

June 1, 2022

Katharine Lord Klein
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BY ELECTRONIC MAIL ONLY

Planning Board
Hopedale Town Hall
P.O. Box 7
Hopedale, MA 01747

Re: Overdale Parkway – Hopedale Ridge

Dear Members of the Planning Board:

You have requested an opinion whether the owners of a proposed 10-lot subdivision, to be known as Hopedale Ridge, located on Overdale Parkway, have the legal right to use the road as access to the lots. The proposed subdivision is owned by Black Brook Realty Corporation, which is proposing to create 6 lots on the west side of Overdale Parkway, and Ricardo Lima, who is proposing to create 4 lots on the east side of Overdale Parkway (Black Brook, together with Lima, the “Applicants”). In my opinion, in consequence of a vote taken under Article 7 of the June 24, 1985 Special Town Meeting (the “1985 Vote”), accepting a gift to the Town of Overdale Parkway, commencing at Freedom Street, and running to the terminus of the road at the entrance to the Hopedale Parklands, the Applicants have the legal right to access the proposed lots by Overdale Parkway.

In 2003, the Land Court held that the Hopedale Planning Board exceeded its authority in permitting Black Brook to create a 42-lot subdivision on its property as Black Brook did not have authority to use Overdale Parkway over its entire length. This decision was affirmed by the Court of Appeals in Parker v. Black Brook Realty Corporation, 61 Mass.App.Ct. 308 (2004). Further appellate review was denied.

Recently, the Applicants learned that at the June 24, 1985 Special Town Meeting of the Town of Hopedale, it was voted to accept as a gift a 30 foot wide paved access road into the Hopedale Parklands from the present end of the pavement on Overdale Parkway, approximately 703 feet, all as shown on a plan of land dated June 1, 1985, “showing paved road donated to the Town of Hopedale under Article 7 of June 24, 1985 Special Town Meeting by Virginia A. and Edward D. Larkin and the limits of the right of way granted to the owners of Lots 1, 2, 3, 4 on the Easterly side and the owners of Lots 1, 2, 3, 4, 5, 6 on the Westerly side and the area rededicated to park use,” said plan prepared by Guerriere & Halnon, Inc. The existence of the 1985 Vote was not known to the parties or courts in the earlier litigation.

In accepting the gift, the Town:

grants, upon the effective date of the acceptance, as set forth hereinafter, to the owners of the ten (10) lots shown on said plan, their heirs and assigns, the perpetual right and

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easement to pass and repass from each lot shown on said plan to said access road and over said access road to Overdale Parkway and to use said paved road for all purposes that public ways are used in the Town of Hopedale. (emphasis supplied)

These are the same ten (10) lots that are the subject of the pending application before the Planning Board.

The intent of the 1985 Vote to grant these 10 lots the right to use Overdale Parkway from Freedom Street as access is clear. “[I]f any lot owner shown on the plan to whom said rights and easements have been granted allows any such other lot owner to pass through a lot shown on this plan without authorization of a Hopedale Town Meeting then the rights and easements granted to said lot owner shall be terminated forthwith and shall not be reinstated without Town Meeting approval.” (emphasis supplied) In my opinion, Town Meeting voted to accept a gift of the road, and, further, to grant an easement for access to the owners of these 10 lots on the Town-owned roadway.

Black Brook, Lima and the Town, acting by and through its Select Board, entered into an Agreement, dated August 9, 2021, recorded with the Worcester South District Registry of Deeds in Book 65903, Page 351. The Town accepted the gift of the road, and the Applicants agreed to: (1) upgrade the road to current Town subdivision standards; and (2) design and construct 4-5 parking spaces, through an easement or in fee, within the cul-de-sac shown on the plan for the benefit of members of the public to access the Hopedale Parklands. Black Brook further agreed to deed a fee interest in or grant a conservation restriction upon the balance of the land it owned to the Town of Hopedale.

The Agreement, in my opinion, merely memorializes the terms of the 1985 Vote. It effectuates the 1985 Vote – it does not create rights which did not already exist. The courts which addressed this property were not aware of the 1985 Vote. The action of Town Meeting significantly changes the analysis of this matter. The Applicants, in my opinion, have the right to use Overdale Parkway to access the 10 lots under consideration by the Planning Board.

Please do not hesitate to contact me with any questions.

Very truly yours,



Katharine Lord Klein

KLK/caa
cc: Select Board