

The letter contains a cost of \$151,250 for the lost value in the four lots, along with the cost of the easement.

Also enclosed for the Board to review was a letter from the developer's attorney, Rackemann Sawyer & Brewster, dated June 5, 2012. **(See Attached)**

The Board is also in receipt of a memo from Tetra Tech Rizzo dated June 11, 2012 providing review of the construction cost estimate prepared by Maricor Construction Services and submitted through GLM Engineering Consultants, the developer's engineer. **(See Attached)**

There could be minor adjustments to the basins which could stay the same and would only upsize the pipe to accommodate the flow.

Mr. Costello has indicated that the cost price for easement is (\$75,000) and an additional \$76,000 for the devaluation for four parcels due to adding the drainage easement.

The total cost noted by Mr. Costello would be \$151,000 for property compensation.

Tom indicated the Town may decide to do nothing. We do not have a formal and traditional easement. This system has been there for 50 years.

It was noted that the applicant's engineer should have reviewed the Virginia Road water issue back when the Applegate subdivision was originally presented.

Tom Holder indicated that we do not have a traditional easement. This is an easement by prescription. The Town has met these criteria since this has been utilized for 20 years. There has been no increase in flow for 20 years.

This situation will be an agenda item which will be scheduled for an Executive Session of the Board of Selectmen on July 16, 2012.

Another component of this matter pertains to the sidewalks. Mr. Costello proposed that if he were not required to have to put in the sidewalks (as specified on the Applegate definitive subdivision plan), he would then install the needed drainage pipe. The cost of the sidewalk is comparable for putting in the pipe. This is an angle he is approaching.

Member Gay disagrees with the idea of sidewalks to nowhere.

Member Tucker agrees with member Gay.

Dave Pellegrini noted that the sidewalks will provide the children of the new subdivision and nearby neighborhoods with the benefit of walking safely to school.

The Board discussed that they could get an easement for prescription and the Town could do work for drainage for \$20,000 on the corner of Virginia and Ellis St. If this were done, Unique Homes could then construct their homes.

Tom indicated DPS could take responsibility for new pipe.

There was a question about who paid for GLM Engineering.

Tom reported that GLM was paid for by the Town.

The Chairman noted that if the prescriptive right is the theory, the condition was there prior to him (Ralph Costello) buying this land. We paid for engineering to mitigate and now the applicant would only have to modify if there is a change to the approved plan.

Susy Affleck-Childs noted that we would be adding an easement. Technically the lots along Ellis Street were ANR lots and are not subdivision lots.

The Chairman wanted to know if those were first ANR Lots.

Tom Holder noted that the effected Lots are 9, 8B and 12 B.

The proposed locations of easements are on the southern edge of lot 7.

Dave Pellegrini noted that the Town could pay for pipe; this is not a big pipe.

Tom Holder noted that the total difference in the pipe size would be \$1,790.00.

The volume will not change and the pipe should have been sized initially to address this. The condition is existing and Mr. Costello will have to deal with this.

Chairman Rodenhiser disclosed that GLM Engineering is his engineer for the Bay Oak subdivision project.

It was noted that it would be a double dip if Mr. Costello wants the Town to pay for an easement AND cover the devaluation of the affected parcels.

Member Spiller-Walsh wants to know what happens with the original calculations since it did not calculate Virginia with the oncoming water. This water was not accounted for. The applicant has not indicated where the water is going.

The Board was informed that if this goes to Court everything is on hold.

Tom Holder notes that maybe the Town can waive the fees if Mr. Costello needs to file a modification to the subdivision plan.

Possible Actions to take:

- Declare a position in support of prescription right theory and support.
- Agree to waive fees for upcoming work.
- Take a stance that this was a pre-existing condition prior to him buying the land and he needs to deal with this.

Member Spiller-Walsh suggested that the Board could also waive the road paving width.

Dave Pellegrini indicated that the curbs could be berm instead of granite which could lessen the cost.

Susy Affleck-Childs will research about the prescriptive easement.

Chairman Rodenhiser noted that the Board could order a cease and desist indicating that the subdivision plans are faulty as the Virginia Road drainage was not accommodated.

Member Rogers noted that the drainage at Virginia and Ellis is unknown. Mr. Costello is obligated to fix and address this.

Susy Affleck-Childs suggested that the applicant must redo the evaluation of the drainage. This would need to be submitted as a plan modification.

Susy Affleck Childs will research previous decisions regarding road width and what is the Board's comfort level when serving 12 houses.

The Board of Selectmen meeting is scheduled for July 16, 2012. at 6:00 pm. Member Tucker will attend.


**On a motion made by Chan Rogers and seconded by Bob Tucker, the Board voted unanimously to exit out of executive session and to reenter into the open session.**

**Roll Call Vote:**

Andy Rodenhiser	aye
Bob Tucker	aye
Chan Rogers	aye
Karyl Spiller-Walsh	aye
Tom Gay	aye

The Executive Session concluded at 9:11 p.m.

Respectfully submitted,



Amy Sutherland  
Recording Secretary

Edited by,



Susan E. Affleck-Childs  
Planning and Economic Development Coordinator

## Susan Affleck-Childs

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**From:** Thomas Holder  
**Sent:** Thursday, May 24, 2012 4:47 PM  
**To:** Susan Affleck-Childs; Pellegri, David  
**Subject:** FW: Applegate Development  
**Attachments:** Applegate Drainage Financial Proposal.pdf

Suzy / Dave – I am forwarding you Town Counsel opinion relative to the existing stormdrain issue at Applegate Development. I am currently having the recommended title search performed on the subject parcel to determine if an easement was ever recorded or whether a prescriptive easement may be applicable.

Also attached is a proposal from Ralph Costello regarding costs associated with drainage construction, easement compensation and impact to property values.

I thought these documents would be helpful to offer some background on developing the Town's position moving forward. We can discuss these issues in more detail when we meet on June 12<sup>th</sup>.

Many Thanks.  
Tom

Thomas Holder | Director  
Department of Public Services

Town of Medway  
155 Village Street  
Medway, MA 02053  
508-533-3275

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**From:** Barbara Saint Andre [mailto:bsaintandre@petrinilaw.com]  
**Sent:** Wednesday, May 16, 2012 5:50 PM  
**To:** Thomas Holder  
**Cc:** Suzanne Kennedy  
**Subject:** RE: Applegate Development

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Tom, you have requested an opinion with regard to the discharge of stormwater onto property known as Applegate Farms. You indicate that the town conveys stormwater from an adjacent public way through a series of pipes onto the adjacent property, now owned by Mr. Costello. You indicate that this drainage system has been in existence for a number of years. Mr. Costello is looking to develop this land, which he claims is not buildable due to the water flowing from the town's drainage system. He has asked the town to pay for an underground drainage system on his property to address this. You have asked if the Town is responsible for accommodating Mr. Costello's request.

As an initial note, I recommend that the town have a title search performed to see if the town at some point acquired an easement over this property for the drainage. If the town has an easement, the easement would probably determine the rights and responsibilities of the town in this regard.

If the town does not have an easement of record, then it may be liable for damages if it creates a nuisance by flooding the property as a result of conditions created or maintained on town land, including street drainage systems, unless the town has acquired an easement by prescription.

## **I. Potential Liability**

Municipal liability for torts is generally governed by the Tort Claims Act, General Laws chapter 258. Prior to the enactment of the Tort Claims Act in 1978, cities and towns were generally immune from liability arising out of the negligent or wrongful acts of their employees under the doctrine of sovereign immunity. See Breault v. Chairman of the Board of Fire Commissioners of Springfield, 401 Mass. 26, 35 (1987). The Tort Claims Act waived that sovereign immunity for cities and towns for tortious conduct, subject to certain limitations such as a limitation of \$100,000 for damages, and provides in section 2:

Public employers shall be liable for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any public employee while acting within the scope of his office or employment, in the same manner and to the same extent as a private individual under like circumstances....The remedies provided by this chapter shall be exclusive....

There are, however, a number of exceptions to this broad waiver of sovereign immunity set forth in chapter 258. Section 10 of chapter 258 provides that the Tort Claims Act does not apply to a number of situations, including any claim based on the exercise or performance or failure to exercise or perform a discretionary function. Thus, the decision as to how to address this drainage issue is arguably a discretionary function that would not subject the town to liability under the Tort Claims Act. See Tarzia v. Hingham, 35 Mass. App. Ct. 506, 509 (1993).

On the other hand, the town may still be liable for the creation of a private nuisance, which is a common law cause of action that is not subject to the Tort Claims Act, and therefore does not include an exemption for discretionary acts. "In Massachusetts, liability for a private nuisance caused by the flow of surface waters from a landowner's property to that of an adjoining landowner depends on whether the landowner is making a reasonable use of his land...." Trenz v. Norwell, 68 Mass. App. Ct. 271, 275 (2007). In the Trenz case, the property owner sued the town for nuisance, alleging damages from significant stormwater flow from town culverts onto his property. The court explained the standard to be applied:

That the culverts were necessary to prevent water and ice accumulation on the street was certainly supported by the evidence. Public safety requires the drainage of surface waters from highways. However, it is unreasonable to impose on private individuals a disproportionate share of the cost of this public benefit.... Reasonableness is a question of fact for the fact finder whose decision is based on consideration of all the relevant circumstances including the amount of harm caused, the foreseeability of the harm which results, the purpose or motive with which the possessor acted, and all other relevant matter.... What is reasonable does not depend solely on the character of the property owner's action. Instead, it focuses on the results of the action, the consequent interference with another's use and enjoyment of his land. Id. p. 275-276. (citations omitted).

There are a number of cases where municipalities have been sued for damages under the nuisance theory as a result of diverting water onto abutting property without an easement. For example, in Schleissner v. Provincetown, 27 Mass. App. Ct. 392 (1989), the town owned a parcel of land that it used as a holding pond for surface runoff and water collected through a series of drains fed into the sump, in order to relieve pooling of water on nearby streets. The amount of water flowing into the sump, however, periodically exceeded capacity and flooded nearby properties. The court found that the town was liable for creating a nuisance. In another street drainage case, the court found that the drainage of stormwater by a drainage system installed in a state highway, which caused periodic flooding, constituted a nuisance. Triangle Center, Inc. v. Department of Public Works, 386 Mass. 858 (1982).

These cases illustrate that, absent an easement to drain onto abutting land, the town can be liable for diverting stormwater onto abutting property, if the court finds that the town's diversion of the water is unreasonable. If, as Mr. Costello claims, the stormwater diverted onto his property makes it unbuildable, and it would be buildable but for the stormwater flow from the Town's drainage system, then the Town faces potential liability for such damages.

## **II. Potential Prescriptive Easement**

As a defense to a nuisance claim, if the town does not have an easement on record to drain onto this property, the town may have obtained an easement by prescription.

A prescriptive easement is established by showing the continuous, open, notorious, and adverse use of another's land, conducted under a claim of right, for a period of twenty years.... In addition, where the entity asserting the right to a prescriptive easement is a town, corporate action is required.... There is sufficient corporate action when the municipality "has exercised dominion and control over the land in its corporate capacity through authorized acts of its employees, agents or representatives to conduct or maintain a public use thereon for the general benefit of its inhabitants. The town bears the burden of proving [an easement] by prescription. (citations omitted).

McLaughlin v. Marblehead, 68 Mass. App. Ct. 490, 499 (2007). Since the burden of proof is on the town, the town would need to establish, by testimony and evidence in a court proceeding, that it has been draining the stormwater onto this property through the drainage system continuously and openly for at least 20 years, and without the permission of the landowner (adverse to the landowner). It would also have to show corporate acts of the town, such as town meeting appropriation of funds for and then installing the culvert that drains onto the abutting land. Trenz v. Norwell, 74 Mass. App. Ct. 1117 (2009).

If the town can establish an easement by prescription, the court would determine the location of the easement and its size. Trenz v. Norwell, 68 Mass. App. Ct. 271, 279 (2007). The scope of the easement is determined by the usage during the twenty year prescriptive period. Although the use of the easement may change somewhat over time, "it is clear that ordinarily one who begins with a trickle of water at the beginning of the twenty years cannot acquire the right to flood his neighbor's land with a brook at the end of that time, even though the flow remains in the same location." Fortier v. H.P. Hood & Sons, 307 Mass. 292, 299 (1940). If the town establishes an easement by prescription, the land owner, to establish a nuisance, would have to show that there has been an increase in flow since the easement was established that caused harm outside the scope of the easement. Trenz v. Norwell, 68 Mass. App. Ct. 271, 275 (2007); Trenz v. Norwell, 74 Mass. App. Ct. 1117 (2009).

To evaluate whether the town may have a claim of a prescriptive easement, the town should research the background of this drainage system, including when the drainage system was installed; any plans showing it; any appropriations to build or maintain it; and whether there has been an increase in stormwater flow.

If you have further questions in this regard, do not hesitate to contact me.

Barbara J. Saint André  
Petrini & Associates, P.C.  
372 Union Avenue  
Framingham, MA 01702  
Tel. (508) 665-4310  
Fax (508) 665-4313  
[bsaintandre@petrinilaw.com](mailto:bsaintandre@petrinilaw.com)

<http://www.petrinilaw.com/>

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**From:** Thomas Holder [<mailto:tholder@townofmedway.org>]

**Sent:** Tuesday, April 17, 2012 4:46 PM

**To:** Barbara Saint Andre; Pellegri, David

**Cc:** Susan Affleck-Childs

**Subject:** Applegate Development



Hi Barbara/Dave – I am continuing to have conversations with the developer of Applegate Farms, Ralph Costello, and his desire to resolve the stormwater issue on his property. I need to clearly define my position as to whether the Town is obligated to perform any work to redirect or mitigate stormwater flow onto his property as well as a legal position as to whether he can cap or interrupt stormwater flow from the current piping configuration.

Barbara – To provide some background, the Town currently conveys stormwater through a small system of pipes within the public right of way onto the subject property. This flow causes the property to be virtually non buildable without a piped system being installed. As far as I am aware, all of the stormwater pipe lies within the public layout. The developer seeks to have the Town pay to have him install pipe on his property or find another route to keep the stormwater off of his property.

I am ultimately looking to determine whether the Town is released from performing any stormwater improvements because of a condition preexisting over a period perhaps exceeding 20 years.

Or, do we have exposure and need to seriously consider working with the developer to remedy the situation.

Please feel free to call me on the phone to discuss this in better detail.

Thanks.

Tom

Thomas Holder| Director  
Department of Public Services

Town of Medway  
155 Village Street  
Medway, MA 02053  
508-533-3275

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May 22, 2012

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Mr. Thomas Holder, Director  
Department of Public Services  
155 Village Street  
Medway, MA 02053

RE: Drainage Easement

Dear Tom Holder,

Thank you for your time at our recent meeting at which we discussed the ongoing drainage problem at Virginia Road and Ellis Street. It is apparent that the unmitigated flow of storm water flooding the homes, streets and land at Virginia Road, Ellis Street, Green Valley Road and the soon to be developed land, streets and homes of the Applegate subdivision should not be left unresolved. I think you believe as I do that now is the time to solve the problem. It is important to the Town of Medway and also to Unique Homes.

The Drainage Easement Plan and the independent Maricor Construction Services cost analysis initiated by your department and prepared by GLM Engineering details a plan whereby flood waters from Virginia Road and Holliston Street are captured in new structures to be built in Ellis Street, conveyed through a newly created 20' wide drainage easement over four lots of the Applegate subdivision and deposited in expanded pipes and retention system to be built by Unique Homes as part of the Applegate subdivision. This plan allows the water to be piped in the most direct and least expensive route to the resource area, avoiding the more expensive alternative of building 1500 feet of drainage east on Coffee Street.

The Maricor Construction Services Report lists and details the material and labor costs for the required improvements to implement and build the GLM plan.

**Payment of Improvement Costs:**

You expressed concern during our meeting that your department budget for this year has very little flexibility to pay for the improvements and easements.

Very truly yours,  
Thomas Holder  
Director of Public Services  
Medway, MA 02053  
Phone: 508-538-1234  
Fax: 508-538-1235  
Email: tholder@medwayma.gov

You also suggested your department may be able to pay for the Maricor improvement costs (approximately \$114,111) over a two or three year period which would spread the costs over a longer period and ease the strain on your budget. If this approach works for you, Unique Homes would be willing to complete the GLM drainage improvements for the price estimated and to work within your budgetary restraints by extending the construction and payments over a three year period.

#### Easement Costs:

The other cost to be considered is the Easement Cost which has two components. First: the price of the easement to be purchased from Cedar Trail Trust, the record owner of the Applegate land. Second: the decrease in value of each lot encumbered with an easement. These costs are more subjective but just as real as the quantifiable improvement costs.

Price of Easement: I propose a \$75,000 purchase price for the easement. In my view, this would be the minimal asking price of the lot owners if each lot was owned separately. This calculates to \$18,750 per lot, about 6% of the lot value.

#### Decrease in Lot Values

The second component to the easement cost is the lost value in each lot as a result of the easement running through the lots. This is difficult to estimate because each lot is impacted differently. The easement over two of the lots (Lot 7 and Lot 9B) significantly encumbers the lots with a 20 foot wide easement running the entire depth of the lots. And the easement over the other two lots (12 B and 8B) is impacted to a much lesser degree.

My best guess for lost values in the four lots as a percentage of market value is as follows:

<u>LOT #</u>	<u>Current Lot Value.....</u>	<u>Value of lot with Easement.....</u>	<u>% of value.....</u>	<u>Lot Value decrease</u>
# 7	\$ 275,000	\$247,500	10%	\$27,500
# 9B	\$ 295,000	\$265,500	10%	\$ 29,500
# 8B	\$ 275,000	\$261,250	5%	\$ 13,750
# 12B	\$ 275,000	\$269,500	2%	<u>\$ 5,500</u>
				<u>\$ 76,250 Total</u>

Adding the Lot value decrease amount (\$ 76,250) to the price of the easement (\$75,000) brings the Total Easement Cost to \$ 151,250.

#### Payment of Easement Cost:

I understand finding the cash to pay the easement cost either in your department budget or some other Town of Medway department may prove difficult if not impossible. However, the flood problem still exists, needs resolution and now is the best time. This is an opportune time to solve the problem because Unique Homes is in the process of constructing the improvements at Applegate and has within

its improvement budget enough to cover the cost of the easement. To make this work we would need an offset agreement which would cover the Easement Cost by identifying an equal amount of savings in the Applegate Plan with changes in some specifications and/or not building some items. This agreement would require Planning and Economic Development Board approval.

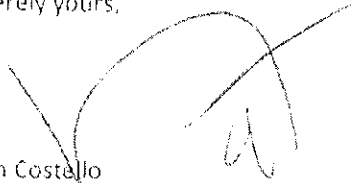
First Steps:

The first step would be for you and I to come to agreement on the Easement Cost as this will be the basis for the amount of savings we need to find in the Applegate Plan.

After we come to agreement on the Easement Cost and possible offsetting specifications in the Applegate Plan, we can schedule an appointment and seek Planning and Economic Development Board approval for recommended changes in the Applegate plan, one of which will solve the flood problem with the drainage easement through Applegate.

Tom, I would like to set up another meeting with you to keep the process going forward. Please let me know what is best and most convenient for you.

Sincerely yours,



Ralph Costello  
President

**RACKEMANN  
SAWYER & BREWSTER**

PROFESSIONAL CORPORATION  
COUNSELLORS AT LAW

Established 1886

RICHARD J. GALLOGLY  
(617) 951-1172  
rgallogly@rackemann.com

June 5, 2012

Unique Homes  
Attn: Ralph Costello  
503 Main Street  
Medfield, MA 02052

**Re: Municipal Liability for Storm Water Damage**

Dear Ralph:

You asked me to review whether the Town of Medway is liable for property damage caused by the diversion of storm water through a municipal storm sewer drain. I understand that several years ago the Town of Medway installed a system of drainage pipes that has caused flooding at Virginia Road, Ellis Street and Green Valley Road. Flooding has also occurred on land that comprises a portion of the Applegate subdivision. I further understand that the Town of Medway does not have an easement authorizing the discharge of storm water onto private property.<sup>1</sup>

Although public safety requires drainage of surface water from public roadways, "it is unreasonable to impose on private individuals a disproportionate share of the cost of this public benefit." Triangle Center, Inc. v. Department of Public Works, 386 Mass. 858 (1982) (Court ruled that an injunction would be appropriate if the drainage caused more than de minimus damage). The Triangle Center Court also noted that the public entity discharging storm water could take an easement (for which they presumably would have to pay).

In Schleissner v. Town of Provincetown, 27 Mass. App. Ct. 392 (1989), the Appeals Court affirmed the lower court's ruling that the municipal storm water system, which periodically floods plaintiff's property, created a nuisance which entitled the plaintiff to damages. See also Brousseau v. Town of Southbridge, Superior Court # 9500850B (February 6, 1998) (increase in the velocity

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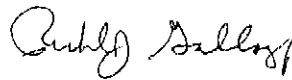
<sup>1</sup> To the extent that the Town of Medway alleges that it has a prescriptive easement to discharge storm water onto private property, I note that increasing the flow of storm water may be an overburdening of any such prescriptive easement.

of storm water is a nuisance justifying an injunction ordering the Town to abate the storm water damage). The Brousseau Court also ruled that as an alternative the Town could take an easement and compensate the plaintiffs for the reduction in fair market value resulting from the nuisance.

Based on the foregoing, the Town of Medway is liable for the flooding that has occurred as a result of storm drains installed by the Town.

If you have any questions, please call.

Sincerely,



Richard J. Gallogly

RJG:smg

8728/12

A0952811.DOC[1]



To: Tom Holder – Medway Department of Public Services  
Susan Affleck Childs – Medway Planning and Economic Development

Fr: Dave Pellegri–Tetra Tech Rizzo *DRP*

Re: **Applegate Farm  
Drainage and Sidewalk Construction Estimate  
Peer Review  
Medway, MA**

Dt: June 11, 2012

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At the request of the Town of Medway, Tetra Tech performed a review of the construction cost estimate completed by Maricor Construction Services and submitted through GLM Engineering Consultants (GLM), dated February 21, 2012. The estimate provides estimated construction costs for both the drainage improvements proposed in Virginia and Ellis Roads, as well as the sidewalk proposed along Coffee Street as part of the Applegate Farm construction. We have coordinated directly with GLM and identified answers to the majority of our original questions. The following represents our final comments on the budgets provided in the Maricor estimate.

#### **Virginia/Ellis Road Drainage Improvements**

The Maricor estimate provided a breakdown of the work organized into six separate tasks including General Conditions, Site Demolition, Sitework, Finish, Site Drain, and Street Drainage. These six items are then broken down by materials, labor, machine, and subs. We have organized our comments following the presentation of the Maricor line items. The page numbers identified below reference the Maricor estimate.

1. Item-Loam Strip/Stack On-Site, Page 5: This item includes the work associated with stripping and stockpiling the loam from the disturbed areas, primarily within the proposed drainage easement. The proposed easement is a minimum of 20' wide and therefore we would assume that the disturbance would be approximately limited to the proposed easement limits. Assuming a depth of six inches over the entire easement area provides a total quantity of approximately 220 cubic yards. The estimate provides for a quantity of 585 cubic yards. Utilizing the costs from the Maricor estimate, this reduction in quantity results in a cost **decrease** of approximately \$547.
2. Item-F&P 3" Minus Gravel-6", Page 5: This item includes placing 6" of gravel over the entire area within Ellis and Virginia Road that is designated to receive new pavement. Since we are maintaining the general crowns/grading of the existing roadways we feel that there will not be a need for an additional 6" of



gravel over the entire roadway area. We recommend carrying 3" of gravel for placement below the new pavement. This number may increase or decrease depending on the quality of the existing base material. Utilizing the costs from the Maricor estimate this reduction in quantity results in a cost **decrease** of approximately **\$740**.

3. Item-F&P 2 1/2" Asphalt Binder-Page 5: This item includes the binder course pavement required to pave Virginia and Ellis Streets. The estimate utilizes a price of approximately \$186 per Ton of pavement. MassDOT specifies a price of approximately \$100/Ton for asphalt pavement, however since this is a very small paving job we would recommend carrying \$150/Ton. Utilizing the quantities from the Maricor estimate this reduction in cost/Ton results in a cost **decrease** of approximately **\$1,100**.
4. Item-Reloam Easement-Page 6: This item includes spreading loam over the disturbed areas within the easement. As noted in Point 1 above we have assumed a smaller disturbed area than identified in the Maricor estimate. Using the 220 CY identified in Item 1 above results in a cost **decrease** of approximately **\$150**.
5. Item-F&P 1 1/2" Asphalt Top-Page 6: This item includes the top course pavement required to pave Virginia and Ellis Streets. As noted in Point 3 above, we feel that a cost/Ton of \$150 should be utilized. Utilizing the quantities from the Maricor estimate this reduction in cost/Ton results in a cost **decrease** of approximately **\$235**.

Original Maricor Estimate Drainage Improvement Cost: \$88,950

Total Recommended Edits to Maricor Estimate: - **\$2,750 (Rounded Total of Costs Above)**

Maricor also provided a cost to increase the size of the 12" drainage pipes from DMH #8 to DMH #13 to accommodate the increased flow. This cost seemed reasonable and fair.

Maricor Estimate Cost to Modify Existing Infrastructure: \$1,790.00

Total Recommended Cost for Drainage Improvements and Modifications- **\$87,990**

#### **Coffee Street Sidewalk**

The Maricor estimate provided two lump sum costs for the sidewalk work along Coffee Street. One cost included the work from Holliston Street to Ellis Street, while the second cost included the work from Ellis Street to approximately 340 linear feet beyond the project entrance. Individual tasks that comprised the scope of work for both costs were provided, however the costs were not broken down by item or as broken down in the Virginia/Ellis Road Drainage Improvements. Since the costs were not broken down by Task we were only able to evaluate the final costs. To do so, we were required to calculate our own rough costs and compare those to the Maricor Estimate. After doing so,





TETRA TECH RIZZO

we found that the costs in the Maricor Estimate for both sections of sidewalk were reasonable and fair.

There was however a discrepancy between the plans and the Special Conditions for the proposed sidewalk improvements. Item Number 15 in the Special Conditions for the approved Applegate Subdivision requires the sidewalk to be 6' wide. Assuming the conditions take precedent over the plans, the sidewalk would need to be increased by 0.5'. I notified the representative from Maricor of this issue and he provided revised costs assuming that the 6' width would be held. The revised numbers for each section of sidewalk along Coffee Street were as follows:

Holliston Street to Ellis Street: \$54,800

Ellis Street to end of proposed sidewalk: \$40,550

If the Town would like to more accurately verify these costs we recommend obtaining a second price from a local contractor to compare to the Maricor costs. If you have any questions or require additional information, please don't hesitate to contact me at (508) 903-2000

## Requirements for Net Metering Contract

### General

- Location
- Site Map & Locus 1 mi radius (why do we care? Can't be within x feet of something? Anything?)
- Site deed and all deed restrictions (Bidder must own the location or have an executed option to purchase the property/lease the property for the life of the project.)
- List of existing permits/licenses/orders from any and all local, state, and/or federal agencies showing all operating restrictions.
- List of all permits/licenses/orders from any and all local, state, and/or federal agencies that must be completed.
- Provide authorizations to interconnect from local electric utility (must be provided before contract execution.)
- Provide number of maintenance staff either at the facility. Must be capable of responding to the facility within 2 hours? Maintenance location? (May not care)
- Guarantee to provide x kWh per month/quarter/year or pay the Town any shortfall at the contract price within 30 days of deficiency.
- Financial strength shown thru D&B index?

### Existing Operating Facility

- List existing equipment on site.
- Provide Daily Facility kWh Output Report (last 3 months), Monthly Facility Availability Reports (last 12 months), Monthly Facility Capacity Report (last 12 months) (If we make a provision to have the Contractor provide credits or payment in lieu of credits, I'm not sure we care. If we do, pick an availability/capacity factor number - 90/80 perhaps?)

### Facility under Construction

- List existing equipment on site.
- List equipment not on site yet.
- Provide schedule for remaining equipment delivery and installation
- Scheduled in-service date. Must be before ????

### Proposed Facility

- List proposed major equipment.
- Provide schedule major equipment delivery and installation.
- Scheduled in-service date. Must be before ????