

TOWN OF DUXBURY

INSPECTIONAL SERVICES DEPARTMENT
TOWN OFFICES
878 TREMONT STREET
DUXBURY, MASSACHUSETTS 02332-4499

Pilgrim By Way

RICHARD R. MacDONALD
Director of Inspectional Services

Telephone (781) 934-6586
(781) 934-1106
Fax (781) 934-1118

March 19, 2001

Atty. Mark J. Coltin, P. C.
101 Merrimac Street
P. O. Box 9601
Boston, MA 02114-9601

Re: Pilgrim By-Way

Dear Atty. Coltin:

I am in receipt of your letter requesting my opinion regarding zoning of the property on Pilgrim By-Way. You state your client has been denied in "efforts to cause this lot to be buildable, but each attempt has been denied by the applicable Duxbury Municipal officials without valid basis."

That is incorrect.

The background and current status of the parcel was discussed with Mr. Joel White and Atty. Scarry along with a memo (enclosed) to Attorney Scarry sent by the Town of Duxbury Planning Director.

Also, a March 12, 2001 memo to me from the Planning Director further describes the subdivision issues involved with this parcel. For the record, it is my opinion that compliance with any aspect of Subdivision Control does not translate into compliance with zoning.

I will be happy to answer any further questions you may have after you review the enclosed information.

Very truly yours,


Richard R. MacDonald
Director of Inspectional Services

RRM:emw

Enclosure

CC: Planning Director

Duxbury Planning Board



Town of Duxbury Planning Office

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878 Tremont Street
Duxbury, MA 02332
Telephone: 781-934-1114
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Thomas A. Broadrick, AICP
Planning Director
broadrick@town.duxbury.ma.us



DATE: March 12, 2001

TO: Richard MacDonald
Director of Inspection Services

FROM: Tom Broadrick, AICP 
Planning Director

RE: Land off Pilgrim By-Way

Please see the attached information in the Planning Board's files regarding this issue of further subdividing this land.

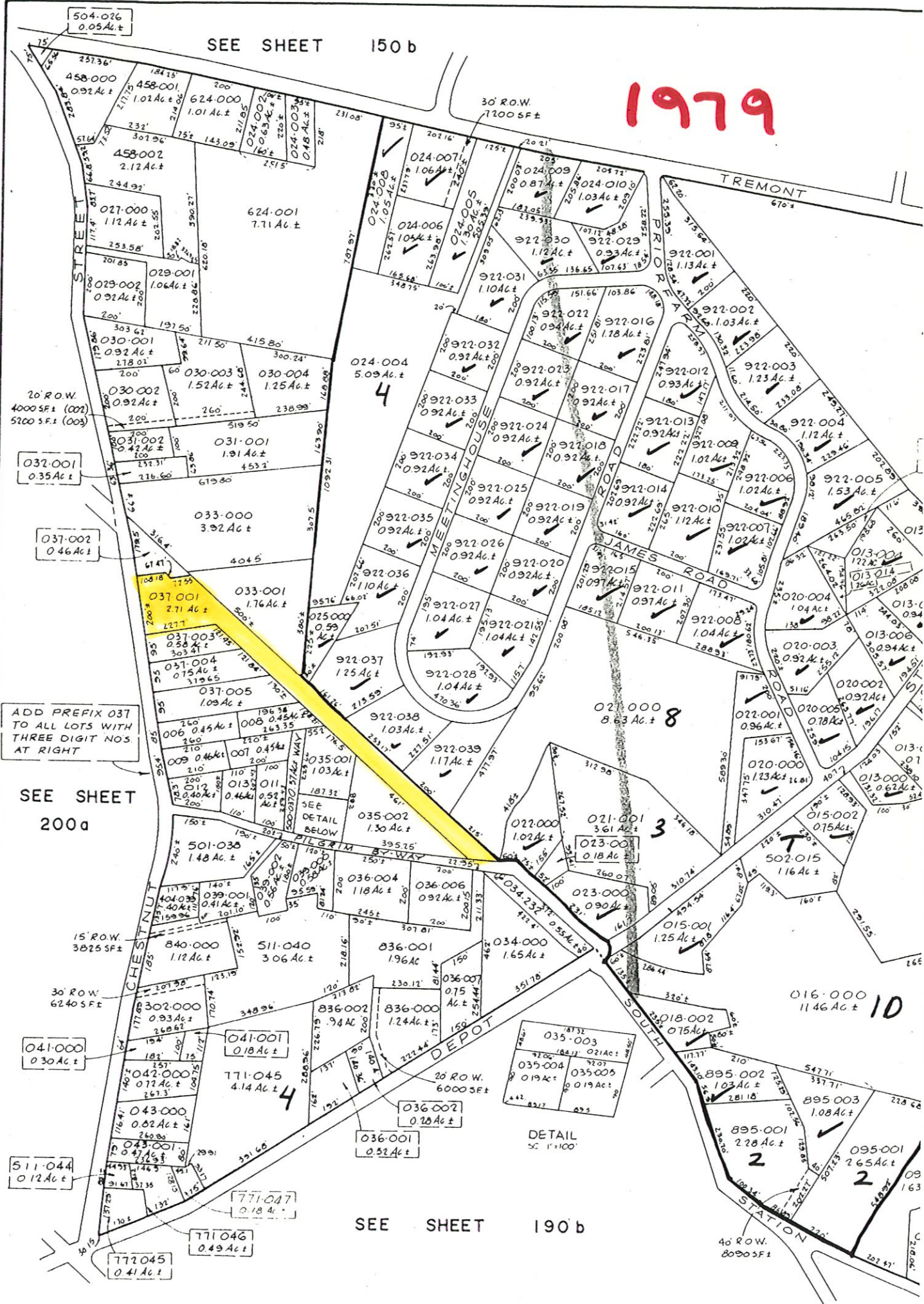
The 81-L provisions relied upon to "split" the original parcel # 190-037-001 (see attached 1979 assessor sheet) into two lots were appropriate for division, NOT for zoning compliance. How the houses on the resulting new parcels #190-037-001 and #190-037-014 (see current assessor sheet) gained building permits without compliance with the zoning bylaw is a question for another time. However, suffice it to be said that they were issued in error.

Trying to create a third lot using the 200 feet of frontage available off Pilgrim By-Way by using the 108'± of frontage of parcel #190-037-014 and the balance from parcel # 190-035-002 creates problems for the balance of parcel #190-037-014 since all three new lots require 200 feet of frontage since they lose any grandfathered status they may have enjoyed. They are new lots created under the current bylaw and therefore need 200' of frontage. Infectious invalidity comes into play (see attachment).

This is why the Planning Board advised Mr. Joel White to withdraw the ANR plan that left the existing house on parcel #190-037-014 without 200' of frontage (they would have denied it) and advised him to pursue a lot frontage waiver, which he did, but alas was also denied. No variance to frontage was applied for so we don't know if he would have been successful in pursuing that.

So, it seems clear that this land has been used to its full and fair value and no further development would seem possible without a waiver to the Subdivision Rules and Regulations and a variance to the Zoning Bylaw.

1979



20' R.O.W.
4000 SF ± (002)
5200 SF ± (003)

ADD PREFIX 037
TO ALL LOTS WITH
THREE DIGIT NOS.
AT RIGHT

SEE SHEET
200 a

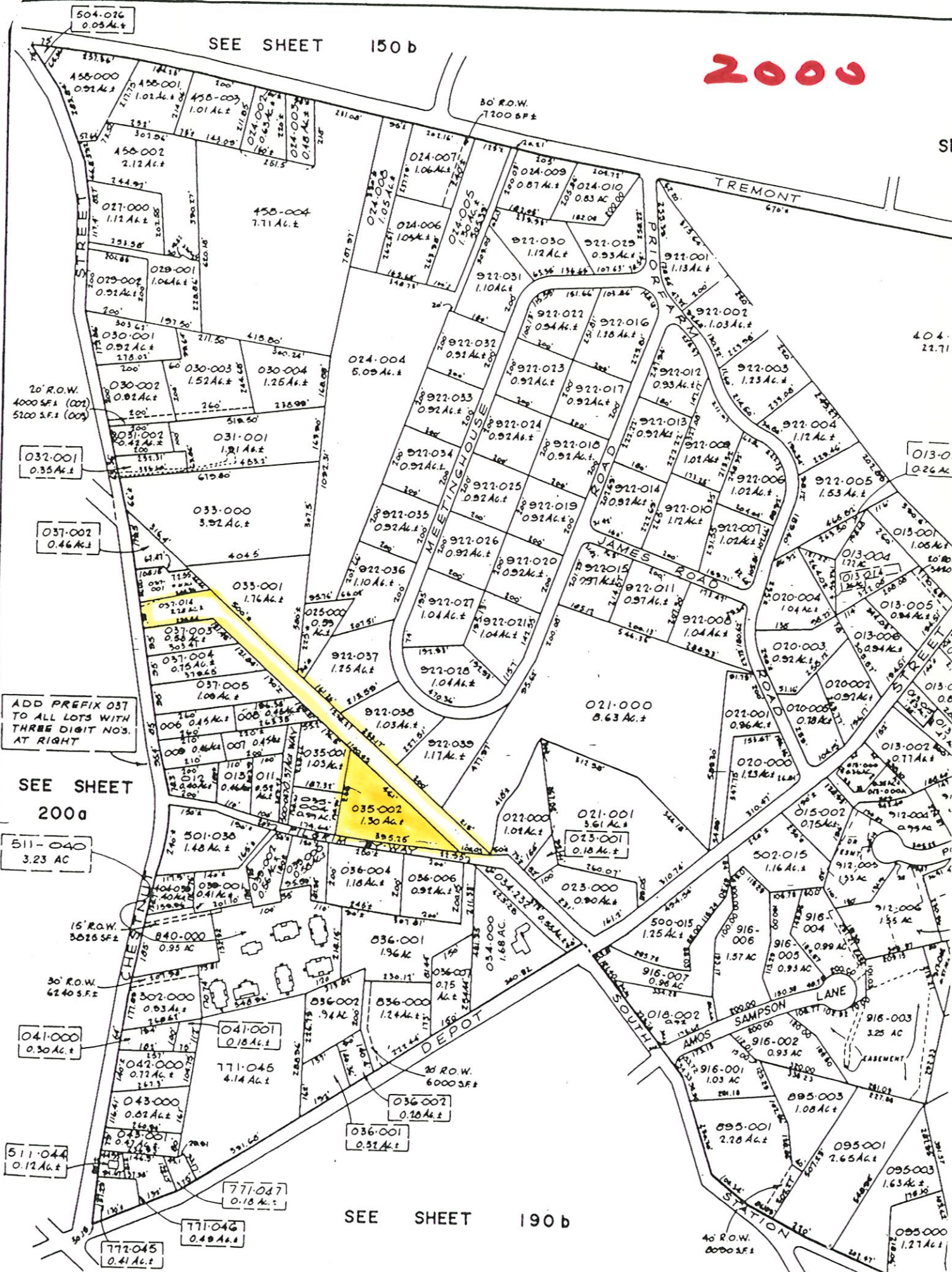
DETAIL
SC 1"=100'

40' R.O.W.
8000 SF ±

2000

SEE SHEET 150 b

SE



20' R.O.W.
4000 SF.1 (007)
5200 SF.1 (009)

ADD PREFIX 037
TO ALL LOTS WITH
THREE DIGIT NOS.
AT RIGHT

SEE SHEET
200 a

511-040
3.23 AC

041-000
0.30 Ac.±

511-044
0.12 Ac.±

15' R.O.W.
3020 SF.±

30' R.O.W.
6240 SF.±

041-001
0.18 Ac.±

043-000
0.02 Ac.±

043-001
0.02 Ac.±

771-047
0.18 Ac.±

772-045
0.41 Ac.±

041-000
0.72 Ac.±

043-000
0.02 Ac.±

043-001
0.02 Ac.±

771-046
0.49 Ac.±

772-046
0.49 Ac.±

041-001
0.18 Ac.±

043-000
0.02 Ac.±

043-001
0.02 Ac.±

771-047
0.18 Ac.±

772-046
0.49 Ac.±

041-001
0.18 Ac.±

043-000
0.02 Ac.±

043-001
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771-047
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772-046
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0.02 Ac.±

771-047
0.18 Ac.±

772-046
0.49 Ac.±

SEE SHEET 190 b

40' R.O.W.
8000 SF.±

Duxbury Planning Board



Town of Duxbury Planning Office

Peter F. Donahue, Chairman
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Duxbury_Planning@mma.org

Thomas A. Broadrick, AICP
Planning Director
tom_broadrick@mma.org

MEMORANDUM

DATE: May 1, 2000

TO: Leo Scarry, Lawyer
20 North Street
Plymouth, MA 02360

FROM: Tom Broadrick, AICP 
Planning Director

RE: Ability to Subdivide Land off Pilgrim By-Way

I have enclosed copies of information made available to Mr. Joel White and his attorney at the time of application, Robert E. Galvin relating to the withdrawal of an ANR plan and the subsequent denial of a Lot Frontage Waiver Request.

I believe the information is self-explanatory. I will summarize it below:

In Duxbury you must have 200 feet of frontage and 40,000 sq. ft of upland for a buildable lot. In order to secure that frontage you must be able to accrue the frontage from a public way or a way which was approved under the Subdivision Control Law which has been constructed or at least has had a performance bond posted to insure its completion. One other method exists wherein the Planning Board may make a determination that a way in existence prior to acceptance of the Subdivision Control Law (1950 in Duxbury) is adequate to serve the use to which the road will be put. This is basic subdivision law and applies throughout the Commonwealth. Each town prescribes its own frontage and area requirements.

The mission of the Town of Duxbury is to deliver excellent services to the community in the most fiscally responsible and innovative manner while endeavoring to broaden our sense of community and preserve the unique character of our town.

Leo Scarry, p2, 5/1/00

In the present case Mr. White submitted an ANR plan which did not show the full 200 feet of frontage for each lot being created. Whenever a new lot is created it must meet current frontage and area requirements. Since any change to a lot line makes the lot different than it was before the change, grandfathered lots lose their protection when changed and must meet current requirements. This is explicit in MGL c. 41, s. 81-L, under the definition of a subdivision.

Since Mr. White could not meet this requirement he was advised to withdraw his application and apply for a lot frontage waiver which, if granted, would allow his division to occur "under the Subdivision Control Law" so that he would not need to meet the required frontage of 200 feet. He was advised he would still need to seek a variance to the frontage requirements to comply with the "zoning" aspect of his plan. No reasonable argument was presented to the Planning Board to convince the Board to grant the waiver to lot frontage; therefore the application was denied.

I hope this clears the matter up for you.

Thank you.

Cc: Richard MacDonald, Director of Inspectional Services

LAW OFFICES OF
MARK J. COLTIN, P.C.
101 MERRIMAC STREET
P.O. BOX 9601
BOSTON, MASSACHUSETTS 02114-9601

(617) 482-0060
FAX (617) 227-7177 OR
FAX (617) 720-1225



February 20, 2001

VIA CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

Richard McDonald, Director
of Inspectional Services
Town of Duxbury
Town Offices
878 Tremont Street
Duxbury, MA 02332-4499

Dear Mr. McDonald:

Please be advised that I represent Cheryl A. White (the "Applicant") with regard to a certain lot (the "Lot") owned her which is situated on Pilgrim By-Way, Duxbury, Massachusetts. The Lot, which contains 1.44 acres and has 202 feet of frontage on a public way, is shown as "Land of Shoreside Realty Trust" on plan entitled "Compiled Plan of Land in Duxbury, Ma. Showing Land of Shoreside Realty Trust, Pilgrim By-Way drawn for Shoreside Realty Trust, dated 26 August, 1999 by Stenbeck & Taylor, Inc. Engineers - Surveyors - Planners", which Plan is recorded with the Plymouth County Registry of Deeds as Plan No. 680 of 1999 in Plan Book 42, Page 847 (the "Plan"). A copy of the Plan is enclosed herewith for your convenience. The property is also described on deed of Joel D. White, Trustee, dated May 16, 2000 and recorded with Plymouth Country Registry of Deeds, Book 18606, Page 203.

This letter shall constitute a request by the Applicant for a determination by you that a single family dwelling may be constructed on the Lot since the Lot complies with all requirements under the Zoning By-Law for the Town of Duxbury in that it meets all frontage, land area and dimensional requirements. I also enclose a plan (hereinafter the "Site Plan") entitled "Replacement Sewage Disposal System Site Plan and Profile, Parcel 190A - 035 - 002 Pilgrim By-Way, Duxbury, MA, prepared for: Shoreside Realty Trust", which Site Plan is dated December 11, 2000 and was prepared by Stenbeck & Taylor, Inc. The Site Plan confirms compliance of the Lot with all applicable zoning requirements.

MARK J. COLTIN, P.C.

Richard McDonald, Director
of Inspectional Services
Town of Duxbury
February 20, 2001
Page Two

My client was recently notified by the Board of Health for the Town of Duxbury that an application with regard to the Premises for a Disposal System Construction Permit was denied since "the Director of Inspectional Services has declared this lot unbuildable."

Where, as here, the Lot meets all dimensional requirements, my client should have the opportunity to build on that property. If you determine that the Lot is not buildable, please set forth in writing all of the reasons for your decision.

As you are no doubt aware, my client and its predecessor in title, Shoreside Realty Trust, have made diligent efforts to cause this Lot to be buildable, but each attempt has been denied by the applicable Duxbury municipal officials without valid basis.

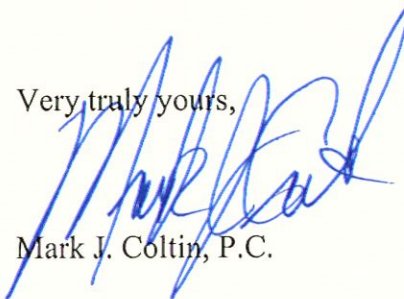
If you determine that the Lot is not buildable, it is my client's intention to fully pursue all rights which she may have, including appeals to the Board of Appeals and Judicial appeals if necessary, as well as the right to seek recovery of damages, if appropriate.

If you require additional information or desire to speak with me, please do not hesitate to contact me at the above-referenced number. You are also authorized to speak directly with Attorney Leo Scarry, who is co-counsel with regard to this matter.

Your determination as to the buildability of this Lot should be set forth in writing and forwarded to me.

Thank you for your attention to this matter.

Very truly yours,



Mark J. Coltin, P.C.

MJC/lam
Enclosure(s)

cc: Leo T. Scarry, Esq. (w/out enclosures)
Joel D. White, Trustee (w/out enclosures)
Ms. Cheryl A. White