

Town of Franklin

355 East Central Street
Franklin, Massachusetts 02038-1352



Phone: (508) 520-4949
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OFFICE OF THE TOWN ADMINISTRATOR

Memorandum

September 1, 2023

To: Town Council
From: Mark G. Cerel, Town Attorney

Re: Resolution 23-50: Acceptance of Private Road Covenant with Owner-Developer of Prospect Hills Estates, a Residential Subdivision Located in Bellingham with Access Road off Prospect Street in Franklin

The Owner-Developer is proposing to construct an eleven lot residential subdivision located entirely within Bellingham, except for the access road, which will be constructed on a parcel of land in Franklin, off Prospect Street. The Franklin Planning Board initially denied the Owner-Developer's application and he appealed the denial to the Land Court. The parties then agreed that the case be remanded to the Planning Board for approval of the access roadway with stated conditions to safeguard both the public and the Town; the Land Court Judge adopted the parties' agreement in a "Stipulated Judgment" (see attached).

On remand, the Franklin Planning Board, as a condition of its approval and consistent with the "Stipulated Judgment", required that the access roadway be and remain a private road with abutters responsible for maintenance and repair and no Town responsibility. To make this legally-binding on subsequent property owners, the Board required that the owner-developer execute the Town's form "private road covenant". Town Council acceptance of the executed covenant is required so that it can be recorded at Norfolk County Registry of Deeds.

If you have any questions, please feel free to contact me.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

LAND COURT DEPARTMENT
DOCKET NO. 22 MISC 000622

<p>WALL STREET DEVELOPMENT CORP.,</p> <p style="text-align: right;">Plaintiff,</p> <p>v.</p> <p>FRANKLIN PLANNING BOARD,</p> <p style="text-align: right;">Defendant.</p>

*Approved as an Agreement
for Judgment pursuant to Land
By the Court, Court Rule 10.*

[Signature]
Howard P. Speicher
Justice 1/5/23

STIPULATED JUDGMENT

Pursuant to a stipulation of the parties, it is hereby ORDERED, ADJUDGED, and

DECREED as follows:

Case shall be remanded to the Franklin Planning Board which shall grant waiver(s) and approve roadway in Franklin to access Wall Street Development Corp.'s proposed ^{APL eleven} ten lot residential subdivision which, with exception of access roadway, is to be constructed entirely within Bellingham, subject to Franklin Town Engineer's determination that proposed design and construction of roadway is adequate to provide safe vehicular ingress and egress, and further subject to two conditions:

- (1) Roadway will always remain private and be maintained by homeowners and Town of Franklin will never have any responsibility to maintain it.
- (2) To implement condition # 1, Developer will execute a private road covenant with Town and establish a homeowners association, both documents to be recorded.

Dated: Jan 5, 2023

APL. By the Court (Speicher, J)

[Signature]
Deborah J. Patterson, Recorder



TOWN OF FRANKLIN

RESOLUTION 23-50

ACCEPTANCE OF PRIVATE ROAD COVENANT WITH OWNER-DEVELOPER OF PROSPECT HILLS ESTATES, A RESIDENTIAL SUBDIVISION LOCATED IN BELLINGHAM WITH ACCESS ROAD OFF PROSPECT STREET IN FRANKLIN

WHEREAS, the Franklin Planning Board on March 14, 2023 voted to approve with conditions a definitive subdivision plan for a residential subdivision known as Prospect Hills Estates, which subdivision plan shows a residential subdivision located wholly in Bellingham but accessed by a roadway off Prospect Street in Franklin, and which plan is to be recorded at Norfolk County Registry of Deeds; and

WHEREAS, said vote included conditions that the unnamed roadway shown on the above described subdivision plan as Parcel E, together with related drainage and utilities, be and remain private and that the private property owner(s) have the exclusive obligation to maintain and repair the same, as well as to remove snow therefrom; and

WHEREAS, Wall Street Development Corp. is the owner of the subject property and has executed a covenant incorporating the foregoing conditions, a true copy of which is attached as "Exhibit 1";

NOW THEREFORE BE IT ORDERED that the Town of Franklin, acting by and through its Town Council, hereby authorizes the Town Administrator to execute the covenant, a copy of which is attached hereto as Exhibit 1, on behalf of the Town of Franklin.

This resolution shall become effective according to the provisions of the Town of Franklin Home Rule Charter.

DATED: _____, 2023

VOTED: _____

UNANIMOUS: _____

A TRUE RECORD ATTEST:

YES: _____ **NO:** _____

ABSTAIN: _____ **ABSENT:** _____

RECUSED: _____

Nancy Danello, CMC
Town Clerk

Glenn Jones, Clerk
Franklin Town Council

**COVENANT
TOWN OF FRANKLIN
(PROSPECT HILL ESTATES - A PRIVATE WAY)**

The undersigned, Wall Street Development Corp. of P.O. Box 272, Westwood, MA 02090 (here within: "Wall Street") is the owner of land shown as Parcel "E" situated off Prospect Street in said Franklin, Norfolk County, Massachusetts, shown on a Definitive Subdivision Plan entitled "Prospect Hill Estates in Bellingham & Franklin, Massachusetts", (hereinafter the "Plan") dated December 17, 2021, revised through August 1, 2023, prepared by GLM Engineering Consultants, Inc., 19 Exchange Street, Holliston, MA 01746 to be recorded herewith at the Norfolk County Registry of Deeds.

Parcel E as shown on said Plan is a proposed unnamed private way. The plan was approved with conditions by the Planning Board of the Town of Franklin by Certificate of Vote dated March 13, 2023, filed with the Town Clerk of the Town of Franklin on March 14, 2023, a certified copy of which having been recorded at Norfolk County Registry of Deeds Book _____, Page _____.

Wall Street represents and covenants that it is the owner in fee simple of all the included land in the aforesaid subdivision and that, except as indicated below, there are no mortgages of record or otherwise on any of said land, except a mortgage to Needham Bank. 1063 Great Plain Avenue, Needham, MA 02394. With its execution of this Covenant, said mortgagee hereby assents to the imposition and binding effect of this Covenant and hereby agrees that said mortgage shall be subordinated to this Covenant, as further provided in paragraph 7 below.

In accordance with said Plan and Certificate of Vote, Wall Street, for minimal consideration acknowledges that this Covenant shall be binding upon its executors, administrators, heirs, successors, and assignees and agree with the Town of Franklin, by and through its Town Administrator, whose signature is affixed hereto, together with a resolution of the Town Council of said Town of Franklin, as follows:

1.) Said unnamed private way shall be constructed as a private road in accordance with the above-described Plan and any and all waivers granted by the Franklin Planning Board.

2.) The property owners served by said unnamed private way shall have the exclusive and continuing obligation for maintenance, repair, and snow removal of said way and the maintenance and repair of the drainage structure(s), if any.

EXHIBIT 1

3.) The unnamed private way shall remain a private road and is not intended to be now or at any time in the future a public way and the drainage structure(s), if any, shall remain private structure(s) for the benefit of the property owner.

4.) No petition shall ever be made to the Town of Franklin seeking to change the status of the unnamed private way and or the drainage structures, if any, from that of private way/private drainage structures or to transfer the obligation for maintenance, repair and/or snow removal from the private property owners to the Town of Franklin.

5.) The unnamed private way and drainage structure, if any, shall be constructed in accordance with the standard set forth in Section 300, Subdivision of Land - Rules and Regulations of the Town of Franklin, except those waived by the Planning Board. Maintenance and repair of the private way, water supply systems, sewer pipes, electric distribution system and storm water system shall be the responsibility of the owners and shall never be the responsibility of the Town of Franklin and the Town of Franklin shall never be required to perform any service, repair or maintenance with respect to said way, areas or any of the aforementioned systems within the subject property. The Town of Franklin will never be required to provide snow plowing with respect to the subject property;

6.) The Town of Franklin, its agents and servants, shall have the right but not the obligation at all times to enter the unnamed private way and the drainage structures, if any, for the purpose of inspecting, maintaining and/or making emergency repairs including, but not limited to, drainage. In such event, the private property owners shall be liable, jointly, and severally, for the payment of all expenses incurred by the Town of Franklin in connection therewith, and unpaid expenses shall constitute a lien on their property.

7.) The holder of the mortgage on said Parcel E, Needham Bank, 1063 Great Plain Avenue, Needham, MA, hereby consents to this covenant, and agrees that said mortgage shall be subject and subordinate hereto as fully as though this covenant had been executed, delivered, and recorded or filed prior to the execution, delivery and recording or filing of said mortgage.

Executed as sealed instrument this 7th day of August, 2023.


WALL STREET DEVELOPMENT CORP.


By: Louis Petrozzi, President & Treasurer

TOWN OF FRANKLIN

By: Jamie Hellen,
Town Administrator
Hereunto Duly Authorized

MORTGAGEE – NEEDHAM BANK

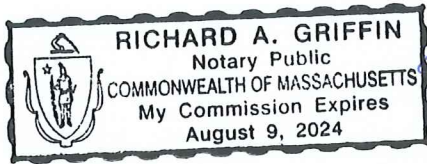

By: Lawrence J. Pitman, Senior Vice-President

**OWNER
COMMONWEALTH OF MASSACHUSETTS**

Norfolk, ss

August 7, 2023

On this 7th day of August, 2023, before me, the undersigned notary public, personally appeared Louis Petrozzi, proved to me through satisfactory evidence of identification, which was a Massachusetts Driver's License, to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose, as President and Treasurer of Wall Street Development Corp., a Massachusetts corporation.



Notary Public
My Commission Expires

**TOWN OF FRANKLIN
COMMONWEALTH OF MASSACHUSETTS**

Norfolk, ss

August __, 2023

On this __ day of August, 2023, before me, the undersigned notary public, personally appeared Jamie Hellen, Town Administrator, proved to me through satisfactory evidence of identification, which were Massachusetts Driver's License, to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose, as the authorized official of the Town of Franklin.

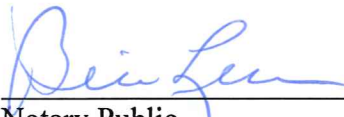
Notary Public
My Commission Expires:

**MORTGAGEE
COMMONWEALTH OF MASSACHUSETTS**

Norfolk, ss

August 4, 2023

On this 4th day of August, 2023, before me, the undersigned notary public, personally appeared Lawrence J. Pitman, proved to me through satisfactory evidence of identification, which was a Massachusetts Driver's License, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose, as Vice-President of Needham Bank, a Massachusetts bank.



Notary Public
My Commission Expires:

