

Section 26: Western Avenue Contract Zone

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 INSTR # 2014028104 DEBRA ANDERSON
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09463

WESTERN AVENUE CONTRACT ZONE

CONTRACT ZONING AGREEMENT
BETWEEN SEAGRASS LANE, LLC
and THE TOWN OF KENNEBUNK

This Contract Zoning Agreement is made this 21st day of July, 2014 by and between the **TOWN OF KENNEBUNK**, a body corporate and politic located in the County of York and State of Maine (hereinafter the "Town") and **SEAGRASS LANE, LLC**, a Maine corporation with a place of business at P.O. Box 1373, Kennebunkport, Maine (hereinafter "Developer").

WHEREAS, Developer is the owner of a parcels of real estate located on or near Western Avenue in Kennebunk, Maine (Tax Map 90, Lot 13 & Tax Map 94, Lot 101 and a portion of Lot 1) as depicted on the Sebago Technics Contract Zone Site Plan (the "Site Plan") and attached hereto as **Exhibit A** and incorporated herewith (hereinafter the "Property").

WHEREAS, the Property is currently located in the Suburban Residential Zone, Resource Protection and Shoreland Overlay Zones under the Kennebunk Zoning Ordinance.

WHEREAS, the Property consists of approximately 10.31 acres.

WHEREAS, Developer wishes to develop the property for the following purposes: Single-Family Housing, Conservation and Recreation.

WHEREAS, Developer hereby agrees to fund and construct the extension of the public sidewalk along Western Avenue from Lake Brook to Captain Sawyer Lane, so as to better protect the safety and welfare of residents of the subdivision on the Property, as well as other residents of and visitors to the area, when walking on Western Avenue to and from Lower Village.

WHEREAS, Developer and the Town wish to create a separate zone known as Western Avenue Contract Zone which will enable above-described uses to exist on the Property.

WHEREAS, the Town has the authority to enter into a contract re-zoning for the Property pursuant to 30-A M.R.S.A. §4352 and Article 13(2) of the Kennebunk Zoning Ordinance.

WHEREAS, after notice and hearing and due deliberation on the re-zoning phase, the Kennebunk Planning Board recommended re-zoning of the Property.

WHEREAS, the Planning Board and the Board of Selectmen have determined that the re-zoning will be pursuant to and consistent with the Town's Comprehensive Plan, specifically Sections 3.A, 3.D, 3.E, 3.F, 3.J, 3.K, and 4.B.

WHEREAS, the re-zoning has been authorized at a Town Meeting.

NOW THEREFORE, in consideration of the mutual promises made to each other, the parties covenant and agree as follows:

1. The Town will amend the Zoning Ordinance and map to create and make reference to the Western Avenue Contract Zone as depicted on Exhibit A.

2. Subject to final Planning Board Subdivision approval (after public hearing) of the Site Plan (as defined above), the Developer and/or its heirs, successors and assigns shall be authorized to use the Property for any of the uses set forth in the description of the Western Avenue Contract Zone attached hereto as Exhibit B and incorporated herewith.

3. In reviewing the Site Plan, the Planning Board will apply the standards set forth in the Kennebunk Zoning Ordinance and the Subdivision Standards except as modified by the description of the Western Avenue Contract Zone attached hereto as Exhibit B and incorporated herewith. The project shall be developed substantially conforming to the layout shown on the Site Plan, Exhibit A. The Planning Board may make modifications of the Site Plan without amendment of this Agreement but, in no event, shall the maximum number of lots be increased without an amendment approved at Town meeting. The number of lots may be decreased by the Planning Board only if necessary to comply with applicable subdivision or zoning requirements.

4. As a condition of this Agreement, the Developer shall construct, at its own and sole expense, the extension of the public sidewalk along Western Avenue from Lake Brook to Captain Sawyer Lane. The project will be constructed in two phases with the first phase being the completion of the on-site subdivision improvements and off-site public sewer connection. The sidewalk will be constructed as a second phase. A performance guarantee shall be submitted for each phase. The performance guarantee for the construction of the sidewalk must be posted within 2 years of the date of Final Subdivision Approval. The construction of the sidewalk must be completed within 6 months of posting of the performance guarantee.

5. To better protect the natural resources on and adjacent to the Property, the Developer and the Town agree that all homes on the Property must be connected to public sewer and public water; and that certain natural buffers must be maintained along the Property lines.

6. Developer shall record the Contract Zoning Amendment in the York County Registry of Deeds and shall submit proof of recording to the Town's Code Enforcement Officer, Clerk and Planner.

7. The provisions of this Contract Zoning Agreement shall be deemed restrictions on the use of the Property and shall be amended only upon further written agreement of the Town and Developer and/or its heirs, successors and assigns to the Property.

8. The above restrictions, provisions and conditions are an essential part of the re-zoning, shall run with the Property and shall bind Developer and/or its heirs, successors and assigns of the Property or any party in possession or occupancy of the Property or any part thereof and shall inure to the benefit of and be enforceable by the Town.

9. If any of the restrictions, provisions, conditions or portions of this Agreement is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portions shall be deemed as separate, distinct and independent provisions and such determination shall not affect the validity of the remaining portions hereof.

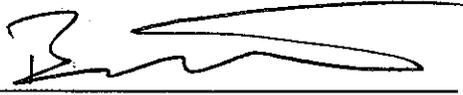
10. Except as expressly modified herein, the use and occupancy of the Property shall be governed by and comply with the provisions of the Town of Kennebunk Zoning Ordinance. This includes the project being reviewed and approved by the Planning Board under the subdivision review standards.

11. In the event that Developer and/or its successors and assigns fail to develop or operate the Property in accordance with this Agreement or in the event of any other breach of any conditions set forth in this Agreement, the Board of Selectmen of the Town shall have the authority, after written notice to Developer and/or its successors and assigns, and reasonable opportunity to cure, to terminate this Agreement or to recommend to the Town that it should re-zone the Property to the current zone or any successor zone. In the event of such a re-zoning, the Property shall then be used for only such uses or otherwise allowed by law. The Town shall also have the ability to enforce any breach of this Agreement or any other violation of the Zoning Ordinance through the provisions of 30-A M.R.S.A. § 4452.

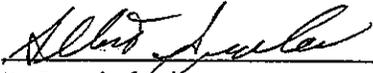
IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the

8TH day of July 2014.

TOWN OF KENNEBUNK



Witness

By: 

Its Board of Selectmen

Barbara Duffey
Witness

SEAGRASS LANE, LLC

By: [Signature]

Its MEMBER

Thereunto duly authorized

STATE OF MAINE
YORK, ss.

7-8, 2014

Personally appeared the above-named Albert Searles as Chairman Board of Selectmen of the Town of Kennebunk and acknowledged the foregoing instrument to be his/her/their free act and deed in said capacity on behalf of said Town.

Seal

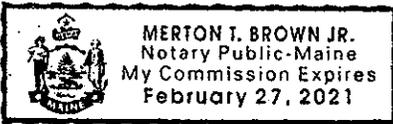
Before me,

[Signature]

Notary Public/Attorney at Law

Printed Name: Merton T. Brown Jr.

Commission Expires: 2-27-21



STATE OF MAINE
YORK, ss.

7-21, 2014

Personally appeared the above-named Michael Spentinhauer as Member of SEAGRASS LANE, LLC. and acknowledged the foregoing instrument to be his/her free act and deed in said capacity on behalf of said SEAGRASS LANE, LLC.

Seal

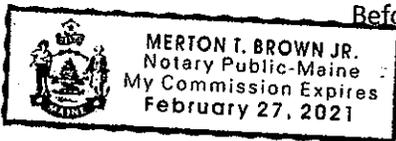
Before me,

[Signature]

Notary Public/Attorney at Law

Printed Name: Merton T. Brown Jr.

Commission Expires: 2-27-21



STATE OF MAINE
YORK, ss.

_____, 2014

09463

EXHIBIT B

WESTERN AVENUE CONTRACT ZONE

A. Purpose

The purpose of the Western Avenue Contract Zone is to allow for a higher density, cluster style, single-family detached housing project to be developed in the least sensitive areas of a parcel. The parcel is currently zoned as Suburban Residential (SR) Resource Protection (RP) and Shoreland Overlay Zone. This Contract Zone will permit a higher density, cluster style development, while retaining approximately 48% of the land in open space, with most of it to be set aside in a private conservation easement. In addition, all the homes will be connected to public sewer and water. Public sidewalks will be extended along Western Avenue from Lake Brook to Captain Sawyer Lane, a distance that is approximately 2,075 feet. A higher density in this area of the Suburban Residential Zone is consistent with the Comprehensive Plan of the Town of Kennebunk.

B. Permitted Uses

The following uses are permitted in the Western Avenue Contract Zone:

- Single family detached dwelling.
- Outdoor recreation.
- Accessory uses and buildings.
- Forest management.
- Essential Services
- Home occupations
- Accessory apartments

C. Special Exceptions

The following uses may be permitted only upon approval as special exceptions in accordance with Article 7 of the Town of Kennebunk Zoning Ordinance:

1. The following utility uses:

1-1 Public utilities

D. Prohibited Uses

(1) Uses not allowed as permitted uses or special exceptions are prohibited within this district.

E. Standards

(1) Space and Bulk Standards

The following space and bulk standards shall apply in the Western Avenue Contract Zone:

Single-Family Detached

Minimum net lot area for individual lots*	10,000 square feet
Minimum lot width	25 feet
Minimum setbacks	front – 10 feet side – 10 feet rear – 10 feet
Shoreland setback	per Article 8 Section 1 & 16 (Resource Protection and Shoreland Zones)
Maximum lot coverage	25%
Maximum lot coverage (Shoreland Zone)	20%
Minimum width of green buffer strip from abutting properties	70 feet, 50 feet and 20 feet as shown on the Site Plan **
Maximum height	35 feet

* Net residential density for the entire parcel shall be determined by dividing the net development area by 20,000 square feet. Minimum net lot area for individual lots is 10,000 square feet. Maximum number of lots permitted is 13.

** A 70 foot wide natural green buffer strip is required along the northern property line. A 50 foot wide natural green buffer strip shall be maintained along the southern and western property boundary to provide a visual screen of the housing development from adjacent dwellings. A 20-foot-wide natural buffer along the property line owned by Bonney (Tax Map 90, Lot 4) is required if an agreement is reached with the owner of the Bonney property for a reduced buffer; this reduced buffer will be supplemented with a dense plantings of evergreens as shown on the site plan. If an agreement for a reduced buffer is not reached with the owner of the Bonney property, then a 50-foot-wide buffer will be required along that property line.

(2) Performance Standards

Uses within the Western Avenue Contract Zone shall conform to all applicable performance standards of this Ordinance, including but not limited to the following:

- | | | |
|-----|--------------------------|------------------------|
| (a) | Soils | Article 10, Section 2 |
| (b) | Private outdoor lighting | Article 10, Section 6 |
| (c) | Signs | Article 10, Section 7 |
| (d) | Off-street parking | Article 10, Section 9 |
| (e) | Home occupations | Article 10, Section 14 |
| (f) | Accessory apartments | Article 10, Section 15 |

(3) Public Utility Services

All lots within the Western Avenue Contract Zone must be connected to public sewer and public water. No variance or waiver of this provision will be allowed.

F. Other Districts

- (1) Any portion of the Western Avenue Contract Zone within the Resource Protection District or Shoreland Area Overlay District shall additionally comply with the provisions of Article 8, Section 1 & 16, and of Article 10, Section 3, of the Town of Kennebunk Zoning Ordinance.

G. Flood Plains

Any construction or development within a flood plain, as defined by the Kennebunk Flood Plain Management Ordinance, shall additionally comply with the terms of that Ordinance.

H. Planning Board Review

Any subdivision review shall be conducted by the Planning Board. The Planning Board may make modifications of the Subdivision Plan without amendment of this Agreement but, in no event, shall the maximum number of lots be increased without an amendment approved at Town meeting.

I. Street Standards

A. Public

Any public street proposed as part of the Western Avenue Contract Zone shall be designed to a Minor Street standard for growth areas, with the following exceptions:

1. Sidewalks shall be required.
2. The following standards shall be reduced in order to reduce wetland impacts to the first 350 feet of road.
 - A. The travel way width for the first 350 feet of roadway shall be 22 feet to reduce wetland impacts.
 - B. No grass esplanade is required for the first 350 feet of roadway to allow for a reduced wetland impact.
 - C. Side slopes for the first 350 feet of roadway shall be 2 feet horizontal to 1 foot vertical.