

Preserve at Somers Home Owners Association

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www.preserveatsomers.org

January 24, 2005

VIA FACSIMILE: (914) 277-4093

Guy Gagne
Town of Somers Engineer
337 Route 202
Somers, New York 10589

Re: The Preserve at Somers HOA

Dear Guy:

In advance of our meeting on Tuesday, January 25, 2005 at 9:30 a.m. at Town Hall, I want to provide you with some additional comments the HOA has with respect to the roadways, walking path, sewers and bio-filter basins, in addition to those identified in your prior correspondence to the builder.

Bio-filter basins & Dam

With respect to the dam elevation, the HOA has a question as to whether any DEC approval has been received. If not, is a modification to the original DEC approval required as the correct elevation was not obtained? Also, are there any impacts from the lower elevation that need to be evaluated with respect to the area where the water is retained?

With respect to the basins, we offer the following comments and questions:

1. It is our understanding that the base of the basins was required to be planted with plugs, but rather instead a seed mix was used. Please clarify.
2. What is the survivability rate of the plantings that were installed in the basins? How will this be evaluated and when?
3. We also recognize that several of the basins in Phases I and II had work performed to them in the

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fall. The HOA therefore disputes the acceptance of the basins as there has been no growing season in which the effectiveness of any modifications and the viability of the recent plantings can be measured against.

4. We understand there were numerous substitutions of approved materials and question whether they are adequate and appropriate.
5. Were as built of the basins provided to the Town? Do these include planting maps?
6. We understand some biobasins are intended to retain water. Can the Town identify which basins are intended to drain and which are to hold residual water?

The HOA raises these concerns because the builder has a responsibility for a period of five (5) years after acceptance of the basins to maintain the basins and, the long term liability is that of the homeowners which we need to better understand. With that in mind, it would be beneficial if there is a document that contains a maintenance schedule for the basins, that it be provided to the HOA.

Please advise as to the amount of the performance bond to guarantee the health and functioning of the basins as required by conditions 6(b) and 14 of the Final Subdivision Approval, how this amount was determined and the date of substantial completion of the basins.

Roadways

In correspondence dated 13-Jan-2005 from Andre Sanz, several concerns were raised with respect to the roadways. We would like to reiterate the most significant ones:

1. Perpetual seepage and icing at the intersection of Putney and Travis, in front of the manhole opposite the Travis pumping station, along Travis East and North of the pumping station, and along Travis west of open space M.

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2. Water accumulation and icing in the Harris cul-de-sac, and the need to adjust the elevation of the storm drain pipes.

Walking Trail

The walking path in its present state is considered to be ineffective as there are numerous obstructions such as trees and guard rails, frequent road crossings and steep elevations. The HOA would support the Town's decision to either remedy the construction of the trail or eliminate it.

Sewer

The Preserve residents continue to have grave concerns that the sewer system is plagued with operational difficulties, requires an extraordinary level of maintenance that is both excessive for a system of this size and exceeds what was anticipated. There have been several problems identified with the system in the last seven (7) months. The builder has asserted that the level of maintenance experienced is "largely driven by the low flow of effluent."¹ The Town, however, did not agree that the problems experienced were due to the low flow. Rather, the Town noted that "the need to flush out the force mains every two months is unacceptable" and characterized the maintenance required as an "unusually high degree of maintenance."² While it may be beneficial from an operational standpoint to have the Town assume responsibility for the day to day control of the system, we do not believe this should occur until an independent waste water systems engineer has evaluated the two (2) pump stations and associated infrastructure located in the Preserve and confirmed that the system is operating in an acceptable fashion and does not require excessive maintenance.

Both the Town and the builder have relied on the fact that the Westchester County Department of Health ("WCDOH") "accepted" the system in July, 2004. We do not know the nature of the County's acceptance of the system and nor do we believe it to be binding on the Town. In evaluating the County's acceptance and the builder's assertion that the system be accepted as complete, we urge the Town to note the following developments that occurred shortly before and since the County's acceptance:

1. October 28, 2003 – odor problem due to unspecified equipment failure.³

¹ August 16, 2004 letter from Beaver Brook Somers Associates, LLC Assistant Project Manager/Engineer Cosmo Marifone, P.E. ("CM") to Guy Gagne, P.E. ("GG").

² September 27, 2004 letter from Guy Gagne, P.E. to Cosmo Marifone, P.E.

³ October 28, 2003 letter from GG to WCDOH

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2. March 29, 2004 – air relief valves sticking and adjusted. Builder evaluating whether “the valves are completely repaired, if it is just a temporary fix or if the valves need to be maintained on a regular basis.”⁴
3. On or about June 18, 2004 – sewage overflow⁵. Transducer not working properly and Town advised the transducer needs to be replaced every two (2) years.⁶
4. June 28, 2004 – Town submits Dedication checklist to the builder, noting 34 items with respect to the sewer system.
5. July 30, 2004 – Sewage overflow onto Bassett Court for at least the fourth time (May 2003, March 2004 & June 2004)⁷. The Automatic Transfer Switch (“ATS”) failed due to arch shields obstructing contactor movement. Additionally, there was a failure of the emergency notification system. The pump station has a system that when a problem is detected, calls a specified person to advise of a problem. Unfortunately, on July 30, 2004, the battery backup system did not have its batteries installed and therefore, the emergency phone system was inoperable when the ATS failed.⁸
6. August 16, 2004 – Builder states that “the force main is designed to accommodate a regional sewer district and NOT only the Preserve at Somers. The lack of flow is causing long detention time within the force main, therefore leading to the settlement of solids within the main. As you are aware excessive detention times lead to the solids to become septic and build up on the walls of the force main.” Builder asserts that “using an air compressor to blow out the lines periodically is the best form of maintenance to prevent blockage”⁹, a maintenance item that was not, as we understand it, anticipated or normal for a system this size.
7. August 16, 2004 – Builder concedes that there is “an increased level of maintenance in an already high maintenance system to keep the mains operating at an efficient level.”¹⁰ Builder states this is caused by the grease from Somers Commons along with the low flows of effluent.

⁴ April 1, 2004 letter from CM to GG.

⁵ June 30, 2004 letter from GG to WCDOH.

⁶ June 24, 2004 letter from CM to GG.

⁷ August 4, 2004 letter from WCDOH to GG.

⁸ August 13, 2004 letter from CM to GG.

⁹ August 16, 2004 letter form CM to GG.

¹⁰ August 16, 2004 letter from CM to GG.

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8. September 1, 2004 – Town confirms that the vertical section of the terminal manhole in front of the main pump station is “clogged interfering with normal wastewater flow, although, not contributing to the backups.”¹¹
9. September 18, 2004 – “the Town of Somers crew dealing with the most recent station problem exposed items omitted from the force main blow-off units that may be contributing to the unusually high degree of maintenance as well as the inoperative blow-off¹².”
10. September 27, 2004 – HOA advised that grease buildup at the top of the wet well will be removed by a local waste hauler on a two month interval.¹³
11. September 27, 2004 – Town advises builder that the system is “still experiencing problems,” items associated with the final inspection of the system have not been addressed, “As Built” not complete and “the assertion that the Somers Commons is the problem requiring the force main to be flushed out every two months is a “smoke screen” and not acceptable.”¹⁴
12. October 6, 2004 – Builder advises that “all air-relief valves have been tested and are working properly, all 2” valves under the air relief valves have been exercised and the defective one was replaced. Furthermore, the flush kits for all the air relief valves have been installed. This is on going maintenance which will need to be performed for the life of the system.”¹⁵
13. October 19, 2004 – Town disputes that County acceptance of system mandates Town to accept sewer system. Town notes “the workmanship of the manhole invert and bench construction is not in accordance with the approved plans. Some of the inverts lose their shape allowing for the solids to settle out, and some have a lip at the outlet pipe causing debris to settle out or become trapped in the inverts. Also the clean out manholes on the force main system were not installed. We have in excess dual 3-mile force main pipes with no clean outs and this is not acceptable.¹⁶” The Town further notes that “as you know, the system has malfunctioned and allowed sewage to discharge at grade due to a series of failures.” Town notes that system will require, annually, that a “pig” be passed through the system and this will require the builder to install the clean-out manholes. Builder is also requested to provide

¹¹ September 1, 2004 letter from GG to CM.

¹² September 27, 2004 letter from GG to CM.

¹³ September 27, 2004 letter from GG to Preserve HOA

¹⁴ September 27, 2004 letter from GG to Linda B. Whitehead, Esq.

¹⁵ October 6, 2004 letter from CM to GG.

¹⁶ October 19, 2004 letter from GG to Linda B. Whitehead, Esq.

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a compressor at the pump station for the flushing out of the force main every two months and the Town notes “this level of maintenance was never clearly defined.”

14. December 1, 2004 – Town Engineer advises Town Board that the system have been “pigged” and determined to be free of foreign objects with a normal maintenance schedule required and notes his office has no objection to Town accepting the primary and secondary pump stations and the dual force main system.¹⁷ (Emphasis Added).
15. December 30, 2004 – Memo from Town Engineer to Town Board responding to HOA’s concerns about sewer system and stating the system needs to be accepted by the Town.
16. December 30, 2004 – While urging Town Board to accept system, Town Engineer advises builder that “the force main system was flushed out on December 29, 2004 and it was determined that the air valve release system is not working properly.” (Believed to be the same valves confirmed by the builder on October 6, 2004 to be working properly). Builder requested to install new valves at all the air release manholes and the Town references a further internal investigation of the two force mains.¹⁸

Given the history of the sewer system over the past seven (7) months as detailed above, we seriously question why the Town would accept the sewer system at this time, especially when repairs are still required, clean outs to be constructed and new air relief valves installed. Indeed, if the HOA had not been raising these issues, the new valves now required and what ever else might be discovered in the internal investigation of the two force mains identified in the Town’s December 30, 2004 letter would have been paid for by the District users or perhaps not identified. The HOA’s goal is to ensure that the primary users of the system, the 188 homes at the Preserve, are not saddled with excessive and unnecessary repairs, modifications to the system and excessive maintenance which are the responsibility of the entity that constructed the system. At this point in time, the HOA does not believe it can be said that the system is operating at an acceptable level with an ordinary and reasonable level of maintenance.

The County’s approval of the system is hardly a yardstick that should be relied on by the Town. One need only look at the additional work identified in the Town Engineer’s June 28, 2004 letter and the subsequent repairs. Therefore, for these reasons, the HOA request that the Town retain an independent engineer to examine the sewer

¹⁷ December 1, 2004 memo from GG to Town Board.

¹⁸ December 30, 2004 letter from GG to CM.

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system and make findings with respect to its functioning adequately to meet the present needs of the Preserve residents and other district users and detailing the required maintenance, cost of maintenance and future anticipated capital repairs to the system over the next 5 and 10 years.

We look forward to meeting with the Town and builder to discuss these and other issues at our meeting. As always, thank you for your attention to these matters.

Sincerely,



The Board of Directors:

Nicholas M. Ward-Willis
Andre Sanz
Matt Murphy
Tony Trabuco

NMW/cp

cc: Preserve at Somers HOA Board
Hon. Mary Beth Murphy