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June 30, 2023

Brookline Planning Board
C/O Michele Decoteau
1 Main Street
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IN RE: *Document Review for Tax Map D, Lot 7*

Dear Members of the Planning Board,

I have been asked by the Town Planner, Michele Decoteau, to review a Declaration of Covenants and Restrictions (the "Covenants"), a Slope and Drainage Easement, and a Fire Pond Easement relative to the above referenced property.

First, I have nothing remarkable to comment with regards to the two easements as they are both standard.

Second, as to the Covenants, Michele expressed whether it was clear that the future lot owners of the subdivision would own the Open Space lot.

The Covenants themselves do not convey title. Title must be deeded separately.

Paragraph 4 of the Covenants state that "[f]ee simple title to the Open Space Lot will be held by the owners of all the lots...[e]ach deed to the Lots...shall include an undivided interest in the Open Space Lot."

As such, title to the Open Space Lot will be conveyed to the respective lot owners when the various lots are sold. Therefore, to be sure the undivided interests in the Open Space Lot have been conveyed would require cross referencing the deeds to all the lots of the subdivision. Presuming without deciding that the deeds are correctly executed I would have to conclude that title to the Open Space would be adequately conveyed.

However, Paragraph 1.1 adds an interesting 'wrinkle.' Said paragraph states that the Declarant (*or successor or assignee (collectively the "Declarant")*) will retain the authority to grant certain easements to the Open Space Lot and that, furthermore, the lot owners acceptance

of the aforementioned deeds will act as an 'appointment' of the Declarant as, essentially, an agent.

So, despite title to the Open Space Lot being conveyed to the lot owners, the Declarant stills retains significant power to grant easements across the Open Space Lot.

It is unclear whether the Declarant's aforesaid authority is a benefit or a detriment to the lot owners. Presumably, any lot owner that purchases a home in this subdivision will be aware of Declarant's authority and perhaps it is not up to the Town to interfere with that contractual agreement.

Regardless of the Declarant's authority, the Covenants (Paragraph 1) make clear that the Open Space *shall* remain in its "*natural undeveloped state*" with few exceptions having to do with forestry maintenance. Despite the Declarant's authority no "person or entity other than the owners of lots...will hold any interest in it."

Overall, I have no issue with the Covenants but I highlight the above points for the sake of general understanding.

Should you need anything else please do not hesitate to ask.

Very Truly Yours,

CRONIN BISSON & ZALINSKY, P.C.

By. 

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