

Town of Boscawen

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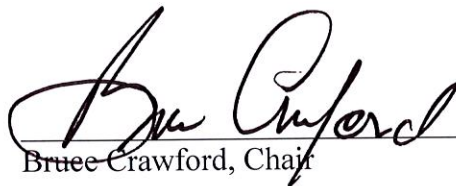
Kellee Jo Easler
*Planning & Community
Development Assistant*

Notice of Decision

At a regularly scheduled and duly noticed meeting of the Boscawen Planning Board, on **Tuesday, March 1, 2016 at 6:30 PM**, the board approved the following:

Application for Minor Amendment to the Subdivision & Site Plan Review Plan, Partial Waiver of Levied Fees submitted by California Fields, LLC, Peter Henenberg 250 Commercial St #904, Manchester NH 03101 through its attorney Eugene F. Sullivan III, 210 No. State St, Concord NH 03301, Map 183C, Lots 62 and Sublots 2-5 off Crescent St in the MRD zoning district, with the attached document.

Per order of the Boscawen Planning Board,


Bruce Crawford, Chair


TOWN OF BOSCAWEN

BEFORE THE

PLANNING BOARD

APPLICATION OF CALIFORNIA FIELDS, LLC
FOR MINOR MODIFICATION OF SUBDIVISION APPROVAL
(SUBDIVISION REGULATIONS SECTION IV, F) TO REFLECT
PARTIAL WAIVER TO LEVIED IMPACT FEES
(RSA 674:21; and ZONING REGULATION 20-8)

NOW COMES, California Fields, LLC by and through its attorney, Eugene F. Sullivan, III, and its Managing Member, Peter Henenberg, and respectfully request approval of a modification to the Subdivision Approval dated November 19, 2007, and recorded at the Merrimack County Registry of Deeds as Plan #18844 to reflect discussions regarding a wiaver to impact fees proposed by the Town. In support thereof, California Fields, LLC states as follows.

1. On November 19, 2007, California Fields, LLC (hereinafter "California Fields") received Subdivision and Site Plan approval from the Town of Boscawen Planning Board (hereinafter "Town" or "Board") for a certain Tract of Land located at Town of Boscawen Map 183C. 
2. Following that approval and Board signature, the Subdivision and Site Plan were forwarded to the City of Concord for signature in accord with the Concord Planning Board's Site Plan and Subdivision Approval of September 19, 2007.
3. As part of this Board's November 19, 2007 Approval, it was agreed that California Fields would contribute \$16,200.00 for the construction of an "offsite playground" as requested by the Board.
4. At no time prior to the November 19, 2007 Approval is there any record of the assessment of impact fees in the Board's minutes or approvals.
5. The first mention of impact fees, in addition to the \$16,200.00 contribution for offsite

improvements, came in a letter from the Planning Board Secretary dated March 21, 2008.

6. In the March 21, 2008 letter, from the Board secretary informs California Fields that the signed Site Plan and Subdivision Plan forwarded to the City of Concord Planning Board for signature had been signed by the Concord Board and returned to the Town of Boscawen.
7. The letter goes on to state that impact fees are being assessed pursuant to a Town Ordinance and will be collected at the time of the issuance of a building permit.
8. In 2015, California Fields had entered into a contract with Cityside Management Company, LLC (hereinafter “Cityside”) of Manchester, New Hampshire for the sale and subsequent construction of the Subdivision by Cityside.
9. In a meeting with the Planning Staff, just prior to the date for closing, Cityside was informed it would be required to pay an impact fee of \$2,414.00 per residential unit to be collected by the Building Inspector at the time of the issuance of a building permit.
10. Based on this previously unknown fee, a fee that was not reflected in the Planning Board minutes or Approvals, Cityside withdrew from the contract.
11. Impact fees for new construction are imposed in New Hampshire pursuant to the provisions and authority granted Towns in RSA 674:21.
12. RSA 674:21, V provides, in relevant part, that impact fees *may* be “assessed” by a Town and that,

[a]ll impact fees imposed pursuant to this section ***shall be assessed at the time of planning board approval of a subdivision plat or site plan*** [emphasis added].

RSA 674:21, V (d).

13. Following Cityside's withdrawal from the contract, Mr. Henenberg requested an opportunity to meet with the Board to discuss the \$2,414.00 per residential unit impact fee being levied by the Town pursuant to its Ordinance.
14. On December 8, 2015, California Fields met with the Board and Planning Staff and proposed a compromise *in lieu* of litigation to determine the legality and the scope of the impact fees proposed to be levied.
15. At that meeting Mr. Henenberg noted that California Fields was already contributing \$16,200.00 to the Town for an off site playground at a site to be chosen by the Town.
16. In addition, counsel to California Fields noted that the majority of the impact fees being proposed were to compensate the School District for the additional children that would reside in the Subdivision and attend school in the District.
17. Counsel noted that the Board had limited the residential units to two bedrooms and that most studies show that two bedroom condominiums have a minimal impact on schools because of the limitations two bedroom units place on families.
18. The Board agreed, discussing the fact that because of the size limitations and the bedroom limitations that had been placed on the condominium units as part of its Subdivision Approval most of the units would be occupied by young families or older individuals and couples; thereby, creating a minimal burden on District schools.
19. The Board further noted that the addition of these condominiums and the commercial development of the fifth lot would add to the Town's annual tax base reducing overall tax costs to all of the Town's residents.
20. Mr. Henenberg suggested a compromise in the form of a reduction to the proposed impact fees to reflect the \$16,200.00 contribution in off site improvements, the relatively low impact on the Town's education budget, and to avoid the costs of litigation to the Town.

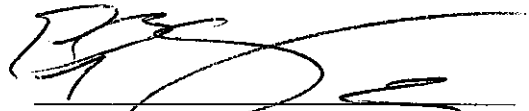
21. Both California Fields and the Board agreed that an impact fee of \$1,315.00 per unit would be a reasonable compromise under the above referenced circumstances and would negate any litigation costs.
22. After ratifying the discussions, the Board requested California Fields discuss the matter with Planning Staff and file the appropriate paperwork to formalize the discussions.
23. This Application(s) followed those discussions.

WHEREFORE, California Fields, LLC respectfully requests that the Planning Board:

- A. Waive a portion of the impact fees proposed under the Town Ordinance and assess an impact fee of \$1,315.00 per residential unit (in addition to the \$16,200.00 contribution in offsite improvements);
- B That the assessment be memorialized as an amendment to the Board's November 29, 2007 Site Plan and Subdivision Approvals; and
- C. Grant such other relief as is deemed just and equitable.

Respectfully submitted,
California Fields, LLC
By and through it attorney:

February 8, 2016



Eugene F. Sullivan III, Esq.
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