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David B. Lyons, Esq.
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50 Milk Street, 21st Floor
Boston, MA 02109

Re: Chapter 40B Application: 91 Beatrice Circle, Belmont, MA
Applicant: 91 Beatrice Circle, LLC
Ownership/Control of Frontage Road/Beatrice Circle

Dear David:

I write with respect to the issue of the ownership and control of Frontage Road and Beatrice Circle as it relates to the proposed Chapter 40B development at 91 Beatrice Circle. I understand that this issue has been raised by the Town's peer review engineering consultants due to the proposal to drain stormwater runoff into the storm sewer system located within the Frontage Road right of way. The following is intended to explain the legal basis for and provide documentation in support of the applicant's conclusion that Frontage Road is owned and controlled by the Town of Belmont, and thus that no permit or authorization from MassDOT is needed to connect to public drainage infrastructure located in Frontage Road.

In April of 1966, the Commonwealth of Massachusetts Department of Public Works executed a taking for the purpose of widening Massachusetts Route 2 in the vicinity of 91 Beatrice Circle. This taking (Layout No. 5579) was recorded in the Middlesex South Registry District on May 18, 1966 at Book 11117, Page 129.¹ A copy of this taking is enclosed for your reference.

Associated with the Route 2 taking was an April 27, 1966 plan of land entitled "The Commonwealth of Massachusetts Plan of Land in the Town of Belmont Middlesex County Altered and laid out as a State Highway by the Department of Public Works", which was recorded in the Middlesex South Registry as Plan 592 of 1966. A copy of this taking plan is enclosed for your reference. 91 Beatrice Circle is shown on the taking plan on Sheet 6 of 9, described as Parcel 3-TS-27.²

¹ This taking was also registered on the same date as Document 432554 on various registered land certificates of title, including the certificate of title under which 91 Beatrice Circle was at that time owned (#64135).

² The taking also included a temporary (3-year) easement over a portion of the driveway at 91 Beatrice Circle, as outlined at page 23 and 33 thereof, and as shown on the taking plan. The purpose of this easement was likely for staging of materials during construction. This easement expired in 1969 by its own terms.

The Route 2 taking describes its purpose on page 2, as follows:

The alteration consists of widening portions of the first and second sections of said 1933 State Highway layout altered as aforesaid on the Southwesterly side thereof, and of altering the southwesterly location line of the aforesaid 1959 State Highway alteration to conform to the northeasterly portion of the boundary line of a parcel of land, ***the control of which is hereby transferred to the Town of Belmont*** [emphasis supplied].

The taking that widened the Commonwealth's Route 2 right of way is described in two sections on pages 5-11 of the taking. The relevant portion of the highway taking for the land in the vicinity of 91 Beatrice Circle is described starting at page 9, line 19 of the taking through the bottom of that page. This metes and bounds description is shown on sheet 6 of the taking plan as a bolded line labeled "no access", which represents the southerly limit of the Commonwealth's Route 2 taking.³

In addition to the taking of land by the Commonwealth to widen the layout of Route 2 itself, the taking also took additional land on the southerly side of the widened Route 2 layout for the purpose of creating Frontage Road. This is described at page 15 of the taking: "In connection with the alteration of the State highway, as hereinbefore described, it is necessary to lay out 8 sections of highway ***in behalf of the Town of Belmont*** . . . [emphasis supplied]." This language corresponds to the text cited above, the intent of which was to effectuate a taking of land to be used as a Frontage Road, which was to be owned and controlled by the Town of Belmont.

The relevant portion of Frontage Road is contained in Section 3 thereof, which is described on pages 16 and 17 of the Route 2 taking as the laying out of "a location for a portion of Frontage Road 'C', so called, ***adjoining the southwesterly location line of the second section of the State Highway alteration, hereinbefore described and is bounded by said location line***, by the existing northwesterly street line of Princeton Road, by the existing northerly street line of Radcliffe Road, ***by the existing northerly street line of Beatrice Circle***, by the existing easterly streetline of Sylvan Road, and by the line described [on page 17 of the taking] [emphasis supplied]."

This portion of Frontage Road, which is shown on sheet 6 of the taking plan, in relevant part constitutes the land between the northerly line of the Town's Beatrice Circle right of way⁴ and the southerly line of the Route 2 layout, having been taken "in behalf of the Town of Belmont". This land is therefore owned by the Town of Belmont and is thus under the Town's control.

The applicant's representatives have reached out to the Town of Belmont Department of Public Works and MassDOT regarding this issue. Our understanding, based on conversations with both entities, is that Frontage Road is currently maintained jointly by the Town and MassDOT. However, MassDOT has informed us that it does not own or control Frontage Road. MassDOT's Road Inventory (available at <https://gis.massdot.state.ma.us/roadinventory/>) corroborates this, classifying Frontage Road as a "City or Town accepted road". See attached copy.

In sum, all evidence indicates that Frontage Road is owned and controlled by the Town of Belmont. As such, the applicant's understanding is that no permission is needed from MassDOT to connect to the public drainage infrastructure in Frontage Road.

³ The taking plan depicts a 7-foot section along the line of taking labeled "pedestrian access", which is located in front of 91 Beatrice Circle. This corresponds to the location of the existing pedestrian footbridge across Route 2.

⁴ At the time of this taking, the Town of Belmont already owned the Beatrice Circle right of way, having laid that way out as a public way in 1949 (as indicated on the taking plan).

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I hope this serves to clear up this issue. Please do not hesitate to reach out to me if you require any further information. If you deem it appropriate, please feel free to share this correspondence with the Board so that this information can be entered into their record for this matter.

Respectfully,

REGNANTE STERIO LLP

/s/ Jesse D. Schomer, Esq.
JESSE D. SCHOMER, ESQ.

cc. Jesse Johnson, P.E.
Justin Gould, P.E.
Development Team