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MEMORANDUM

To: Colin Kelly, Conservation Director
From: Nicholas Bamonte, Esq.
Date: October 2, 2025
Re: Edgemarth Hill Road: Clarification for Ownership of Shared Private Road

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We have reviewed the materials and correspondence you have provided from neighbors and from Attorneys Joel Green and Adam Cohen regarding the status of legal ownership of Edgemarth Hill Road and the implications, if any, on the applications pending before the Conservation Commission ("Commission") and the Flood and Erosion Control Board ("Board"). After studying the relevant law, we conclude that the Commission and the Board should accept all comments and correspondence into the record, however, must proceed in the normal due course without rendering any findings as to ownership of Edgemarth Hill Road.

Connecticut courts have long held that when acting on permit applications, land use bodies like the Commission and the Board operate in an administrative capacity and, as such, are tasked with determining whether an applicant's proposed use complies with existing regulations and statutes. Those land use bodies are explicitly precluded from deciding issues of title or ownership, since that conclusion can be made only by a judicial authority in a quiet title action governed by state law. *Beckish v. Manafort*, 175 Conn. 415 (1978); *Cybulski v. Planning & Zoning Comm'n*, 43 Conn. App. 105 (1996), *Lea Manor Health Care Ctr. v. Health Resources,* 1993 Conn. Super. LEXIS 3103 (Fuller, J., 1993), *Gagnon v. Municipal Planning Com.,* 10 Conn. App. 54 (1987). For these reasons, even where a land use regulation requires identification of an "owner" of a property seeking a permit, the land use body is legally prohibited from rendering any determination as to the validity of such representation in a pending application.

Further, the Supreme Court has examined and determined that the lack of a clear title interest in a property does not preclude application to a municipal land use body.

> [I]t is not possible to extract a precise comprehensive principle which adequately defines the necessary interest which a nonowner must possess in order to have standing to apply for a special permit or a variance… . Whether the applicant is in control of the property, whether he is in possession or has a present or future right to possession, whether the use applied for is consistent with the applicant's interest in the property, and the extent of the interest of other persons in the same property, are all relevant considerations in making that determination. *Richards v. Planning & Zoning Com.*, 170 Conn. 318, 323-24 (1976).

In this case, there evidence that an association of homeowners first duly formed as a corporation with the Secretary of the State in 1992. That association, represented by Attorney Cohen, now claims ownership of Edgemarth Hill Road based upon the references in the property deeds granting a right of way over the road and for proportional shared maintenance costs. Several property owners, in part represented by Attorney Green, contest their membership in the association and therefore dispute the association's right to claim ownership over the entirety of the road. One property owner now disputing membership in the association has conceded being part of the association when initially formed.

Based on the evidence submitted, the association, under its current undisputed membership, does demonstrate a sufficient easement interest in the entirety of Edgemarth Hill Road and control over, at the very least, the portions abutting the properties owned by the association membership. Under the law, these interests authorize the association to file the present applications with the Commission and Board, and there is no legal authority that the applications must now be halted and rejected due to the underlying dispute amongst the property owners about who is going to pay for proposed Road improvements.

For these reasons, both the Commission and Board must proceed on the substance of the applications and render a decision whether the proposal conforms to the applicable regulations.