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April 6, 2021

Mr. James Bristol III
Bristol Brothers Development Corp.
190 Old Derby Street
Suite 311
Hingham, MA 02043

Re: Rights of Bristol Brothers Development Corp. in Charlotte Street, Weymouth, Massachusetts

Dear Mr. Bristol:

We have been asked to research and provide a legal opinion concerning what rights Bristol Brothers Development Corp. (“Bristol”) has in Charlotte Street, Weymouth that are appurtenant to its property at Finnell Drive, and whether permission from abutters is needed to use the deeded rights for right-of-way purposes. Based on our substantial research, as set forth below, we conclude that Bristol has a deeded right-of-way easement to use the entirety of Charlotte Street appurtenant to all of its Finnell Property, with no need to obtain the permission or signature of the abutters.

I. Bristol has a Deeded Right-of-Way Easement to use Charlotte Street appurtenant to its land.

Bristol has a deeded record title right-of-way in Charlotte Street going back to Linn Realty Service Co. (developers of the Weymouth Gables subdivision in the mid-1920s) and/or to the Tirrell family, who owned the area going back to the 1800s. The Bristol locus as currently configured was assembled during the 1960s and 1970s from various deeds by Thomas Flatley. Through subsequent conveyances the land assembled by Flatley is now owned by Bristol, including all the Weymouth Gables lots¹ along the north side of Charlotte Street up to Duke Street going east.

All of the relevant deeds conveying lots into Bristol’s chain of title expressly grant rights-of-way in Charlotte Street, which “run with the land,”² as easements appurtenant to the locus now

¹ The relevant 1926 Weymouth Gables Plan #3, showing these lots, is recorded at the Norfolk Registry of Deeds in Plan Book 1685 Page 900.

² An easement is appurtenant to land where it is created to benefit the land and benefits the possessor in the use of that land. Denardo v. Stanton, 74 Mass. App. Ct. 358, 361 (2009). Appurtenant easements attach to and run with the land

owned by Bristol. For example, the Bristol land along the north side of Charlotte Street, up to Duke Street, which is composed of lots on the Weymouth Gables 1926 plan, was acquired by Flatley in three deeds:

1. Lots 181 & 182, from Jordan in 1965, recorded in Book 4309 Page 389;
2. Lots 183 & 184, from Lundy in 1966, recorded in Book 4392 Page 244; and
3. Lots 185, 186, and 187, from the Weymouth Sportsmen's Club in 1966, recorded in Book 4337 Page 348.

All three of these deeds include similar language expressly including the grant of all right, title, and interest in the various streets on the plan, and expressly Charlotte Street.

The bulk of the locus off the end of Charlotte Street and up to the Southeast Expressway, three parcels containing approximately 29 acres, was acquired by Flatley from Mahony in 1965. See Norfolk Registry of Deeds, Book 4314 Page 35. This deed also expressly grants all right, title, and interest in Charlotte Street to benefit all parcels.

II. Rights of the Abutters to Charlotte Street are Servient to Bristol's Appurtenant Right-of-Way.

Abutter DePaolo's land, running along the north side of Charlotte Street from Duke Street to Front Street, is composed of Weymouth Gables Lots 157, 158, and 159, and 177 through 180. Neither DePaolo's deeds, nor the immediately preceding deeds in his title chain make any reference to granting him any rights in Charlotte Street.

Nevertheless, the "derelict fee statute," M.G.L. ch. 183 sec. 58, provides that a deed passing title to real estate abutting a way shall be construed to include any fee interest of the grantor in such way. Since the lots were conveyed into his chain with reference to the Weymouth Gables plan of which Charlotte Street is a part, it would appear that under that statute, DePaolo may own title to the middle of the way where it abuts his lots, with an implied right-of-way to use the rest of the width of the way, subject to the right-of-way easement held by Bristol as appurtenant to its land, and any others so endowed.

Any ownership rights DePaolo has in Charlotte Street are thus servient to Bristol's right-of-way, and he can only use part of the way to which he may own the fee in a manner which is not inconsistent – i.e., does not interfere with – Bristol's use. The owner of land burdened by an easement "retains the right to make all uses of the land **that do not unreasonably interfere with exercise of the rights granted by the servitude.**" Martin v. Simmons Props., LLC, 467 Mass. 1, 8 (2014). [Emphasis added].

intended to benefit thereby (the dominant estate), and consequently benefit subsequent possessors of that property. Schwartzman v. Schoening, 41 Mass. App. Ct. 220, 223 (1996).

Thus, at best DePaulo only owns half-way across the way in fee adjoining his lots. Assuming he does, he would also share an easement in the remaining portions of the road beyond his individual fee ownership, and must “[...] act reasonably in the exercise of [his] privileges so as not to interfere unreasonably with the rights of other easement holders.” Cannata v. Berkshire Natural Resources Council, 73 Mass. App. Ct. 789, 797 (2009) (citing to Restatement (Third) of Property (Servitudes) § 4.12 comment b, at 626-27 (2000)).

The owner on the south side of Charlotte Street, opposite all of DePaulo’s lots and Bristol’s lots is Golden. Golden’s title does not come from the Weymouth Gables Lots. Like those in DePaulo’s title chain, none of the deeds in the chain to Golden mention any rights in Charlotte Street, but all describe it as abutting Charlotte Street.

Because Golden’s land is described as bounded by Charlotte Street, like DePaulo, under the derelict fee statute he may own to the middle of Charlotte Street. Similarly, Bristol owns to the center of the way for the length its property as opposite Golden. Just as is the case with DePaulo, assuming Golden does own the fee to the middle of the way, his ownership is subject to Bristol’s deeded right-of-way over the entire length of Charlotte.

III. Bristol does not need permission of either abutter to use its deeded right-of-way easement in Charlotte Street over its entire length.

An easement is an interest in land which grants to one person the right to use or enjoy land owned by another. Commercial Wharf East Condominium Ass’n v. Waterfront Parking Corp., 407 Mass. 123, 133 (1990), citing Baseball Publishing Co. v. Bruton, 302 Mass. 54, 57-58, (1938); 3 R.R. Powell, Real Property, par. 404, at 34-3 (1989 ed.). It is “a right, which one proprietor has to some profit, benefit, or beneficial use, out of, in, or over the estate of another proprietor.” Id., citing Ritger v. Parker, 8 Cush. 145, 147 (1851).

“An easement...entitles the owner of the easement interest to a limited use or enjoyment of the land **that is not subject to the will of the possessor of the land.**” Entine v. Reilly (Mass. Land Court 2015), citing, e.g., Commercial Wharf at 133; Baseball Publishing Co. [Emphasis added].

Therefore, Bristol does not need permission from either DePaulo or Golden to make full use of its right-of-way in Charlotte Street.

Moreover, the abutters do not have any legal basis for complaint. The original grantor of Bristol’s lots along Charlotte Street, who granted rights in it (Linn Realty Service), is the same original grantor of the Lots owned by DePaulo, and all were originally conveyed with reference to the Weymouth Gables plan. “[W]hen a grantor conveys land bounded on a street or way, he and those claiming under him are estopped to deny the existence of such street or way, and the right thus acquired by the grantee (an easement of way) is not only coextensive with the land conveyed, but embraces the entire length of the way, as it is then laid out or clearly indicated and prescribed.” Murphy v. Mart Realty of Brockton, Inc., 348 Mass. 675, 677-78 (1965). Similarly, “where land situated on a street is conveyed according to a recorded plan on which the street is shown, the

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grantor and those claiming under him are estopped to deny the existence of the street for the entire distance as shown on the plan.” Goldstein v. Beal, 317 Mass. 750, 755 (1945). Thus, DePaulo, who claims under the same original grantor, is estopped to deny the existence of Charlotte Street, or the right-of-way easement held by Bristol in it. The same principle applies to Golden, because the original grantor of Bristol’s land at the end of Charlotte Road, Tirrell, who granted into the Bristol chain a right-of-way in it, is the same original grantor of the Golden parcel.

Nor is there any valid objection that using an easement granted with respect to certain lots would be “overburdened” were Bristol to use it to access land beyond those lots. While an easement can be overburdened when it is used to access land “other than the land to which it is appurtenant[.]” Southwick v. Planning Bd. of Plymouth, 65 Mass. App. Ct. 315, 319 n. 12 (2005), such an argument is unavailing here, because the grants of the Weymouth Gables lots into Bristol’s chain specifically included the rights to use all the streets on the related plans, which demonstrates that the right-of-way in Charlotte was not limited to certain lots. Similarly, the deeds granting the large acreage off the end of Charlotte Street into Bristol’s chain, originally from Tirrell, specifically granted the rights in Charlotte Street in conjunction with all that land.

Based upon the foregoing, it is my legal opinion that Bristol has a deeded right-of-way easement to use the entirety of Charlotte Street appurtenant to all of its Finnell land, with no need to obtain the permission or signature of the abutters.

Sincerely,

Mark S. Bourbeau

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cc: Joseph Callanan, Town Solicitor