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July 8, 2011

Michael K. McGovern, Town Manager  
TOWN OF CAPE ELIZABETH  
320 Ocean House Road  
P.O. Box 6260  
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*Via Electronic Mail*

Dear Mike:

Early Bird Group, LLC, through its attorney, David A. Lourie, Esq., has requested an easement deed from the Town of Cape Elizabeth for the placement and maintenance of a portion of a driveway for a house apparently numbered 374 Mitchell Road. The house would have a driveway access to Mitchell Road and not to Stonegate Road. However, a portion of the previously constructed driveway to Stonegate Road to serve as a turnaround area would remain within the Town's right of way for Stonegate Road as indicated upon a mortgage inspection sketch, a copy of which is attached.

It is worth noting that the easement is not for access to Stonegate Road. The improved traveled way of most public ways does not extend the full width of the public right of way and, hence, many property owners must pass over, and place driveways upon, that portion of the public way between an owner's property and the improved portion of the public way. To my knowledge, towns are never asked for easements for this purpose. However, in this case, the requested easement is not for access to a public way, but rather to enhance the ability of the owner to turn around vehicles in front of an existing garage.

It appears this issue arises in connection with the settlement of the litigation involving Early Bird Group, LLC, Stonegate Homeowners Association and the Town. The Town did not participate in the settlement but from information I have received including an e-mail today from Bob Stier, Esq., it appears as between Early Bird Group, LLC and the other parties to that litigation that some intrusion into the Town owned property may have been contemplated. Certainly, that is not binding upon the Town, but the Town Council may wish to give consideration to this fact. Generally, the Town would not look favorably upon an individual placing permanent improvements upon Town owned property, other than the customary and

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necessary access driveways, lawn areas or modest plantings which do not interfere with the use and maintenance of public ways.

I have made some suggested changes to the Easement Deed in the event this is approved by the Council . If I can be of further assistance to you or the Town Council in regard to this matter, please let me know.

Best regards,

Monaghan Leahy, LLP

Thomas G. Leahy  
By Thomas G. Leahy, Esq.

TGL/kt

Enclosures

cc: David S. Sherman, Jr., Esq. (with enclosures)  
David Lourie, Esq. (with enclosures)