

NO. FST-CV-03-0196671-S : SUPERIOR COURT
ARS PARTNERS POPLAR PLAINS, LLC
vs.
TOWN OF WESTPORT
PLANNING & ZONING COMMISSION, et al.

-- and --

NO. FST-CV-03-0196711-S
ARS PARTNERS POPLAR PLAINS, LLC
vs.
TOWN OF WESTPORT
PLANNING & ZONING COMMISSION, et al.

-- and --

NO. FST-CV-03-0197083-S : JUDICIAL DISTRICT
BARBARA ABER, et al. OF STAMFORD/NORWALK
vs.
TOWN OF WESTPORT
PLANNING & ZONING COMMISSION, et al.

-- and --

NO. FST-CV-03-0197084-S
BARBARA ABER, et al.
vs.
TOWN OF WESTPORT
PLANNING & ZONING COMMISSION, et al.

-- and --

NO. FST-CV-03-0197105-S : AT STAMFORD
ARTHUR COHEN
vs.
TOWN OF WESTPORT
PLANNING & ZONING COMMISSION, et al.

-- and --

NO. FST-CV-03-0197106-S
ARTHUR COHEN
vs.
TOWN OF WESTPORT
PLANNING & ZONING COMMISSION, et al. : NOVEMBER 10, 2005

STIPULATION FOR JUDGMENT

Whereas, ARS Partners Poplar Plains, LLC (hereinafter "ARS"), is the owner of 55± acres of undeveloped land in the Open Space Residential Zone District in the Town of Westport, fronting upon Partrick Road and Newtown Turnpike ("the Property"); and,

Whereas, ARS has received conditional approval from the Westport Conservation Commission to construct 25 single family homes on the Property; and,

Whereas, on August 7, 2003 in Resolutions #03-009 and #03-010 the Planning and Zoning Commission denied ARS' application for site plan and special permit approvals and for an excavation and fill permit "without prejudice", thereby precipitating these appeals; and,

Whereas, the parties have now agreed upon terms and conditions acceptable to all upon which the Property may be developed and wish to settle their differences and terminate these proceedings;

NOW, THEREFORE, in consideration of these premises and the mutual undertakings herein set forth, the parties stipulate and agree as follows:

1. Subject to conformance with all plans, conditions, and terms stated herein, the defendant Planning and Zoning Commission of the Town of Westport (hereinafter "the P&Z"), shall authorize and issue all necessary permits and approvals, including but not limited to Section 8-24 of the General Statutes; site plan and special permit approvals; excavation and fill permit; and zoning permit; to authorize and enable ARS to construct thirteen (13) single family residences as shown on plans listed in Item #6A, herein and, upon successful completion and satisfaction with all plans, conditions and terms stated herein, a certificate of zoning compliance.

2. In the development of the Property, construction of the roadways, infrastructure and amenities and in the formation of a Common Interest Community, ARS shall comply with:

a. Resolution #IWW 6678-01 and #WPL 6678-01 of the Westport Conservation Commission, dated April 15, 2002, to the extent it applies to the thirteen (13) units to be constructed pursuant to this Stipulation.

b. Approvals from the Flood and Erosion Control Board received on 11/7/01 and 11/6/02, to the extent it applies to the thirteen (13) units to be constructed pursuant to this Stipulation.

c. Approval from the Water Pollution Control Authority of the sewer line referenced herein received on November 9, 2005. Such approval from the Water Pollution Control Authority shall be a condition of this Stipulation.

d. Army Corps. of Engineers Permit CENAE-R-200101294, Connecticut Programmatic General Permit, obtained 10/25/01.

e. All other plans and permits submitted as part of the application.

f. All conditions in paragraph 6 herein.

3. Conveyance of Open Space Parcel:

a. A portion of land situated easterly of the west bank of Poplar Plains Brook and between it and Partrick Road, as shown on the plans listed in Item #6a herein, designated as "Parcel _____"; comprising 22± acres shall be known as the "Open Space Parcel" hereafter in this Stipulation. (The Open Space Parcel had previously been approved in the IWW resolutions referenced above in paragraph 2a for additional single-family residences. Those units are now being abandoned in this

Stipulation.) ARS agrees to prepare on one survey a compilation of existing data showing the outlines of the Open Space Parcel.

b. Within thirty (30) days after satisfaction of the contingencies set forth in Paragraph 3h, ARS shall convey by Warranty Deed, but without monetary consideration, the Open Space Parcel to the Partrick Wetlands Preservation Fund (hereafter "PWPF"), a non-profit 501(c)(3) organization. ARS shall notify the P&Z at least seven (7) days in advance of the time, location and date of this conveyance. Simultaneously, for no monetary consideration, PWPF shall execute a warranty deed conveying the Open Space Parcel to the Town of Westport, which will be held in escrow by the law firm of Wake, See, Dimes & Bryniczka, 27 Imperial Avenue, Westport, Connecticut. An escrow agreement between PWPF and Wake, See, Dimes & Bryniczka shall be prepared, which shall provide that the deed shall be recorded consistent with the terms of this Stipulation and with prior approval of the Superior Court (which approval by the Superior Court may be waived by PWPF). During the period of PWPF's ownership of the Open Space Parcel, PWPF shall maintain general liability insurance in form and amount satisfactory to the Finance Director of the Town of Westport. Prior to the conveyance, PWPF shall provide proof of its 501(c)(3) status, which status shall be maintained throughout its ownership of the Open Space Parcel. PWPF shall also provide the P&Z with its updated list of officers, directors and/or members.

c. Commencing on the date of this Stipulation, PWPF will endeavor to identify another non-profit entity (hereafter "Non-Profit Entity") which is willing and able to acquire the Open Space Parcel in perpetuity subject to the conditions herein. Such Non-Profit Entity must be an established, local, state or national organization with

experience acquiring, owning or managing lands dedicated to preservation or use as open space. The selection of the Non-Profit Entity must be approved by the P&Z and by ARS, which approvals shall not be unreasonably withheld.

d. Within one hundred and eighty (180) days after the conveyance from ARS to PWPF set forth in Paragraph 3b, or within twelve (12) months from the date of this Stipulation, whichever is later, PWPF shall in turn convey by warranty deed, for no monetary consideration, the Open Space Parcel to:

i. the approved Non-Profit Entity (which Non-Profit Entity shall also maintain general liability insurance in form and amount satisfactory to the Finance Director of the Town of Westport); or

ii. in the event a Non-Profit Entity has not been identified during these time periods or is not acceptable to the P&Z and ARS, PWPF shall convey the Open Space Parcel to the Town of Westport. Conveyance to the Town of Westport shall not require ARS approval. The P&Z shall reserve the right, in its sole discretion, without Superior Court approval, to extend the deadlines in this Paragraph 3 and shall grant any such request from PWPF for additional time if a designation of a Non-Profit Entity appears reasonably probable, but in no event shall the original time frame and extension exceed thirty (30) months past the date of this Stipulation.

e. A Declaration of Restrictions for the Open Space Parcel shall be prepared by the parties, and reviewed and approved by the parties to this Stipulation (such approvals not to be unreasonably withheld). Such Declaration of Restrictions shall then be finally approved by the P&Z, which approval shall be required prior to any conveyance of the Open Space Parcel. The Declaration of Restrictions shall be consistent with the general terms stated in Paragraph 3f, shall be recorded on the

Westport Land Records, shall be referenced in the conveyances of the Open Space Parcel, and shall run in perpetuity.

f. The Declaration of Restrictions shall contain the following general terms:

i. the Open Space Parcel shall be maintained in perpetuity for passive recreation, undeveloped, open to the public, with trails (subject to Conservation Commission approval), but without structures other than the pump station and related lines referenced below, and open from dawn to dusk only;

ii the Open Space Parcel shall contain no refuse receptacles;

iii upon a subsequent application to the P&Z and Conservation Commission, the owner of the Open Space Parcel may apply for a single unpaved public parking area for no more than five (5) cars.

g. The conveyances of the Open Space Parcel referenced in Paragraphs 3b and 3d above shall be subject to temporary and permanent easements in favor of ARS, its successors and assigns, to construct and maintain a pump station and sanitary sewer line in the location and as shown on the plans referenced in 6a. ARS agrees that any accessways or roadways to the pump station through the Open Space Parcel, along with the pump station itself, shall be constructed to be as unobtrusive and natural as possible consistent with the natural setting, and the P&Z staff shall review and approve such construction materials.

h. The conveyances described in Paragraph 3b and 3d shall be contingent upon the following acts by others, not parties to this Stipulation:

i. approval by: A) Water Pollution Control Authority; and B) the Connecticut Department of Environmental Protection of an amendment to the Town of

Westport Facilities Plan (March, 2002) indicating the existence of this sanitary sewer line (hereafter "sewer line") and authorizing this modification of the Town of Westport Facilities Plan, to serve the Property and only the 13 homes to be constructed by extending the existing sanitary sewer line from its Northerly terminus at the intersection of Route 33 and King's Highway, northerly along Route 33 and thence westerly on Partrick Road through the Open Space Parcel to the Property. Any costs of such application, including reasonable costs to retain a consultant or engineer to assist the Town of Westport, shall be borne by ARS; and

ii. application to the State of Connecticut Department of Transportation and approval and issuance of road opening permit(s) as may be required from the State of Connecticut and Town of Westport to install the sewer line (the Town of Westport will cooperate on the application as may be required); and

iii. expiration of all appeal periods following approval of this Stipulation by the Planning & Zoning Commission and the Superior Court.

4. Association:

a. The thirteen (13) homeowners shall be governed by the creation of a Homeowners' Association pursuant to the Common Interest Ownership Act. ARS will prepare a declaration and by-laws for review and approval by the Westport Town Attorney, the P&Z staff, and the Conservation Department Staff, such approvals not to be unreasonably withheld, to insure compliance with earlier approvals. The declaration and by-laws shall be consistent with the terms of this Stipulation. The Westport Town Attorney shall afford a reasonable opportunity to other parties to this Stipulation to review and comment on these documents. A form warranty deed for the conveyance of the thirteen (13) units shall also be prepared by ARS containing references to the terms

and limitations contained herein, which form warranty deed shall also be subject to the same review and approval process described in this paragraph 4a.

b. The Homeowners' Association shall own the sewer line and shall be responsible for the maintenance, upkeep and repair of the line. Construction of the sewer line shall be in accordance with any conditions imposed by the Water Pollution Control Authority. The sewer line shall be kept in good working condition at all times. The Homeowners' Association shall maintain an escrow account for maintenance of the pump station and forced main, in accordance with the permit agreement required pursuant to the Water Pollution Control Authority approval of the sewer line on November 9, 2005.

c. The sewer line shall be privately owned by the Homeowners' Association and limited to the thirteen (13) dwelling units. The sewer line shall not be accessed by additional parties. The sewer line shall be sized in such a manner so as to restrict capacity consistent with this Stipulation. The sewer line shall be a force main for its entire length from the pump station to King's Highway North and shall be no larger than is necessary in the opinion of the Town Engineer to provide service only to the thirteen (13) dwelling units. Any reference to "sewer line" in this Stipulation shall include all components of the system including lines directly connected to the thirteen (13) dwelling units. The sewer line design shall be approved by the Town of Westport Department of Public Works and the State of Connecticut Department of Environmental Protection.

d. The P&Z is aware that some of the parties to this Stipulation, along with nonparties, desire to establish a separate legal entity to manage the sewer line. The parties hereby agree that:

- i. the P&Z is not a party to such entity; and
- ii. all terms and conditions of this Stipulation and the Water

Pollution Control Authority approval of the sewer line of November 9, 2005 shall govern at all times, even if the declaration or by-laws of such entity state anything to the contrary.

5. Miscellaneous:

a. All deeds of conveyance to the thirteen (13) homes shall incorporate by reference the terms and conditions of this Stipulation, which shall be binding on ARS' successors and assigns and shall run with the land.

b. ARS agrees to use E-1 pumps (or their equivalent) for each of the thirteen (13) homes as part of its sewerage disposal system.

6. In addition to conformance with all other Town of Westport approvals (including Flood & Erosion and Conservation Commission), the following conditions shall be adhered to and shall be binding on ARS and its successors and assigns:

a. Conformance to approved plans and calculations including:

i. Existing Conditions Plans prepared by Land Tech Consultants (sheets 1-6), revised 10/7/05, and received by P&Z on 10/7/05.

ii. Overall Site Plan prepared by Land Tech Consultants (sheet 1), revised 10/27/05 and received by P&Z on 11/1/05.

iii. Site Plans prepared by Land Tech Consultants, (sheets 1-2, revised 10/27/05 and sheets 3-6, revised 10/7/05) and received by P&Z on 11/1/05.

The site plans shall be revised to be consistent with the footprints shown on the building plans. The site plans shall be further revised to clarify that the "Voluntary Open Space

Deed Restricted by Owner” is not a separate lot, but will remain a part of the property owned by ARS.

iv. Grassy Plains Road Profile Plan prepared by Land Tech Consultants, (sheets 7-8), revised 10/27/05 and received by P&Z on 11/1/05.

v. Notes and Details prepared by Land Tech Consultants, (sheets 9-10 revised 10/27/05 and sheet 11 revised 4/10/03) and received by P&Z on 11/1/05.

vi. Conservation Easement Map prepared by Land Tech Consultants (sheet 1), revised 10/27/05 and received by P&Z on 11/1/05, which shall be modified to show an expanded Conservation Easement above the usable Open Space area on the upper portion of the peninsula located above Unit #3.

vii. Usable Open Space Map prepared by Land Tech Consultants (sheet 1), revised 10/27/05 and received by P&Z on 11/1/05.

viii. Sanitary Sewer Route prepared by Land Tech Consultants (sheets 1-2), revised 10/27/05 and received by P&Z on 11/1/05.

ix. Limits of Potential Blasting Area prepared by Land Tech Consultants (sheet 1) dated 10/27/05, and received by P&Z on 11/1/05.

x. Limits of Aquifer Recharge Area and Potential Blasting Area prepared by Land Tech Consultants (sheet 1) dated 2/14/03, revised 4/21/03 by Leggette, Brashears and Graham, Inc., and received by P&Z on 11/1/05.

xi. Cover Sheet [Zoning Chart] prepared by Roger Ferris and Partners, (sheet C1) revised 11/2/05 and received by P&Z on 11/2/05. This sheet shall be revised to show proposed coverage on both lots. General note #2 shall be modified to

state that all oil tanks shall be located within the proposed structures. The zoning data chart shall be revised to show the total number of bedrooms in all units shall not exceed 57, with no more than five five-bedroom and no more than eight four-bedroom units.

xii. Dwelling Unit Building Floor Plans and Elevations prepared by Roger Ferris and Partners (sheets A1a to A3c) dated 10/7/05 and received by P&Z on 10/11/05.

xiii. Site Plans, Landscape Plans, Site Details, Pump House plans prepared by Roger Ferris and Partners (sheets C2 – A1P) dated 11/2/05 and received by P&Z on 11/2/05. These plans shall be revised to show: the proposed Unit Type information consistent with the information shown on the Cover Sheet, Sheet C1; to show relocation of the entrance piers to a location on the ARS property to be approved by P&Z staff, and with signage in compliance with P&Z regulations; and to show deletion of the pump station on slab (no enclosure) detail as this alternative is not proposed. All plantings on the Planting Plan are subject to review by the Conservation Department.

xiv. Excavation and Fill Calculations, prepared by Land Tech Consultants, dated 10/27/05 and received by P&Z on 11/1/05.

xv. Coverage Calculations based on Open Space Plan, prepared by Land Tech Consultants, dated 10/27/05 and received by P&Z on 11/1/05.

b. Conformance to all recommendations listed in the Traffic Report prepared by Barkan and Mess Associates, dated 2/28/03, including:

i. Clear vegetation and other obstructions within the sight triangle at the proposed driveways.

ii. Install STOP signs and stop bars for motorists using the site

drives at their intersections with the town roads.

iii. Provide radii of 30 feet at these intersections to accommodate delivery trucks.

iv. Install overhead luminaire at the site intersection with Newtown Turnpike.

c. Conformance to the excavation and fill standards listed in §32-8.3 of the Westport Zoning Regulations shall be required.

d. ARS shall conduct a water well monitoring program before construction, on an annual basis during the construction period, and for two years after the completion of the construction and issuance of the zoning certificate of compliance for the last of the thirteen (13) houses, for wells located within a 750' radius around the proposed blasting area (prior to construction, a map to scale will be submitted by ARS to the Westport-Weston Health District). ARS agrees to pay the costs of any public water hookup for those monitored properties whose well water quality is affected adversely by the proposed blasting. The monitoring program shall be approved by the Westport Weston Health District prior to issuance of a zoning permit.

e. Prior to conveyance of the Open Space Parcel, ARS agrees it will clean all garbage and debris from the Open Space Parcel prior to conveyance to the reasonable satisfaction of the Westport-Weston Health District and Conservation Department. Prior to any conveyance by PWPF to either the Non-Profit Entity or the Town of Westport, PWPF agrees it will clean all garbage and debris from the Open Space Parcel to the reasonable satisfaction of the Westport-Weston Health District and Conservation Department.

f. Submission by ARS of a separate drainage maintenance plan to the Planning and Zoning Commission in accordance with the Flood and Erosion Control Board 11/7/01 and 11/6/02 approvals.

g. Submission by ARS of deed restrictions for review by the Westport Town Attorney regarding the "Voluntary Open Space deed restricted by the owner," prior to recording on the land records.

h. Cellars are permitted in all Units. However, Units 13, 14 and 15 shall be permitted to have cellars so long as no blasting or track or rubber mounted, mechanical percussive equipment is required. However, if s-mite, a non-explosive process to remove the rock is used, the equipment to utilize this process is permitted. No bathrooms will be allowed in cellars. All attics shall remain unfinished. The total number of bedrooms in all units shall not exceed 57, as shown on the plans submitted, with no more than five five-bedroom units and no more than eight four-bedroom units, for a total of 57 bedrooms.

i. Unit driveways may consist of impervious material only as allowed in accordance with the Conservation Commission approvals referenced herein; all other driveways shall consist of pervious materials.

j. Salvage rights to any material from excavation on the embankment to the south of the driveway (future roadway) to Newtown Turnpike shall belong to the Town of Westport, in accordance with recommendations from the Westport Public Works Director dated 4/22/03.

k. The emergency accessway shall have a suitable locked gate at the end of the paved portion within the development, in accordance with recommendations from the Westport Public Works Director dated 4/22/03.

l. A road opening permit shall be obtained from the Department of Public Works for all work in the Town right-of-way.

m. Sewer permits shall be obtained from the Department of Public Works for all sewer hookups.

n. Driveway permits shall be obtained from the Department of Public Works.

o. Grassy Plains Road shall be a minimum of 24-feet wide as shown on the submitted plans and as recommended by the Fire Department.

p. The water main to be installed from Newtown Turnpike to the end of the cul-de-sac of Grassy Plains Road shall be at least eight (8) inches in diameter as recommended by the Fire Department. A similar diameter water service will connect to the sewer pump station as shown on the submitted plans.

q. Individual sewer alarm systems shall be installed in each dwelling unit to alert the homeowner when the low pressure ejector pump system is inoperative.

r. Light poles shall not exceed 12-feet in height measured to the top of the fixture and shall include full cut-off fixtures. A light schedule shall be added to the site plan. Cut-sheets from the manufacturer shall be submitted by ARS.

s. Street addresses shall be subject to approval by the Town Engineer.

t. If rock crushing is required, ARS shall return to the P&Z for a temporary zoning permit, which shall apply its usual and normal standards for such permits.

u. ARS agrees to pay \$5,500.00 for the leachable lead/PCB testing on the property.

v. Pursuant to the recommendations listed on pages 36-37 of the Fuss and O'Neill, Inc., Site Investigation Report prepared for ARS, dated June 2004, ARS shall complete the following:

i. submit a soil management plan for review and approval by the Town of Westport and its consultants;

ii install complete passive venting systems for radon and/or methane in each of the thirteen (13) dwelling units if pre-construction testing discloses the presence of gases in excess of governmental standards (provided, however, that ARS will install basic PVC piping in all thirteen (13) dwelling units);

iii submit a bedrock blasting program which includes a monitoring program for surrounding residential wells in accordance with paragraph 6d of this Stipulation, a surrounding occupant notification program and the use of mechanical removal in lieu of or in conjunction with the blasting to mitigate the low risk of impacts to site workers, future site occupants and surrounding occupants.

w. All new utilities shall be placed underground.

x. Trees shall not be removed from Town property, except as required to improve site lines as set forth in this Stipulation.

y. Parking Spaces required on dwelling site: 29 (2 per dwelling unit or 26 spaces plus 10% of the minimum required parking for visitors or 3 spaces). Parking Spaces proposed on site: 29.

z. Prior to the issuance of a Zoning Permit ARS shall complete the following:

i. This Stipulation shall be filed upon the Town of Westport Land Records and shall be binding upon the parties' successors and assigns.

ii. Submission by ARS of surety in the form of a bond satisfactory to the Town Attorney, prepared on the Planning and Zoning Bond Estimate Form, approved by the Town Engineer, and posted with the P&Z Office to guarantee completion of all site improvements. Changes to the bond amount shall be made exclusively by the P&Z without further Superior Court review.

iii. Prior to issuance of a Zoning Permit the well monitoring program described herein shall be approved by the Westport Weston Health District and paragraphs 6f, 6g, 6l, 6m, 6n, 6r, 6s, 6v.i and 6v.iii shall be completed.

aa. A zoning permit shall be obtained within one year of approval of the Stipulation by the Superior Court or said approval shall become null and void. Any extension must be approved by the P&Z, but any such extension shall not require approval from the Superior Court.

bb. A certified and comprehensive "As-Built" shall be submitted along with a Letter of Satisfactory Completion by the Design Engineer of Record, prior to issuance of a Zoning Certificate of Compliance.

cc. All work approved pursuant to this Site Plan and Special Permit shall be completed within 5 years of date of approval of the Stipulation by the Superior Court, unless extended by the P&Z, such extension not to be unreasonably withheld. Such extension shall not require Superior Court approval.

7. Approval of this Stipulation by the P&Z shall be deemed to include positive reports pursuant to Sec. 8-24 of the Conn. General Statutes:

- a. for the sewer line; and
- b. for the potential acquisition by the Town of Westport of the Open

Space Parcel.

8. Reference to “the date of this Stipulation” shall mean November 10, 2005.

9. For any disputes arising from a provision of this Stipulation requiring the future agreement of the parties, or for any other dispute arising out of this Stipulation, the disputing parties shall seek final resolution from the Superior Court, which shall retain jurisdiction.

10. Any agreements or approvals required by this Stipulation shall not be unreasonably withheld or delayed.

11. Judgments may enter in accordance with this Stipulation. Approval of this Stipulation pursuant to Conn. Gen. Stat. Sec. 8-8n shall be required before any Town of Westport permits are issued, and such approval shall be sought by the parties only after the satisfaction of the contingencies in Paragraph 3h and Paragraph 4c have been obtained.

ARS PARTNERS POPLAR PLAINS, LLC

Date: _____

By _____

Lawrence P. Weisman
HALLORAN & SAGE LLP
315 Post Road West
Westport, CT 06880
Juris No. 412195
Its Attorneys

TOWN OF WESTPORT
PLANNING & ZONING COMMISSION

Date: _____

By _____

Ira W. Bloom
Wake See Dimes & Bryniczka
27 Imperial Avenue, P. O. Box 777
Westport, CT 06881
Juris No. 65850
Its Attorneys

BARBARA ABER, BERT ABER, GAYLE
VAN SUMMERN and MARK VAN SUMMERN

Date: _____

By _____

Michael T. Bologna, Esquire
Fitzpatrick, Fray & Bologna, LLC
1238 Post Road, P.O. Box 278
Fairfield, CT 06824
Juris No. 020158
Their Attorneys

ARTHUR COHEN

Date: _____

By _____

Edward K. Lerner
Lerner & Guarino, LLC
112 Prospect Street
Stamford, CT 06901
Juris No. 033840
His Attorney

Date: _____

Mr. Sean Timmins
87 Partrick Road
Westport, CT 06880