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February 18, 2015

Frank P. Muzio, Esq.
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Re: O'Sullivan, et al. v. Marblehead Zoning Board of Appeals, et al.
Land Court Department – Misc. Case No.: 14 MISC 487181 (KCL)

**CONFIDENTIAL SETTLEMENT COMMUNICATION
NOT ADMISSIBLE FOR ANY PURPOSE**

Dear Attorney Muzio:

As a follow-up to our recent discussions and following the exchange of expert reports in this matter, the following is a revised settlement demand to resolve this matter.

1. Consistent with the Plaintiffs Expert Report, the stairway to be constructed at the base of the slope shall be redesigned by Harborside Condominium Trust (Harborside), so as to minimize as much as possible the removal of bedrock and avoid further impact or damage to the ledge and slope on the O'Sullivan Property. As part of that design process:
 - a. The McBrie, LLC structural drawings that indicate proposed bottom of footing elevations to be 4'-0" below grade will be abandoned.
 - b. The landings, stairs on bedrock, and the retaining wall should be affixed to the bedrock similar to how it is conceptually shown on the sketches attached to the October 6, 2014 UTS Memorandum. That is, with steel reinforcing dowels used to pin the stairway and landings to the bedrock.
 - c. A detailed topographic survey will be undertaken to complete final design and details of the stairway modifications and preparation of construction documents.

- d. Consistent with good engineering design and construction practice, mapping of bedrock features shall be performed to complete the design of the modifications to the Building B stairway. Mapping of bedrock features involves measuring the orientation and spacing of fractures in the bedrock that are exposed at the bedrock surface. This information would be used to design the spacing, length and orientation of steel reinforcing dowels used to pin the stairway to the bedrock and ensure the long term stability of the bedrock slope and proposed stairway.
 - e. Pre-construction and post-construction condition surveys shall be performed to detect damage to nearby structures (note: including landscaping features) during construction of the proposed stairways. To minimize disturbance and possible damage to nearby structures, drilling of dowel holes into the bedrock or any required bedrock removal, shall be performed with hand-tools such as hammer-drills and jackhammers. Vibration monitoring shall be performed during the work to measure vibrations caused by the work and so construction activities can be modified as-needed to minimize damage to nearby structures.
 - f. The O'Sullivans shall be provided with a copy of the proposed redesign plans and design criteria and shall be given 30 days to review the plans and consult with their experts as to the sufficiency of same. The plans shall be stamped by a professional engineer and shall fully disclose and describe, in writing and in detail, all work intended to be undertaken at or near the ledge and slope, as well as identifying all safety measures, mitigation measures and operational measures proposed for such work.
 - g. The O'Sullivans shall submit any objections or comments regarding the redesigned plans in writing to Harborside. If the O'Sullivans object, Harborside shall cooperate in addressing the O'Sullivans concerns.
 - h. The O'Sullivans will grant permission to enter upon their property to undertake testing, design and monitoring provided for herein.
2. The O'Sullivans will design and construct a retaining wall at the rear of the O' Sullivan Property, in order to retain and stabilize the landscaping and soil on top of bedrock that was disturbed by the recent soil removal, and during construction of the stairway modifications. The retaining wall will be built up 12 inches above the elevation of the current horizontal landscaped surface and shall run the length of the O'Sullivan easterly property line at a location to be determined by the O'Sullivans.

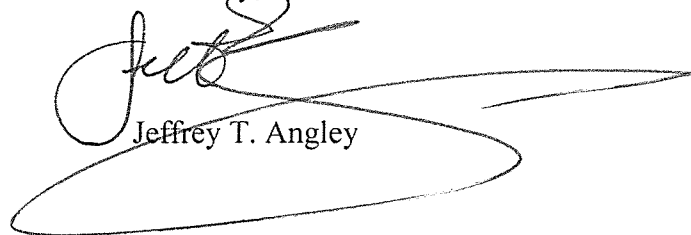
- a. Harborside will pay for the design and construction of the retaining wall.
 - b. The O'Sullivans shall provide a copy of the proposed plans and design criteria for the construction of the retaining wall to Harborside for their approval and Harborside shall have 30 days to review the plans and consult with their experts as to the sufficiency of same. The plans shall be stamped by a professional engineer and shall fully disclose and describe, in writing and in detail, all work intended to be undertaken at or near the ledge and slope, as well as identifying all safety measures, mitigation measures and operational measures proposed for such work.
 - c. Harborside shall submit any objections or comments regarding the retaining wall in writing to Harborside. The O'Sullivans shall cooperate in addressing Harborside objections or concerns.
 - d. Harborside will grant permission to enter upon their property for the design and construction of the retaining wall and for such other aspects of this agreement as shall reasonably require entry.
 - e. Harborside shall also pay for any costs or expenses involved with back filling the retaining wall, relocation of walkways, plantings and other landscape features that need to be relocated or disturbed during or as a result of construction.
3. Harborside shall pay for the costs and expenses incurred by the O'Sullivans for engineering, landscape architects, geotechnical and other necessary consultants fees related to this matter, and any future inspections and supervisory efforts during and at the conclusion of construction of the stairs and retaining wall.
 4. Harborside will pay all of the O'Sullivans attorney's fees incurred to date.
 5. Harborside will indemnify and hold harmless the O'Sullivans from injury or loss occurring as a result of any work by the Condominium on or near the ledge.
 6. The O'Sullivans shall be given 5 days advance notice in writing prior to the commencement of work on or near the slope, and shall be provided with the identity of any site contractors working on or near the ledge. If any contractor shall enter onto the O'Sullivan property, they shall provide proof of liability and workers compensation insurance coverage.

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7. No plantings or obstructions shall be made on the slope or ledge to interfere with or obstruct the views of O'Sullivan property or adjacent properties.
8. No further excavation of materials or other work shall occur on the slope or ledge until plans are finalized and signed off by the engineers, consultants and parties, except emergency work to stabilize the ledge and slope.
9. Upon the execution of settlement documents providing for the terms and provisions above, the O'Sullivans would agree to dismiss the zoning appeal.

This letter constitutes a settlement communication, the terms of which shall not be binding upon the parties until a written Settlement Agreement is fully executed by all parties of record in this action. All discussions of settlement set forth herein are without prejudice to any party. Any admission of fact made during settlement discussions as well as the fact that discussions have occurred, shall not be the subject of discovery nor admissible as evidence for any purpose in any litigation. This letter constitutes a confidential settlement negotiation.

Sincerely,



Jeffrey T. Angley

JTA/hs
cc: Client