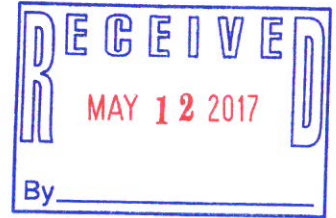




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TWO CAPITAL PLAZA, P.O. BOX 1137  
CONCORD, NEW HAMPSHIRE 03302-1137

ALSO ADMITTED IN MASSACHUSETTS

May 12, 2017

**HAND DELIVERED**

City of Concord City Council  
41 Green Street  
Concord, NH 03301

**Re: Request to Release "Paper Street" at 52 Locke Road**

Dear Honorable Mayor Bouley and Members of the City Council:

On behalf of JDH Realty Holdings, LLC ("JDH"), we hereby request and petition the City Council to release and discharge from all public servitude certain portions of Locke Road, as more particularly described below, for the reasons and on the conditions set forth herein.

*Background*

JDH recently submitted to the Planning Board an application for site plan review for an approximately 12,816 square foot warehouse and office building to be constructed and operated at 52 Locke Road (also known as Tax Map 40, Block Z, Lot 6, formerly known as Tract No. 8207, Lot No. 2) (the "Lot"), which is currently owned by Jay W. Stewart Realty Holdings, LLC. The Planning Board's public hearing on this matter will likely be scheduled for June 21, 2017.

The improved portion of Locke Road currently terminates in a cul-de-sac at the Lot's southerly property line. The Lot is encumbered by a small portion of the cul-de-sac as well as the so-called "paper street" shown as "Future Phase III Roadway Construction" most recently on the subdivision plan for Concord Business and Industrial Park, approved by the Planning Board on November 15, 1989.<sup>1</sup> The paper street over the Lot is sometimes referred to herein as the "Phase III Roadway".

Locke Road was originally intended as a through-street, providing public vehicular access to the lots within the development known as the "Concord Business and Industrial Park"

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<sup>1</sup> The 1989 subdivision plan is recorded in the Merrimack County Registry of Deeds as Plan #11807. All references in this letter to the "Registry" refer to the Merrimack County Registry of Deeds.

and to the large tract of land located to the immediate north of the Lot, formerly owned by the Gold Star Sod Farm. Pursuant to an unrecorded subdivision plan for the Concord Business and Industrial Park approved by the Planning Board on October 29, 1980, an easement for the southerly portion of Locke Road (referred to herein as the “Phase I Roadway”) was granted to the City by Keewaydin Shores, Inc. on December 9, 1980.<sup>2</sup>

A second subdivision plan for the Concord Business and Industrial Park was approved by the Planning Board on June 25, 1986.<sup>3</sup> The 1986 subdivision plan shows Locke Road in its entirety, culminating at a cul-de-sac at the boundary of the former Gold Star Sod Farm property (then owned by Merrimack Land Holding Inc.).

A third subdivision plan for the Concord Business and Industrial Park was approved by the Planning Board on June 15, 1988.<sup>4</sup> The 1988 subdivision plan shows Locke Road in three segments: (i) the Phase I Roadway as completed; (ii) an extension of the right-of-way northerly to the existing cul-de-sac, identified as “Phase II Roadway Construction” and “Temporary Turnaround Easement” (referred to herein together as the “Phase II Roadway”); and (iii) the Phase III Roadway. An easement for the Phase II Roadway was granted to the City by Keewaydin Realty Trust on October 30, 1989.<sup>5</sup> We understand that the Phase II was constructed prior to 1990. No easement for the Phase III Roadway has been granted to the City, and no portion of the Phase III Roadway has been constructed or accepted as a public street by the City.

The City acquired the Gold Star Sod Farm property in 2005, and the parcel is subject to a conservation easement to the Society for the Protection of New Hampshire Forests (the “Forest Society”).<sup>6</sup> There is currently a telecommunications tower located on the Gold Star Sod Farm property, which is accessed through the Lot. Access and utility easements to the tower over a fifteen foot (15’) wide portion of the Lot are provided by the easements granted to Sprint Spectrum L.P. and the City.<sup>7</sup>

Water, sanitary sewer and storm drains are also “stubbed in” to the Lot and are located within a portion of the Phase III Roadway.

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<sup>2</sup> The easement is recorded in the Registry at Book 1386, Page 1057.

<sup>3</sup> The 1986 subdivision Plan is recorded in the Registry as Plan #9120.

<sup>4</sup> The 1988 subdivision plan is recorded in the Registry as Plan #10570.

<sup>5</sup> The easement is recorded in the Registry at Book 1837, Page 1464. By the terms of the easement, the cul-de-sac is temporary in nature and was intended to terminate upon the acceptance of the Phase III Roadway as a public highway.

<sup>6</sup> The conservation easement to the Forest Society and the deed to the City are each dated March 25, 2005 and are recorded in the Registry at Book 2759, Pages 642, and Book 2759, Page 734, respectively.

<sup>7</sup> The easements are dated December 17, 1996 and July 24, 2009, respectively, and are recorded in the Registry at Book 2049, Page 701 and Book 3153, Page 38, respectively.

In connection with the 2014 site plan approval for a poultry processing facility on the Lot granted to Fournier Foods, Inc., the Planning Board recommended that the City Council release the Phase III Roadway from public servitude and a request similar to this one was presented to the City Council. That project did not go forward, and the request was withdrawn before the City Council could take action.

*Applicable Law and Procedure*

This request is made pursuant to RSA 231:51, which provides that any street which has been dedicated to public use by being shown on a plan may be released and discharged from all public servitude by vote of the City Council if such street has not been opened, built or used for public travel with twenty (20) years from such dedication.

*Grounds for Release from Public Servitude*

The Phase III Roadway was dedicated to public use by being shown on the subdivision plans for the Concord Business and Industrial Park, but has not been opened, built or used by the public for more than twenty (20) years. Although there was the potential for a public benefit at the time that the Phase III Roadway was shown on the subdivision plans, any potential public necessity for the Phase III Roadway has ceased. As noted above, the City now owns the Gold Star Sod Farm parcel, and the parcel is subject to development restrictions held by the Forest Society pursuant to the conservation easement. In addition to these factors, the current zoning, wetlands and flood plain regulations applicable to the land north of the Lot render the likelihood of development of that area, and the related need for public access, highly remote.

Private access to the Gold Star Sod Farm parcel and telecommunication tower on it will be unaffected by the release of the public servitude in the Phase III Roadway and will continue by virtue of the access and utility easements over the Lot. These easements will be modified, however, to re-align the fifteen foot (15') wide access way to accommodate JDH's proposed development. Furthermore, we anticipate that as a condition JDH's site plan approval, JDH will be required to provide for the existing water, sewer and storm drains located with the Phase III Roadway by easement to, or other appropriate agreement with, the City.

Finally, release of the public servitude to the Phase III Roadway will be in the public interest, as it will terminate any liability the City may have for the construction, maintenance, repair, upkeep and condition of the encumbered property.

*Specific Request for Release*

Based on the foregoing, we request and petition that the City Council release and discharge from all public servitude the Phase III Roadway and terminate the City's interest in the

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portion of the cul-de-sac located on the Lot, all subject to and effective upon final site plan approval of JDH's proposed development of the Lot by the Planning Board and satisfaction by JDH of all conditions thereof.

We ask that this matter be placed on the City Council agenda for consideration and referral to the appropriate City staff for their input, with a vote on this request, with the benefit of such input, at the City Council's next subsequent meeting.

Please contact me if you have any questions or need further information.

Sincerely,

CLEVELAND, WATERS AND BASS, P.A.

By:   
Philip M. Hastings

PMH/mr

cc: Paul Gendron, City Surveyor  
James Kennedy, City Solicitor  
Heather Shanks, City Planner  
Katie Weiss, Bedford Design Consultants, Inc.  
JDH Realty Holdings, LLC