

**RE: Newton Land Use Committee Hearing item #311-22 scheduled for 7/12/2022**

Submitted by Danny Kaloupek, 230 Melrose St., Auburndale

I recognize the need for a retaining wall at 10 Elberta Terrace, but I am submitting the following excerpts from a December 2021 legal settlement in order to show that the proposed wall will have to be higher than is reflected in supporting material filed for the special permit. The grade of the abutting property at 230 Melrose Street is to be matched by restored land on 10 Elberta Terrace that will be supported by the retaining wall. I estimate that the grade difference between properties will require the proposed wall to be at least 8 ft high, extending up to 10 or 11 ft at the highest point.

**Settlement Agreement and Release of Claims**

Debra L. Franko and Danny G. Kaloupek (the "Plaintiffs) and Crowflight Development and Investment Firm LLC ("Crowflight") and Kenneth J. Leary, Jr., individually and as Trustee of the 2115 Commonwealth Avenue Realty Trust ("Leary"), for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, make the following agreement ("Agreement") for resolution of the litigation pending in the Land Court as 19 MISC 000160 (MDV) (the "Litigation").

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**3. Grant of Easement in Lieu of Title**

The parties agree that the record boundary between 10 Elberta Terrace and 230 Melrose Street shall not be relocated notwithstanding the "Findings of Fact and Conclusions of Law (Rule 52, Mass.R.Civ.P.) and Order" in the Litigation dated February 12, 2020.

In lieu of a relocation of the record boundary, the parties agree that Leary as record and beneficial owner of 10 Elberta Terrace, Newton, land, shall promptly execute and deliver an instrument suitable for recording and in substantially the form attached hereto as Exhibit 1 that grants to the Plaintiffs or their assigns a permanent easement for exclusive use of the following described land comprising portions of 10 Elberta Terrace (collectively, the "Easement Area"):

Starting at the record boundary with 230 Melrose Street at the northwest corner of the 10 Elberta Terrace lot and running 20 feet east along the boundary between 10 Elberta Terrace and 224 Melrose Street, then turning south and running 30 feet parallel to the record boundary between 10 Elberta Terrace and 230 Melrose, then turning west and running 20 feet to the record boundary, then turning north and running 30 feet along the record boundary to the point of beginning at the northwest corner of the 10 Elberta Terrace lot.

Starting at the southwest corner of the above-described easement area and running 3 feet east along the southern boundary of said easement area, then turning south and running 30 feet parallel to the record boundary between 10 Elberta Terrace and 230 Melrose Street, then turning west and running 3 feet to the record boundary at the southeastern corner of 230 Melrose Street, then turning north and running 30 feet along the record boundary to the point of beginning at the southwest corner of the first-described easement area.

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In furtherance of the foregoing, the parties hereby agree that:

1. Crowflight shall rebuild, restore, and supplement the excavated soil in the Easement Area at a level grade specified by the Plaintiffs to suitably match the grade of the land at the record boundary with 230 Melrose Street.

**APPENDIX TO SETTLEMENT AGREEMENT**

1. Retaining Wall: Shea Concrete Products specification: "10 Elberta Ter Newton – Preliminary Design Not for Construction" by Shea Concrete Products, dated 8/5/20, to be updated for new layout and grades.

**Grade and slope specifications subsequently provided by the Plaintiffs to John Santangelo, Esq., attorney for Crowflight et al.:**

The reference point for elevation within the 20' x 30' easement area is the grade along the property boundary with 230 Melrose St. at a point 15' south of the northwest corner of the Elberta Terrace lot. Unexcavated land within this easement area will be graded to the level of this reference point. Restored land within the 20' x 30' easement area will be graded from the elevation of the reference point to the East boundary of the easement area with a 2% slope so that the East boundary will be 2% lower than the reference point.

The 3' x 30' easement area will be level (non-sloping) from west to east and will match the existing grade of the boundary with 230 Melrose Street.